

EXHIBIT "B" TO THE
PROSPECTUS OF
THE HAMPTONS WEST, A CONDOMINIUM

DECLARATION OF CONDOMINIUM AND ITS EXHIBITS

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YOUNG, STERN & TANNENBAUM, P.A.
NORTH MIAMI BEACH

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(Orig. - Recorded)

THE HAMPTONS WEST, A CONDOMINIUM

DECLARATION OF CONDOMINIUM

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DECLARATION OF CONDOMINIUM
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DECLARATION OF CONDOMINIUM
OF THE HAMPTONS WEST, A CONDOMINIUM

DADE COUNTY, FLORIDA

HAMPTONS DEVELOPMENT CORP. OF DADE, a Florida corporation, herein called the "developer," makes the following declaration:

1. Purpose. The purpose of this declaration is to submit the land and improvements described to condominium form of ownership and use in the manner provided in Chapter 718 of the Florida Statutes, herein called "the condominium act." Except where permissive variances therefrom appear in this declaration, the annexed by-laws, and/or the articles of incorporation of HAMPTONS WEST CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, or in lawful amendments to these instruments, the provisions of Chapter 718, supra, including the definitions therein contained, are adopted herein by express reference as if set forth in haec verba; and this declaration, the annexed by-laws, and the articles of incorporation of said corporation, as lawfully amended from time to time, shall govern this condominium and the rights, duties, and responsibilities of owners of condominium parcels therein.
2. Name. The name by which this condominium is to be identified is "THE HAMPTONS WEST, A CONDOMINIUM" (hereinafter referred to as the "condominium").
3. Property Submitted to Condominium Form of Ownership. The following property is hereby submitted to the condominium form of ownership:
 - a. The Land. - The lands, owned in fee simple by the developer, lying and being situate in Dade County, Florida, as more particularly set forth in exhibit "A" attached hereto, which lands are called the "land."
 - b. The Improvements. - One multi-unit building (hereinafter sometimes referred to as "Tower I") containing three hundred sixty-three (363) condominium units. Of the three hundred sixty-three (363) condominium units, three hundred forty-two (342) are residential condominium units, one (1) is a commercial condominium unit and twenty (20) are cabana condominium units, together with all common elements and improvements appurtenant thereto, as more particularly set forth in the plot plan, survey and graphic descriptions of the improvements as shown in exhibit "B" attached hereto and made a part hereof as though set out in full.

c. Accessways, Guardhouse and Security Gate Easement. - A non-exclusive accessways, guardhouse and security gate easement for ingress and egress over the lands described in exhibit "D" attached hereto as created by the accessways, guardhouse and security gate easement, use and maintenance agreement, which is attached hereto as exhibit "E".

4. Definitions. As used in this declaration and all exhibits attached hereto, unless the context otherwise provides or requires, the following terms shall have the meanings or definitions listed below. Unless the context otherwise requires, all other terms used in this declaration shall be assumed to have the meaning attributed to said term by the condominium act.

a. Act - means and refers to the condominium act of the State of Florida (Florida Statute 718, et seq.) as it exists on the date hereof.

b. Assessment - means a share of the funds required for the payment of common expenses which from time to time are assessed against an owner.

c. Association or Corporation - means Hamptons West Condominium Association, Inc., the entity responsible for the operation of the condominium.

d. Board - means the board of directors of the corporation.

e. By-Laws - means the by-laws of the association as they exist from time to time, and as they may be amended from time to time.

f. Common Elements - means the portion of the condominium property not included in the units. Common elements shall include the tangible personal property required for the maintenance of the common elements and limited common elements even though owned by the association. References to common areas mean, and are, the common elements, and said words "common areas" and "common elements" are used interchangeably.

g. Common Expenses - include: (1) expenses of administration and management of the condominium property; (2) expenses of maintenance, operation, repair or replacement of common elements; (3) expenses declared common expenses by the provisions of this declaration or the by-laws; (4) any valid charge against the condominium as a whole.

h. Common Surplus - means the excess of all receipts of the corporation, including, but not limited to, assessments, rents, profits, and revenues on account of the common elements, over and above the amount of money expended as common expenses.

- i. Complex - means and refers to THE HAMPTONS COMPLEX which complex is contemplated to consist of the condominium on the land described in exhibit "A" attached hereto (the "land") and the land and improvements as may be constructed on land adjacent to the land, which land is described in exhibit "E" to the prospectus, and which land and improvements are sometimes referred to as "The Hamptons future development land" or "future development land." Only the land in exhibit "A" attached hereto is part and parcel of this condominium and the other land as set forth on exhibit "E" to the prospectus is not, at this time, part and parcel of this condominium. The complex land is legally described in exhibit "C" attached hereto.
- j. Condominium - means that form of ownership of condominium property under which units or improvements are subject to ownership by one or more owners, and there is appurtenant to each unit, as part thereof, an undivided share in common elements.
- k. Condominium Documents - means this declaration and all exhibits attached hereto as same, from time to time, may be amended.
- l. Condominium Unit - means a part of the property which is subject to private ownership; said unit being a unit space designated as "condominium unit" on the plot plan, survey and graphic descriptions attached hereto and marked as exhibit "B".
- m. Condominium Parcel - means the condominium unit, together with an undivided share in the common elements appurtenant thereto.
- n. Co-Tenant - means an owner owning a condominium parcel in conjunction with another owner.
- o. Declaration or Declarations - means this instrument and all exhibits attached hereto as it or they, from time to time, may be amended, and the declaration of condominium for such other condominium or condominiums, if any, which are subsequently determined to be operated by the association and all exhibits attached thereto as it or they, from time to time, may be amended.
- p. Developer - means HAMPTONS DEVELOPMENT CORP. OF DADE, a Florida corporation.
- q. Directors - means the directors of the corporation.
- r. Institutional Mortgagee - means the owner and holder of a mortgage encumbering a condominium parcel, which owner and holder of said

mortgage is either a bank or life insurance company or a federal or state savings and loan association, or a mortgage or real estate investment trust, or a pension and profit sharing fund, or a credit union, or a Massachusetts Business Trust, or an agency of the United States Government, or any entity controlling, controlled by or under common control with any of the foregoing, or a lender generally recognized in the community as an institutional lender, or the developer, or assignee, nominee, or designee of the developer.

- s. Institutional Mortgage - means a mortgage owned or held by an institutional mortgagee.
- t. Insurance Trustee - means that Florida Bank having trust powers, designated by the board to receive proceeds on behalf of the corporation, which proceeds are paid as a result of casualty or fire loss covered by insurance policies.
- u. Limited Common Elements - means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.
- v. Member - means an owner or co-tenant who, or which, is a member of Hamptons West Condominium Association, Inc., a Florida non-profit membership corporation, hereinafter referred to as "association," or "corporation."
- w. Occupant - means the person or persons, other than the owner, in possession of a condominium unit.
- x. Owner - means that person or entity owning a condominium parcel.
- y. Property or Condominium Property - means and includes the real property submitted to condominium ownership, whether or not contiguous, all improvements thereon, and all easements and rights appurtenant thereto, intended for use in connection with the condominium.
- z. Recreational Land Use Agreement - is the agreement between the developer and the association, a copy of which is attached hereto as exhibit "F" and made a part hereof as if set out in full.
- aa. The Hamptons Recreational Lands - Part I - refers to the recreational land, facilities and other improvements set forth under the recreational land use agreement which land is described in exhibit "G" attached hereto and made a part hereof as if set out in full.

- bb. The Hamptons Recreational Lands - Part II - refers to the land and potential facilities and improvements as described in the recreational land use agreement, which land is further described in exhibit "I" attached hereto and made a part hereof as if set out in full.
- cc. The Hamptons Recreational Lands - Part III - refers to the recreational land, facilities and other improvements set forth under the recreational land use agreement which land is described in exhibit "K" attached hereto and made a part hereof as if set out in full.
- dd. Utility Services - as used in the condominium act and construed with reference to this condominium and as used in the declaration, by-laws, the recreational land use agreement and the accessways, guardhouse and security gate easement, use and maintenance agreement shall include, but not be limited to, electric power, gas, water, heating, air-conditioning, cable television, sprinkler, irrigation, drainage, sewage and garbage disposal.
- ee. Voting Member - means an owner or his designee empowered to vote at annual or special meetings.
- 5. Identification. The condominium units and all other improvements constructed on the condominium property are set forth in detail in exhibit "B" attached hereto and made a part hereof. Each condominium unit is described in exhibit "B" in such a manner that there can be determined therefrom the identification, location, and dimensions of such unit and the common elements appurtenant thereto.

Each condominium unit is identified by a number, letter or name, or combination thereof, as shown on exhibit "B", so that no unit bears the same designation as any other unit.
- 6. Easements. Each of the following easements is a covenant running with the land of the condominium, to wit:
 - a. Utility Services; Drainage - Easements are reserved under, through and over the condominium property as may be required for utility services, cable television, drainage and other services in order to serve the condominium and complex. A unit owner shall do nothing within or outside his unit that interferes with or impairs the utility services using these easements. The board of directors of the association or its designee shall have a right of access to each unit to inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility service facilities and common elements contained in the unit or elsewhere in the condominium property, and to remove any improvements interfering

with or impairing the utility services or easements herein reserved; provided that such right of access shall not unreasonably interfere with the unit owner's permitted use of the unit, and entry shall be made on not less than one (1) day's notice except in the event of an emergency. Drainage systems on the condominium property, if any, shall be maintained continuously in good condition by the condominium association and easements are granted hereby over all condominium parcels in favor of all owners and the association with respect thereto; provided that such right of easement shall not unreasonably interfere with the unit owner's permitted use of his unit, and entry shall be made on not less than one (1) day's notice except in the event of an emergency. Such easements shall be for the use and benefit of owners, institutional mortgagees, or tenants, and those claiming by, through or under the aforesaid and for the benefit of all parties authorized to the use and enjoyment of the recreational lands under the recreational land use agreement. With respect to any easements set forth herein and any easements granted or to be granted under the recreational land use agreement and the accessways, guardhouse and security gate easement, use and maintenance agreement, all such easements shall be for the use and benefit of owners, institutional mortgagees or tenants, and those claiming by, through or under the aforesaid and for the benefit of all parties authorized to the use and enjoyment of the recreational lands under the recreational land use agreement.

b. Traffic - An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, halls, lobbies, elevators, center cores, and other portions of the common elements as may be from time to time intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the common elements and limited common elements as may, from time to time, be paved and intended for such purposes; and such easements shall be for the use and benefit of owners, institutional mortgagees, or tenants, and those claiming by, through or under the aforesaid and for the benefit of all parties authorized to the use and enjoyment of the recreational lands under the recreational land use agreement.

c. Easement for Unintentional and Non-Negligent Encroachments - If a unit shall encroach upon any common element, limited common element or upon any other unit, by reason of original construction or by the non-purposeful or non-negligent act of the unit owner or developer, then an easement appurtenant to such encroaching unit to the extent of such encroachment shall exist so long as such encroachment shall exist. If any common element or limited common element shall encroach upon any unit by reason of original construction or the non-purposeful or non-negligent act of the association or the developer, then an easement appurtenant to such

common element or limited common element to the extent of such encroachment shall exist so long as such encroachment shall exist.

d. Support - The developer and association hereby grant to each other, their heirs, successors, and assigns, and all third party beneficiaries, including condominium unit owners, their lessees, guests, invitees, servants, and employees, the right of support for all structures on any portion of the real property of the condominium.

e. Additional Easements - The developer (during any period in which there are any unsold residential units in the complex) and the association each shall have the right to grant such additional electric, telephone, telephone answering service, drainage, irrigation, sprinkler, cable television or other utility or service easements. The developer and not the association shall have the right to relocate any existing utility or service easements in any portion of the condominium property, and to grant such access easements as the developer shall deem necessary for the proper operation and maintenance of the improvements or any portion thereof, or for the general health or welfare of the unit owners, or for the purpose of carrying out any provisions of this declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the units in the complex for dwelling purposes. Nothing herein contained shall be construed as allowing the association to change any of the terms of the accessways, guardhouse and security gate easement, use and maintenance agreement attached hereto as exhibit "E".

f. Covenant - All easements, of whatever kind or character, whether heretofore or hereafter created, shall constitute a covenant running with the land, shall survive the termination of the condominium, and, notwithstanding any other provisions of this declaration, may not be substantially amended or revoked in a way which would unreasonably interfere with its proper and intended use and purpose. Owners do hereby designate developer and/or association as their lawful attorney in fact to execute any and all instruments on their behalf for the purposes of creating all such easements as are contemplated by the provisions hereof.

7. Common Elements. Common elements as hereinabove defined shall include within its meaning, in addition to the items as listed in the Florida condominium act, the following items:

- a. An undivided share in the common surplus.
- b. Easements for ingress, egress, support, maintenance, repair, replacement and utilities.

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- c. Easements for overhanging troughs or gutters, downspouts, and the discharge therefrom of rainwater and the subsequent flow thereof over condominium units.
- d. Easements through units for all conduits, chases, chase areas, pipes, ducts, plumbing, wiring and all other facilities for the furnishing of utility services to units and common elements and easements of support in every portion of a unit which contribute to the support of the improvements, and shall further include all personal property held and maintained for the joint use and enjoyment of all of the owners of all such units.
- e. Easements or encroachments by the perimeter walls, ceilings and floors surrounding each condominium unit caused by the settlement or movement of the building or caused by minor inaccuracies in building or rebuilding which now exist or hereafter exist, and such easements shall continue until such encroachment no longer exists.
- 8. Ownership of Common Elements and Restrictions thereto. The owner of each unit shall own a share and certain interest in the condominium property which is appurtenant to his unit, which includes, but is not limited to, the following items which are appurtenant to the several units, as indicated:
 - a. Common Elements - The undivided shares, stated as percentages, in the common elements appurtenant to each of the condominium units is set forth on the schedule attached hereto and made a part hereof by reference as exhibit "U".
 - b. Common Surplus - Each unit owner shall own any common surplus of his condominium in the same percentage as the common elements appurtenant to each unit are shared, as set forth in exhibit "U". This ownership, however, does not include the right to withdraw or require payment or distribution of the same.
 - c. Automobile Parking Spaces - The parking areas of the condominium are set out in exhibit "B" attached hereto. There are four hundred fifty-two (452) parking spaces in this condominium, twenty (20) parking spaces outside and four hundred thirty-two (432) parking spaces undercover. Every condominium unit, except cabana units, shall be assigned one (1) undercover parking space. All parking spaces, until assigned, are common elements of this condominium. Once a parking space is assigned to a unit, the same shall be deemed a limited common element of the unit to which it was assigned. Once a parking space is assigned and is a limited common element, such parking space may not thereafter be separately conveyed, hypothecated, transferred, encumbered or otherwise dealt with, and the use thereof shall pass only with title to the condominium unit to which it is

appurtenant. Any parking spaces which remain unassigned shall belong to the association as a common element for guest parking and shall be utilized by the association for the needs of the building and the condominium unit owners. However, developer, so long as it has units for sale, shall have the right to use unassigned parking spaces or a portion of the common elements and property for parking for prospective unit purchasers and such other parties as the developer, in its sole discretion, may reasonably determine.

Only condominium unit owners or their tenants may self-park their automobiles in their spaces as assigned. Any guests or invitees or servants of said condominium units shall be required to use the valet parking service of the condominium. Said valet parking service shall only be accomplished in accordance with a valet parking agreement entered into between the association and such other parties as the association may deem proper. In addition thereto, valet parking service shall provide for developer parking for prospective unit purchasers and such other parties as developer may reasonably determine, so long as the developer has units for sale.

The association, through its directors and officers, shall, and it is hereby authorized to, contract for the parking needs of condominium unit owners and their lessees, guests, servants, invitees and employees so as to provide a doorman and appropriate attendants for valet parking service at all times. The contract for the foregoing will include such terms and conditions as the association determines in its sole discretion. The charge for doorman services shall be a common expense of the condominium and not a charge against those specific unit owners requesting such service. Unit owners shall have the option of valet parking if they so desire. In the event a unit owner requests valet parking, such unit owner shall pay to the association such valet parking charge as the association promulgates as a valet parking charge. Accordingly, any income received from valet parking, whether from unit owners, their lessees, guests, servants, invitees or employees, shall be paid to the condominium association. The foregoing shall not be intended or construed to eliminate reasonable tipping for services provided by the doorman or valet parking and, accordingly, tipping is permitted.

Any unit owners, their lessees, guests, servants, invitees and employees, or as otherwise provided herein, shall use and be subject to the rules and regulations promulgated by the board of directors in connection with valet parking.

No parking space shall bear the same identifying number as any other.

The developer may add additional parking spaces to the parking areas at any time, providing that the addition of such spaces does not violate any

state or local law or ordinance, and, in such event, developer may add such spaces without approval from any other party whatsoever.

9. Common Expenses. The common expenses of the condominium, shall be shared by the unit owners as specified and set forth in exhibit "U". The foregoing ratio of sharing common expenses and assessments shall remain, regardless of the purchase price of the condominium parcels, their locations, or the building square footage included in each condominium unit.

10. Limited Common Elements. The balconies, terraces and patios of condominium units as shown on exhibit "B" hereto are limited common elements useable only by appurtenant unit owners. Those portions of the common elements reserved for the use of certain unit owners or a certain unit owner, to the exclusion of other unit owners, are deemed limited common elements. Any expense for the maintenance, repair or replacement relating to limited common elements shall be treated as and paid for as part of the common expenses of the association, unless otherwise specifically provided in this declaration and exhibits attached hereto. Should said maintenance, repair or replacement be caused by the negligence or misuse by a unit owner, his family, guests, servants and invitees, he shall be responsible therefor, and the association shall have the right to levy an assessment against the owner of said unit, which assessment shall have the same force and effect as all other special assessments.

A unit owner shall have the right to the exclusive use of his limited common element, including balcony, terrace and patio, and shall be responsible for the maintenance, care and preservation of the interior parapet walls, including floor and ceiling, within said exterior balcony, terrace or patio and the fixed and/or sliding glass door(s) in the entranceway to said patio, terrace or balcony, and the replacement of light bulbs on said terrace, patio or balcony, and the wiring, electrical outlets and fixtures thereon, if any. Notwithstanding, the association shall be responsible for the painting of the interior parapet walls and ceiling within said exterior balcony, terrace or patio. A unit owner may not screen or enclose his balcony, terrace or patio except with the prior written approval of the board of directors of the association, and the Architectural Control and Maintenance Standards Committee (the "committee").

Accordingly, any expense for the maintenance, repair or replacement relating to balconies, patios or terraces as limited common elements shall be treated as and paid for by the unit owner who is the owner of the appurtenant balcony, patio or terrace as a limited common element and not as a common expense of the association.

As set forth in paragraph 8c, all parking spaces, until assigned, are common elements, and when a unit owner receives a written parking space designation from developer during or subsequent to the purchase and closing of his unit wherein such unit owner is granted a right of exclusive use of a particular designated parking space or spaces, then such space shall thereupon become a limited common element usable

solely by such appurtenant unit owner. Expenses for the maintenance, repair or replacement of such spaces, as limited common elements, shall be controlled by the terms of the first paragraph of this numbered paragraph 10.

On every floor containing residential units in Tower I, there exists a pair of adjacent type "D" units at both the north and south end of said floor. In the event that adjacent type "D" units are owned by the same person or entity, the owner shall have the right to combine said units and, accordingly, in such event, the hall area between the two type "D" units may be deemed a limited common element of those two units. The developer shall, upon the request of the unit owner, designate and assign the space as a limited common element to the two type "D" units and shall furnish evidence of the same to the unit owner. Any expense and upkeep for the maintenance and repair of said limited common element shall be the responsibility of the unit owner who is the owner of the appurtenant type "D" units.

Those portions of the roof above condominium units PH 1, through and including PH 12, PH 14 and PH 15, designated on exhibit "B" hereto as limited common elements for said condominium units, are limited common elements useable only by appurtenant unit owners of the condominium units as specifically designated on exhibit "B" hereto, and the foregoing limited common elements are hereinafter referred to as "roof limited common elements" for the individual condominium units appurtenant thereto. Upon payment of a fee to the developer, (the amount of said fee being specified in the addendum to the form purchase and sale agreement for penthouse unit owners), a unit owner who has appurtenant to his unit a roof limited common element has the right and authority to construct improvements upon his roof limited common element limited, however, to such improvements as may be authorized in writing by the developer or the association through its board of directors. A unit owner who is the owner of a roof limited common element shall provide his own accessway to the roof limited common element which accessway shall be contained within his unit and may extend to the roof limited common element through the roof area above his unit. The perimetrical boundaries of a roof limited common element shall be as shown on exhibit "B" hereto. The lower boundaries shall be the top of the surface of the slab of the roof. The upper boundaries shall be twelve (12) feet above the surface of the slab of the roof, and unit owners shall be authorized to build interior perimeter walls not to exceed twelve (12) feet within the roof limited common element. Furthermore, no interior perimeter wall may extend beyond the exterior wall of the unit below. Under no circumstances shall a unit owner be permitted to alter or modify the parapet walls. A unit owner who has appurtenant to his unit a roof limited common element shall be deemed to own the outer undecorated and/or unfinished surfaces of perimeter ceilings, walls and floors of his roof limited common element as well as the decorated and/or finished surfaces of perimeter ceilings, walls and floors, including plaster and paint. Any construction or improvements made within a roof limited common element shall be at the cost, expense and responsibility of the unit owner whose unit is appurtenant to the roof limited common element. Further, any such construction and improvements for a roof

limited common element shall be commenced and completed in accordance with local, state and federal applicable laws and it shall be the responsibility of the unit owner to obtain all proper permits that may be deemed necessary by any governmental body having jurisdiction thereof and all such improvements shall be fully completed prior to completion of construction of the building, unless written permission from the developer or the association is otherwise obtained. Any use, construction and improvements for a roof limited common element and its accessway shall, prior to construction thereof, be presented to the developer or to the board of directors for approval and the developer or the board may require such drawings and specifications as they deem necessary. The unit owner of a roof limited common element shall have the right to the exclusive use of his roof limited common element and shall be responsible for the maintenance, care and preservation of his roof limited common element, including any improvements constructed thereon. Any expense for the construction, maintenance, repair, replacement or use related to a roof limited common element shall not be deemed a common expense of the association and shall be paid for by the respective condominium unit owner who is the owner of the particular roof limited common element. Maintenance and repair or replacement of a roof limited common element shall extend to all portions of the roof limited common element as owned by the unit owner of the unit as a limited common element. Improvements or construction in a roof limited common element shall in no way interfere or affect the structural integrity of the condominium building and in furtherance thereof, a unit owner of a roof limited common element shall indemnify and save harmless the association and unit owners from damage or loss caused by any construction or improvements by said unit owner within or upon his roof limited common element.

11. Governing Body. The affairs of the condominium shall be conducted by a corporation incorporated pursuant to the Florida Statutes governing corporations not for profit. The name of the corporation to conduct the affairs of the condominium shall be Hamptons West Condominium Association, Inc.

The by-laws of the association are attached hereto as exhibit "M" and made a part hereof, and a copy of the articles of incorporation of the association is attached hereto as exhibit "N" and made a part hereof.

All parties hereafter owning condominium parcels (owners) in this condominium which interest is evidenced by recordation of a proper instrument in the Public Records of Dade County, Florida, shall automatically be members of the association, and such membership shall automatically terminate when such persons have divested themselves of such interest.

An owner or owners of a single condominium parcel shall collectively be entitled to one (1) vote which vote shall be cast by the voting member, except that the owners of the cabana units shall be members of the association but shall not have any voting rights in the condominium association unless such owner also owns an apartment

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unit, and, in such event, the ownership of a cabana unit shall not increase the vote which said unit owner will otherwise have.

If a unit is owned by one person, his right to vote shall be established by the record title to his unit. If a unit is owned by more than one person, the person entitled to cast the vote for the unit shall be designated by a certificate signed by all of the record owners of the unit filed with the secretary of the association. If a unit is owned by a corporation, the person entitled to cast the vote for the unit shall be designated by a certificate of appointment signed by the president or the vice-president and attested by the secretary or the assistant secretary of the said corporation, and filed with the secretary of the association. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the unit concerned. A certificate designating the person entitled to cast the vote of a unit may be revoked by any owner thereof.

A person or entity owning more than one condominium parcel may be designated as a voting member for each such condominium parcel which it or he owns. The developer shall be deemed an owner and voting member of and for each unsold condominium unit. Failure by all owners of any condominium parcel to file the aforementioned written statement with the secretary prior to or at a members' meeting will result in depriving such owners of a condominium parcel of a vote at such meeting.

All the affairs, policies, regulations, and properties of the association shall be controlled and governed by the board of directors of the association, consisting of voting members.

The association shall have all of the powers and duties reasonably necessary to operate this condominium as set forth in this declaration, the by-laws, and the articles of incorporation of the association, and as the same may be amended. It shall also have all the powers and duties of an association, as set forth in the condominium act, as well as all powers and duties granted to or imposed upon it by this declaration, including:

- a. The irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein, or for making emergency repairs therein which are necessary to prevent damage to the common elements or to other units.
- b. The power to make and collect assessments and to lease, maintain, repair and replace the common elements.

c. The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by unit owners at all reasonable business hours.

d. The power to enter into contracts with others for a valuable consideration, including but not limited to contracts for vending machines, bus service, doorman and valet parking service, security service, landscaping maintenance, elevator maintenance, pest control, water treatment and for the maintenance and management of the subject condominium property, including the normal maintenance and repairs of the common elements, and in connection therewith to delegate the powers and rights herein contained, including that of making and collecting assessments, perfecting liens for non-payment, etc. The service and maintenance contracts referred to herein may delegate to the service company the duty and responsibility to maintain and preserve the landscaping, gardening, painting, repairing and replacement of the common elements, but shall not relieve the condominium unit owner from his personal responsibility to maintain and preserve the interior surface of the condominium parcels and to paint, clean, decorate, maintain and repair the individual condominium unit.

Each unit owner, his heirs, successors and assigns, shall be bound by any management agreement in the event a management agreement is entered into by the association, or amendments or revisions thereof to the same extent and effect as if he had executed such management agreement for the purposes therein expressed, including, but not limited to, adopting, ratifying, confirming and consenting to the execution of same by the association, covenanting and promising to perform each and every of the covenants, promises and undertakings to be performed by unit owners as required under said management agreement and acknowledging all of the terms and conditions thereof, including the manager's fee, if any, the maintenance, rental and/or expense of any apartment provided the manager, if any, and agreeing that the persons acting as directors and officers of the association entering into such an agreement have not breached any of their duties or obligations to the association.

e. The power to adopt reasonable rules and regulations for the maintenance and conservation of the condominium property, and for the health, comfort, safety and welfare of the condominium unit owners, all of whom shall be subject to such rules and regulations.

f. The power to grant or contract for easements, license and other privileges and duties on behalf of the membership where no member's rights are substantially affected.

g. Subsequent to the filing of this declaration, when authorized by a vote of sixty-six and two-thirds percent (66-2/3%) of the total vote of the unit owners of the association and approved by the owners and holders of institutional first mortgages encumbering condominium parcels who represent a majority of the dollar institutionally mortgaged indebtedness against this condominium, then and in that event, the association may purchase and/or acquire and enter into agreements from time to time whereby it acquires leaseholds, memberships, and other possessory or use interests in land or facilities, whether or not contiguous to the lands of the condominium, intended to provide for the enjoyment, recreation and other use or benefit of the unit owners. The expense of ownership, rentals, membership fees, operations, replacements and other undertakings in connection therewith shall be common expenses, together with all other expenses and costs herein or by law defined as common expenses.

h. The authority and power to enter into the recreational land use agreement which is attached hereto as exhibit "F".

i. The authority and power to enter into the accessways, guardhouse and security gate easement, use and maintenance agreement which is attached hereto as exhibit "E".

j. The power to amend the by-laws in the manner provided for therein, but no amendment to said by-laws shall be adopted which would affect or impair the validity or priority of any institutional mortgage covering any condominium parcel(s), or which would change the provisions of the by-laws with respect to institutional mortgagees, without the written approval of all institutional mortgagees of record.

12. Maintenance, Alterations and Improvements. The responsibility for the maintenance of the condominium property and restrictions upon its alteration and improvement shall be as follows:

a. By the Association - The association shall operate, maintain, repair and replace at the association's own expense:

- (1) All common elements.
- (2) All portions of the units (except interior wall surfaces) contributing to the support of the building, which portions shall include, but not be limited to, the outside walls of the building, and load bearing columns.
- (3) All conduits, chases, chase areas, ducts, plumbing, air-conditioning, wiring and other facilities for the furnishing of utility services which

are contained in the portions of the unit contributing to the support of the building or within interior boundary walls, and all such facilities contained within a unit which service part or parts of the condominium other than the unit within which contained.

- (4) All property owned by the association and other property contemplated by and to the extent the same is consistent with the terms of the accessways, guardhouse and security gate easement, use and maintenance agreement and the recreational land use agreement.
- (5) All incidental damage caused to a unit by the above work.
- (6) All painting of interior parapet walls and ceilings within exterior balconies, terraces and patios.

b. By the Condominium Parcel Owner - The responsibility of the condominium parcel owner shall be as follows:

- (1) To maintain, repair and replace at his expense all portions of the unit except the portions to be maintained, repaired and replaced by the association. Notwithstanding the provisions of paragraph 12.a. above, included within the responsibility of the unit owner shall be windows, screens and doors opening into or onto his unit, sliding glass doors and plate glass. All such maintenance, repairs and replacements shall be done without disturbing the rights of other unit owners.
- (2) To maintain, repair and replace at his own expense his individual air conditioning and heating system. Each unit owner shall be and is the sole owner of his condominium unit's individual air conditioning and heating unit, which unit is located inside his condominium unit. Accordingly, the unit owner shall maintain, repair and replace, at their own expense, any portions of such system in need thereof including, but not limited to, the compressor, condenser, motor, fan and related parts. Notwithstanding the foregoing, unit owner shall not be responsible for such conduits and ducts as are described in paragraph 12.a.(3) hereof.
- (3) Within the unit to maintain, repair, and replace at his expense all fans, stoves, refrigerators, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage, and sanitary service to his condominium unit. The floor and interior walls of any balcony, terrace or patio of a condominium unit shall be maintained by the condominium unit owner thereof at his own expense.

- (4) Not to decorate or change the appearance or color of any portion of the exterior of the building including balconies, patios or terraces or any stucco portion of the unit.
- (5) To promptly report to the association any defects or need for repairs, the responsibility for the remedy of which is that of the association.
- (6) No condominium parcel owner other than the developer shall make any alterations in the portions of the building which are to be maintained by the association, or remove any portion thereof or make any additions thereto or do any work which would jeopardize the safety or soundness of the building or impair any easement.

c. Alteration and Improvement - There shall be no material alterations or substantial additions to the common elements or limited common elements, except as the same are authorized by the board of directors and the committee and ratified by the affirmative vote of voting members casting not less than sixty-six and two-thirds percent (66-2/3%) of the total votes of the members of the association present at any regular or special meeting of the unit owners called for that purpose. The cost of the foregoing shall be assessed as common expenses of this condominium. Where any alterations or additions as aforescribed are exclusively or substantially exclusively for the benefit of the unit owner(s) requesting same, then the cost of such alterations or additions shall be assessed against and collected solely from the unit owners exclusively or substantially exclusively benefiting, and the assessment shall be levied in such proportion as may be determined as fair and equitable by the board of directors of the association. Where such alterations or additions exclusively or substantially exclusively benefit unit owners requesting same, said alterations or additions shall be made only when authorized by the board of directors and the committee and ratified by not less than seventy-five percent (75%) of the total votes of the unit owners exclusively or substantially exclusively benefiting therefrom; and where said unit owners are ten (10) or less, the approval of all but one (1) shall be required.

13. Enforcement of Maintenance. In the event the owner of a unit fails to maintain it as required above, the association, developer, or any other unit owner shall have the right to proceed in a court of equity to seek compliance with the foregoing provisions, or the association shall have the right to assess the unit owner and the unit for the necessary sums to put the improvements within the unit in good condition. After such assessment, the association shall have the right to have its employees or agents enter the unit and do the necessary work to enforce compliance with the above provision.

Further, in the event a unit owner violates any of the provisions of paragraph 12 above, the developer and/or the association shall have the right to take any and all such steps as may be necessary to remedy such violation, including, but not limited to, entry of the subject unit with or without consent of the unit owner.

14. Developer's Maintenance Guarantee. In the event there are unsold units, the developer retains the right to be the owner of said unsold units; however, the developer, pursuant to and in accordance with exhibit "O" hereto, which is a form of guarantee to be delivered to each purchaser at time of closing, has guaranteed that the assessment for common expenses of the condominium imposed upon the unit owners other than developer during a specified period of time shall not increase over a stated dollar amount. During this said period of time, the developer will not be required to make payments for assessments attributable to units owned by the developer, but, instead, will be obligated to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners. The foregoing provisions are pursuant to Florida Statutes Section 718.116(8)(b).

The developer hereby reserves the right to extend the period of this maintenance guarantee for as many additional periods as it desires. In the event of such additional guarantee or guarantees, then the assessments for common expenses of the condominium shall not exceed the dollar amount as set out in the new guarantee or guarantees, and in such cases, the developer shall obligate itself to pay any amount of common expenses incurred during the additional period or periods guaranteed and not produced by the assessments at the guaranteed level. It is understood that for every additional guarantee, the developer shall deliver to each unit owner a guarantee in the form and substance as the form of guarantee shown in exhibit "O" hereof, except stating therein the new guarantee period and the amount guaranteed.

The provisions of this paragraph 14 are paramount to and superior to the provisions of paragraphs 9 and 16 of this declaration as to the matters set forth in this paragraph.

15. Condominium Working Capital Fund. At the time the developer sells and closes a condominium unit to a purchaser (purchaser thereby becoming a unit owner in this condominium), the purchaser shall deposit an amount equal to two (2) months maintenance payments for the purchasers' condominium fund (condominium working capital fund) for the purpose of initial maintenance, initial items, non-recurring items, capital expenses, permits, licenses, and all utility deposits and advance insurance premiums for insurance policies and coverages pursuant to this declaration and the exhibits attached hereto. All of the foregoing expenses or items may be paid from the condominium working capital fund. If the developer has paid any of the foregoing expenses or items, then any such expense or item shall be paid to or reimbursed to the developer from the condominium working capital fund. The purchasers' condominium fund may be commingled by the association with any of its other funds.

The commencement of payment of common expenses by unit owners shall be at such time as the developer notifies unit owners of the commencement date of payment of monthly common expenses, provided same shall not commence later than the first day of the month succeeding thirty (30) days from the first closing in this condominium. Prior to the time that maintenance payments are commenced for the condominium, all maintenance expenses shall be paid from the purchasers' condominium fund.

16. Assessments, Liability, Lien and Priority, Interest, Collection. Common expenses shall be assessed against each condominium parcel as provided in paragraph 8 of the prospectus.

Assessments and installments that are unpaid for over ten (10) days after due date may, at the discretion of the board of directors, be subject to a late charge of Twenty-Five Dollars (\$25.00) per month and/or bear interest at the rate of eighteen percent (18%) per annum from the due date until paid.

The board of directors of the association may take such action as they deem necessary to collect assessments, by personal action or by enforcing and foreclosing its lien and may settle and compromise same if in the best interest of the association. The delinquent members shall pay all costs, including reasonable attorney's fees, incident to the collection of such assessments or enforcement of such lien. In any lien foreclosure, the condominium parcel owner may be required to pay a reasonable rental for continued occupancy or use of the condominium parcel, and plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect same. The association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien and to apply against said bid sums due the association for assessments, interest, and collection costs.

As to priority between the lien of a recorded mortgage and the lien for an assessment, the lien for assessment shall be subordinate and inferior to any recorded institutional first mortgage regardless of when said assessment was due, but not to any other mortgage. The association shall maintain a register of institutional first mortgages and shall give such mortgagees notice, in writing, of all notices given by the association to the owner of such condominium parcel encumbered by such institutional first mortgage.

If the mortgagee of a first mortgage of record, or any other purchaser or purchasers of a condominium parcel, obtains title to the condominium parcel as a result of the foreclosure of the first mortgage, or by voluntary conveyance in lieu of such foreclosure, such acquiror of title, his successors and assigns, shall not be liable for the share of common expenses or assessments by the association pertaining to such condominium parcel or chargeable to the former owner of such condominium parcel which became due prior to acquisition of title as a result of the foreclosure or voluntary conveyance in lieu of said foreclosure. Such unpaid shares of common

expenses or assessments shall be deemed to be common expenses collectible from all of the owners of condominium parcels in the condominium, including such acquiror, his successors and assigns. It is understood that such acquiror shall be liable for his share of common expenses or assessments attributable to his condominium unit from the date of acquiring said condominium unit.

In furtherance of said grant of authority to the association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the condominium, the following provisions shall be operative and binding upon the owners of all condominium units, to wit:

a. In accordance with Florida Statutes Section 718.112(2)(f), the board of directors of the association shall establish an annual budget, in advance, for each fiscal year, and such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the condominium. As a common expense of the association, there shall be included the cost and expenses of the recreational land use agreement as set out in exhibit "F", the cost and expenses of the accessways, guardhouse and security gate easement, use and maintenance agreement as set out in exhibit "E" and the cost of maintaining leasehold and other possessory use or fee interests in lands or facilities, including, but not limited to, country clubs, golf clubs, marinas and other recreational and communal facilities, whether or not contiguous to the lands of the condominium, to provide enjoyment, recreation or other use or benefit to the condominium owners, all as may be now or hereafter acquired, directly or indirectly, in such form and in such manner as may be deemed by the board of directors to be in the best interests of the association. Should the board of directors at any time determine, in the sole discretion of said board of directors, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the condominium, or in the event of emergencies, said board of directors shall have the authority to levy such additional assessment or assessments as it may deem to be necessary.

b. All monies collected by the association shall be treated as the separate property of the said association, and such monies may be applied by the association to the payment of any expense of operating and managing the condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this declaration of condominium and the articles of incorporation and by-laws of said association, and as monies for any assessment are paid to the association by any condominium parcel owner, the same may be commingled with monies paid to said association by other condominium parcel owners. Although all funds and common surplus, including other assets of the association, and any increments thereto or profits derived therefrom, or from the leasing or use of common elements,

shall be held for the benefit of the members of the association, no member of said association shall have the right to assign, hypothecate, pledge, or in any manner transfer his membership interest therein, except as an appurtenance to his condominium parcel. When the owner of a condominium parcel shall cease to be a member of the association by reason of his divestment of ownership of such condominium parcel, by whatever means, the association shall not be required to account to such owner for any share of the funds or assets of the association, which may have been paid to the association by such condominium parcel owner, as all monies which any condominium parcel owner has paid to the association shall be and constitute an asset of said corporation which may be used in the operation and management of the condominium.

- c. The payment of any assessment or installment thereof due to the association shall be in default if such assessment, or any installment thereof is not paid unto the association on or before the due date for such payment.
- d. The owner or owners of each condominium parcel shall be personally liable, jointly and severally, as the case may be, to the association for the payment of all assessments, regular or special, which may be levied by the association when such party or parties are owner or owners of a condominium parcel in the condominium. In the event that any owner or owners are in default in payment of any assessment or installment thereof owed to the association, such owner or owners of any condominium parcel shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.
- e. No owner of a condominium parcel may exempt himself from liability for any assessment levied against such owner and his condominium parcel by waiver of the use or enjoyment of any of the common elements, or by abandonment of the condominium parcel or in any other way.
- f. Recognizing that the necessity for providing proper operation and management of the condominium entails the continuing payment of costs and expenses therefor, which results in benefit to all of the owners of condominium parcels, and that the payment of such common expense represented by the assessments levied and collected by the association is necessary in order to preserve and protect the investment of the owner of each condominium parcel, the association is hereby granted a lien upon such condominium parcel, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the owner

of each condominium parcel, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the association in enforcing this lien upon said condominium parcel. The lien granted to the association may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida, and in any suit for the foreclosure of said lien, the association shall be entitled to rental from the owner of any condominium parcel from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said condominium parcel. The rental required to be paid shall be equal to the rental charged on comparable type of condominium units in Dade County, Florida. The lien granted to the association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the association in order to preserve and protect its lien, and the association shall further be entitled to interest at the rate of eighteen percent (18%) per annum on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any condominium parcel, or who may be given or acquire a mortgage, lien, or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the association, and shall acquire such interest in any condominium parcel expressly subject to such lien rights.

g. The lien herein granted unto the association shall be effective from and after the time of recording in the Public Records of Dade County, Florida, a claim of lien stating the description of the condominium parcel encumbered thereby, the name of the record owner, the amount due, and the date when due, and the lien shall continue in effect until all sums secured by said lien, as herein provided, shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded (the maintenance sums that may be accelerated pursuant to the declaration or the by-laws hereto), plus late charges, interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

h. Whenever any condominium parcel may be leased, sold, or mortgaged by the owner thereof, which lease or sale or mortgage shall be concluded only upon compliance with other provisions of this declaration, the association, upon written request of the owner of such condominium parcel, shall furnish to the proposed lessee, purchaser, or mortgagee a statement

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verifying the status of payment of any assessment which shall be due and payable to the association by the owner of such condominium parcel. Such statement shall be executed by any officer of the association, and any lessee, purchaser, or mortgagee may rely upon such statement in concluding the proposed lease, purchase, or mortgage transaction, and the association shall be bound by such statement.

In the event that a condominium parcel is to be leased, sold, or mortgaged at the time when payment of any assessment against the owner of said condominium parcel and such condominium parcel due to the association shall be in default (whether or not a claim of lien has been recorded by the association), then the rent, proceeds of such purchase, or mortgage proceeds shall be applied by the lessee, purchaser, or mortgagee first to payment of any then delinquent assessment or installments thereof due to the association before the payment of any rent, proceeds of purchase, or mortgage proceeds to the owner of any condominium parcel who is responsible for payment of such delinquent assessment.

The association shall have the right to withhold consent to a sale, lease, or mortgage where there is a deficiency or delinquency existing as to an assessment or installment due in the absence of a properly executed assignment to the association of such portion of the proceeds of such sale, lease, or mortgage equal to the amount of such deficiency or delinquency.

In any voluntary conveyance of a condominium parcel, other than voluntary conveyance in lieu of foreclosure, the grantee shall be jointly and severally liable with grantor for all unpaid assessments against the grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

Institution of a suit at law to attempt collection of the payment of any delinquent assessment shall not be deemed to be an election by the association which shall prevent its thereafter seeking by foreclosure to enforce the collection of any sums still owed to it, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt collection of any balance then remaining due.

17. Insurance.
 - a. Liability Insurance - The board of directors of the association shall obtain public liability, property damage liability and other liability insurance covering all real property owned by the association and all of the common elements of the condominium, and insuring the association and the unit

owners, as its and their interests appear, in such amounts as the board of directors of the association may determine from time to time, provided that the minimum amount of coverage shall be \$500,000.00/\$1,000,000.00/\$50,000.00. Said insurance coverage shall include, but not be limited to, water damage, legal liability, hired automobile, non-owned automobile, and off-premises employee coverages. All liability insurance shall contain a cross-liability endorsement to cover the liability of all unit owners, as a group, to any one unit owner. Premiums for the payment of such insurance shall be paid by the association and charged as a common expense.

- b. Casualty Insurance; Purchase of Insurance. The association shall obtain fire and extended coverage insurance and vandalism and malicious mischief insurance, insuring all of the insurable improvements within the building (including all fixtures, installations or additions comprising that part of the building within the boundaries of the units initially installed, or replacements thereof, in accordance with the original plans and specifications therefor, but excluding all furniture, furnishings or other personal property owned, supplied or installed by unit owners or tenants of unit owners), including personal property owned by the association, in and for the interest of the association, all unit owners and their mortgagees, as their interests may appear, with a company complying with the standards set by the board of directors of the association in an amount equal to the maximum insurable replacement value as determined annually by the board of directors of the association. The premiums for such coverage and other expenses in connection with said insurance shall be paid by the association and charged as a common expense. The company or companies with whom the association shall place its insurance coverage, as provided in this declaration, must be good and responsible companies, authorized to do business in the State of Florida. The institutional first mortgagee who first records a mortgage encumbering a condominium unit shall have the right, for so long as it owns and holds any mortgage encumbering a condominium unit, to approve the policies and the company or companies who are the insurers under the insurance placed by the association as herein provided, and the amount thereof, and the further right to designate and appoint the insurance trustee. At such time as the aforesaid institutional first mortgagee is not the holder of a mortgage on a unit, then these rights of approval and designation shall pass to an institutional first mortgagee selected by the board of directors which mortgagee shall hold mortgages on at least three (3) condominium units and in the event there are no institutional mortgagees that hold mortgages on at least three (3) condominium units, then, in such event, any institutional mortgagee selected by the board of directors.

c. Loss Payable Provisions - Insurance Trustee - The insurance trustee shall be a banking institution having trust powers and doing business in the State of Florida. The board of directors of the association shall select the insurance trustee. All policies purchased by the association shall be for the benefit of the association, all unit owners, and their mortgagees, as their interests may appear. Such policies shall be deposited with the insurance trustee (as hereinbefore defined), who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof. Said policies shall provide that all insurance proceeds payable on account of loss or damage shall be payable to the insurance trustee. The insurance trustee shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds, nor for the form or content of the policies. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the association, the unit owners and their respective mortgagees (sometimes collectively referred to hereinafter as "beneficial owners"), in the following shares, but such shares need not be set forth upon the records of the insurance trustee:

(1) Common elements - Proceeds on account of damage to common elements shall be an undivided share for each unit owner, such share being the same as the undivided share in the common elements appurtenant to his unit.

(2) Condominium units - Proceeds on account of condominium units shall be in the following undivided shares:

(a) Partial destruction when units are to be repaired and restored to the owners of the damaged units in proportion to the cost of repairing the damage suffered by each unit owner.

(b) Total destruction of condominium improvements, or where "very substantial" damage occurs and the condominium improvements are not to be restored, as provided hereinafter in this Article to the owners of all condominium units, each owner's share being in proportion to his share in the common elements appurtenant to his condominium unit.

(3) Mortgagees - In the event an institutional mortgage encumbers a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner, as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired.

d. Distribution of Proceeds - Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the owners and expended or disbursed after first paying or making provision for the payment of the expenses of the insurance trustee in the following manner:

- (1) Reconstruction or Repair - If the damage for which the proceeds were paid is to be repaired and restored, the remaining proceeds shall be paid to defray the cost thereof, as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the owners, all remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by him. Said remittance shall be made solely to an institutional first mortgagee, when requested by such institutional first mortgagee, whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt.
- (2) Failure to Reconstruct or Repair - If the damage for which the proceeds were paid is not to be repaired and restored, the remaining proceeds shall be distributed to the beneficial owners, all remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by him. Said remittance shall be made solely to an institutional first mortgagee, when requested by such institutional first mortgagee, whose mortgage provides that it has the right to require application of the insurance proceeds to the payment of its mortgage debt. In the event of the loss or damage to personal property belonging to the association, and should the board of directors of the association determine not to replace such personal property as may be lost or damaged, the proceeds shall be disbursed to the owners as surplus in the manner elsewhere stated.
- (3) Certificate - In making distribution to unit owners and their mortgagees, the insurance trustee may rely upon a certificate of the association, executed by the president and secretary of the association, as to the names of the unit owners and their respective shares of the distribution. Upon request of the insurance trustee, the association forthwith shall deliver such certificate. In addition, the insurance trustee may rely on such a certificate as to whether or not the damaged property is to be repaired and restored and as to the payee and the amount to be paid from said proceeds.
- e. Loss Within a Single Unit or Units - If loss shall occur within a single unit or units, without damage to the common elements, the insurance proceeds shall be distributed to the unit owner(s), remittance to unit owners and

their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by him. Said remittance shall be made solely to an institutional first mortgagee when requested by such institutional first mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt. The unit owner shall thereupon be fully responsible for the restoration of the unit.

f. Loss Less Than "Very Substantial" - Where a loss or damage occurs to the common elements, or to any unit or units and the common elements, but said loss is less than "very substantial" (as hereinafter defined), it shall be obligatory upon the association and the unit owners to repair, restore, and rebuild the damage caused by said loss. Where such loss or damage is less than "very substantial":

(1) The board of directors of the association shall promptly obtain reliable and detailed estimates of the cost of repairing and restoration.

(2) If the damage or loss is limited to the common elements, with minimal or no damage or loss to any individual unit, and if such damage or loss to the common elements is less than Seventy-Five Thousand Dollars (\$75,000.00), the insurance proceeds shall be endorsed by the insurance trustee over to the association, and the association shall promptly contract for the repair and restoration of the damage.

(3) If the damage or loss involves an individual unit(s) encumbered by institutional first mortgagees, as well as the common elements, or if the damage is limited to the common elements alone but is in excess of Seventy-Five Thousand Dollars (\$75,000.00), the insurance proceeds shall be disbursed by the insurance trustee for the repair and restoration of the property upon the written direction and approval of the association; provided, however, that upon the request of a holder of an institutional first mortgage which encumbers any damaged unit, the written approval shall also be required of the institutional first mortgagee owning and holding the first recorded mortgage encumbering a condominium unit, so long as it owns and holds any mortgage encumbering a condominium unit. At such time as the aforesaid institutional first mortgagee is not the holder of a mortgage on a unit, then these rights of approval and designation shall pass to an institutional first mortgagee selected by the board of directors which mortgagee shall hold mortgages on at least three (3) condominium units and in the event there are no institutional mortgagees that hold mortgages on at least three (3) condominium

units, then, in such event, any institutional mortgagee selected by the board of directors. Should written approval be required, as aforesaid, it shall be said mortgagee's duty to give written notice thereof to the insurance trustee. The insurance trustee may rely upon the certificate of the association and the aforesaid institutional first mortgagee, if said institutional first mortgagee's written approval is required, as to the payee and the amount to be paid from said proceeds. All payees shall deliver paid bills and waivers of mechanics' liens to the insurance trustee and execute any affidavit required by law or by the association or the aforesaid institutional first mortgagee. In addition to the foregoing, the institutional first mortgagee whose approval may be required, as aforesaid, shall have the right to require the association to obtain a completion, performance, and payment bond in an amount and with a bonding company authorized to do business in the State of Florida, which are acceptable to said mortgagee.

- (4) Subject to the foregoing, the board of directors shall have the right and obligation to negotiate and contract for the repair and restoration of the premises.
- (5) If the net proceeds of the insurance are insufficient to pay for the estimated cost of restoration and repair (or for the actual cost thereof if the work has actually been done), the association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to the unit owners' share in the common elements, for that portion of the deficiency as is attributable to the cost of restoration of the common elements, and against the individual unit owners for that portion of the deficiency as is attributable to his individual unit; provided, however, that if the board of directors finds that it cannot determine with reasonable certainty the portion of the deficiency attributable to specific individual damaged unit(s), then the board of directors shall levy the assessment for the total deficiency against all of the unit owners in proportion to the unit owners' share in the common elements, just as though all of said damage had occurred in the common elements. The special assessment funds shall be delivered by the association to the insurance trustee and added by said trustee to the proceeds available for the repair and restoration of the property.
- (6) In the event the insurance proceeds are sufficient to pay for the cost of restoration and repair, or in the event the insurance proceeds are insufficient but additional funds are raised by special assessment within ninety (90) days after the casualty so that sufficient funds are

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on hand to fully pay for such restoration and repair, then no mortgagee shall have the right to require the application of insurance proceeds as to the payment of its loan; provided, however, that this provision shall be waived by the board of directors in favor of any institutional first mortgagee upon request made within ten (10) days after the casualty. In such event, such mortgagee shall only be entitled to the portion of the proceeds that would be applicable to the condominium unit and not to the portion that would be applicable to the common elements. To the extent that any insurance proceeds are required to be paid over to such mortgagee, the unit owner shall be obliged to replenish the funds so paid over, and said unit owner and his unit shall be subject to special assessment for such sum.

g. "Very Substantial" Damage - As used in this declaration, or any other context dealing with this condominium, the term "very substantial" damage shall mean loss or damage whereby three-fourth's (3/4) or more of the total unit space in the condominium is rendered untenable, or loss or damage whereby seventy-five percent (75%) or more of the total amount of insurance coverage (placed as per paragraph 17b) becomes payable. Should such "very substantial" damage occur, then:

(1) The board of directors of the association shall promptly obtain reliable and entailed estimates of the cost of repair and restoration thereof.

(2) The provisions of paragraph 17f shall not be applicable to any institutional first mortgagee who shall have the right, if its mortgage so provides, to require application of the insurance proceeds to the payment or reduction of its mortgage debt. The board of directors shall ascertain as promptly as possible the net amount of insurance proceeds available for restoration and repair.

(3) Thereupon, a membership meeting shall be called by the board of directors of the association, to be held not later than sixty (60) days after the casualty, to determine the wishes of the membership with reference to the abandonment of the condominium project, subject to the following:

(a) If the net insurance proceeds available for restoration and repair, together with the funds advanced by unit owners to replace insurance proceeds paid over to institutional first mortgagees, are sufficient to cover the cost thereof, so that no special assessment is required, then the condominium property shall be restored and repaired, unless two-thirds (2/3) of the total votes of the members of the condominium shall vote to

abandon the condominium project, in which case the condominium property shall be removed from the provisions of the law, in accordance with Section 718.117 of the condominium act.

(b) If the net insurance proceeds available for restoration and repair, together with funds advanced by unit owners to replace insurance proceeds paid over to institutional first mortgagees, are not sufficient to cover the costs thereof, so that a special assessment will be required, then if two-thirds (2/3rds) of the total votes of the members of the condominium vote against such special assessment vote and to abandon the condominium project, then it shall be so abandoned and the property removed from the provisions of the law in accordance with Section 718.117 of the condominium act. In the event a majority of the total votes of the members of the condominium vote in favor of special assessment, the association shall immediately levy such assessment, and thereupon the association shall proceed to negotiate and contract for such repairs as set out in paragraph 16-f above. The special assessment funds shall be delivered by the association to the insurance trustee and added by said trustee to the proceeds available for the repair and restoration of the property. The proceeds shall be disbursed by the insurance trustee for the repair and restoration of the property, as provided in paragraph 17d above. To the extent that any insurance proceeds are paid over to such mortgagee, and in the event it is determined not to abandon the condominium project and to vote a special assessment, the unit owner shall be obliged to replenish the funds so paid over to his mortgagee, and said unit owner and his unit shall be subject to special assessment for such sum.

(c) In the event any dispute shall arise as to whether or not "very substantial" damage has occurred, it is agreed that such a finding made by the board of directors of the association shall be binding upon all unit owners.

h. Surplus - It shall be presumed that the first monies disbursed in payment of costs of repair and restoration shall be from the insurance proceeds; and if there is a balance in the funds held by the insurance trustee after the payment of all costs of the repair and restoration, such balance may be retained as a reserve, or wholly or partly distributed, at the discretion of the board of directors, unless the institutional mortgagee holding and owning the first recorded mortgage encumbering a condominium unit

within the condominium requires distribution. In the event of distribution, then the insurance trustee shall distribute any such balance to the unit owners and their mortgagees jointly.

i. Certificate - The insurance trustee may rely upon a certificate of the association, certifying as to whether or not the damaged property is to be repaired and restored. Upon request of the insurance trustee, the association forthwith shall deliver such certificate.

j. Plans and Specifications - Any repair and restoration must be substantially in accordance with the plans and specifications for the original building, or as the building was last constructed, or according to the plans approved by the board of directors of the association, which approval shall not be unreasonably withheld. If any material or substantial change is contemplated, the approval of all institutional first mortgagees shall also be required. The insurance trustee is not obligated or required to inquire into or determine any matters concerning the plans or specifications of any repairs, restorations or rebuilding.

k. Association's Power to Compromise Claim - The association is hereby irrevocably appointed agent for each unit owner for the purpose of compromising and settling claims arising under insurance policies purchased by the association, and to execute and deliver releases therefor upon the payment of claims.

l. A workmen's compensation policy shall be purchased to meet the requirements of law.

m. Such other insurance shall be purchased as the board of directors of the association shall determine from time to time to be desirable.

n. Each individual unit owner shall be responsible for purchasing, at his own expense, liability insurance to cover accidents occurring within his own unit or as a result of his own negligence which causes damage outside of his own unit, and for purchasing insurance upon his own personal property including, but not limited to, flood insurance, living expense insurance, and such insurance, where applicable, shall contain the same waiver of subrogation, if available, as referred to in paragraph 17o hereinafter.

o. If available, and where applicable, the board of directors of the association shall endeavor to obtain policies which provide that the insurance company waives its right of subrogation as to any claims against unit owners, the association, and their respective servants, agents, and guests.

18. Conveyances, Sales, Rentals, Leases and Transfers. In order to insure the community of congenial residents and thus protect the value of the units, the sale, leasing, rental, and transfer of units by any owner other than the developer shall be subject to the following provisions:

a. Conveyances, Sales and Transfers. Any sale, conveyance or transfer of any residential condominium parcel to any other person by any unit owner other than parties otherwise exempt under the terms of this paragraph 18 shall be subject to rights of first refusal to purchase in favor of the association, its designee or, if the board of directors in its sole discretion so desires, other members, in accordance with the terms and provisions as hereinafter set forth. Unit owners shall provide or require that all offers to purchase or purchase agreements contain a statement that such offer or agreement is subject to the rights of first refusal to purchase contained in this paragraph 18 of the declaration. Prior to sale, conveyance, or transfer of any residential condominium parcel to any other person, the owner shall notify (the "owner's initial notice") the board of directors of the association, in writing and by certified mail, of the name and address of the person to whom the proposed sale, conveyance, or transfer is to be made, and such other information as may be required by the board of directors of the association. Within twenty-one (21) days from the receipt of the owner's initial notice, the application for transfer approval form, the purchase agreement and the receipt of such other information as has been requested by the board of directors of the association (whichever shall last occur), the board shall either approve or disapprove of a proposed sale, transfer, or conveyance, in writing, (the "board's initial notice") and shall notify the owner of its decision. Any such disapprovals by the board of directors may be made on an arbitrary basis and the board shall not be obligated to provide any reason or explanation therefor. In the event the board of directors shall fail to approve or disapprove of a proposed sale within said twenty-one (21) days, the failure to act as aforesaid shall be considered approval of the sale.

In the event the board of directors disapproves the proposed sale, conveyance, or transfer, and if a member still desires to consummate such sale, conveyance, or transfer, he shall, within ten (10) days from the mailing of the notice of disapproval from the board to the member, deposit by certified mail written notice (the "owner's post disapproval notice") to the secretary of the association of his intention to sell, convey or transfer on a certain date, together with the price and other terms thereof. For a period of forty-five (45) days from the date of an owner's deposit in the mails of said owner's post disapproval notice, the association or its designee, or, if the board, in its sole discretion so desires, any other member (the "designated purchaser") shall have the first right over the prospective purchaser to accept such sale or transfer at the price and on

the terms as provided with the owner's post disapproval notice, provided, however, that the making of a good faith deposit and the time for closing by the designated purchaser shall be controlled by the terms as hereinafter provided. In the event that the association or its designee, or other designated purchaser, wishes to exercise its first right to purchase, such designated purchaser shall notify the secretary of the association and shall deposit with the secretary ten percent (10%) of the purchase price as a good faith deposit prior to the expiration of the forty-five (45) day period hereinbefore described. The secretary shall promptly forward to the unit owner any such notice together with a notice of deposit. In the event that the association, in its sole discretion, offers the condominium unit to other members of the association and more than one (1) member desires to purchase said unit, it shall be discretionary with the unit owner to consummate the sale or transfer with whichever one of the accepting members he so chooses. The association, its designee or other designated purchaser shall, upon timely delivery of the good faith deposit, close upon the subject unit within thirty (30) days of the making of such deposit if an all cash transaction or within sixty (60) days from the date of such deposit if other than an all cash transaction.

In the event that the secretary of the association has not received notice of a designated purchaser's intent to purchase together with the aforescribed good faith deposit within forty-five (45) days from the date of an owner's deposit in the mails of the owner's post disapproval notice, then that member may complete the sale or transfer on the day and at the price and terms given in or provided with his post disapproval notice, but on no other day or at no other price or terms without repeating the procedure outlined above. In the event the subject unit owner makes a sale or transfer without first complying with the terms hereof, the association, its designee, or, if the board in its sole discretion so desires, any other member shall have the right to redeem from the purchaser, according to the provisions hereof. Such redemption rights shall be exercised by the redeeming party reimbursing the purchaser for the monies expended, and immediately after such reimbursement said purchaser or transferee shall convey all of his right, title and interest to the party or parties making the redemption.

An affidavit of the secretary of the association stating that the board of directors approved or was deemed to have approved (such as, without limiting the generality of the foregoing, by its failure to act) in all respects on a certain date the sale or transfer of a condominium parcel to a certain person(s) shall be conclusive evidence of such fact, and from the date of approval as stated in the affidavit the redemption rights herein afforded the members shall terminate with respect to the sale or transfer aforementioned.

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An affidavit of the secretary of the association stating that the board of directors was given proper notice on a certain date of a proposed sale or transfer and that the board of directors disapproved such proposed sale or transfer, and that thereafter all the provisions hereof which constitute conditions precedent to a subsequent sale or transfer of a condominium parcel have been complied with, and that the sale or transfer of a particular condominium parcel to particularly named persons does not violate the provisions hereof, shall be conclusive evidence of such facts for the purpose of determining the status of the person's title to such condominium parcel sold or transferred. Such affidavit shall not be evidence of the fact that the subsequent sale or transfer to such persons was made at the price, terms, and date stated in the notice given to the secretary, but one hundred twenty (120) days after the date of the notice to the board of directors as stated in the affidavit the redemption rights herein afforded the members shall terminate.

b. Rental or Lease - A condominium parcel, excluding hotel condominium units, shall not be leased or rented without the prior written approval of the association, which approval shall not be unreasonably withheld, provided, however, that no lease shall be approved for a term of less than sixty (60) days, and further provided that with respect to said sixty (60) day term, the same shall only be done once every year. The board of directors shall have the right to require that a substantially uniform form of lease be used. The foregoing paragraph shall not apply to the leasing of hotel condominium units.

In the event the board of directors approves a rental or lease, such approval of a lease or rental shall not release the member from any obligation under this declaration, and either the lessee or the member shall have the right to use the recreational facilities to the exclusion of the party not occupying the unit.

Completely apart from and in addition to the association's right to pass on and approve or disapprove of any such attempted lease on any condominium unit, is the right of the association (or its designee) hereby given and granted of first refusal to lease any condominium unit (other than hotel condominium units) offered for lease by any member of the association. Accordingly, no owner of a condominium unit shall lease same to any party without first giving the association notice in writing and by certified mail of such lease (the "owner's initial lease notice") including therein the name and address of the proposed lessee and such other information as may be required by the board of directors of the association. Within twenty-one (21) days from the receipt of the owner's initial lease notice, application for lease approval form, the proposed form of lease and the receipt of such other information as has been requested by the board of directors of the association (whichever shall last occur), the board shall either approve or

disapprove of such proposed lease in writing (the "board's initial lease notice") and shall notify the owner of its decision. Any such disapprovals may be made on an arbitrary basis and the board shall not be obligated to provide any reason or explanation therefor. In the event that the board shall fail to approve or disapprove of a proposed lease within twenty-one (21) days, the failure to act as aforesaid shall be considered an approval of the lease. The foregoing paragraph shall not apply to the leasing of hotel condominium units.

In the event that the board of directors disapproves of the proposed lease, and if a member still desires to consummate such lease, he shall, within ten (10) days from the mailing of the notice of disapproval from the board to the member, deposit by certified mail written notice (the "owner's post disapproval lease notice") to the secretary of the association of his intention to lease on a certain date, together with the lease price and all other terms thereof. For a period of forty-five (45) days from the date of an owner's deposit in the mails of said owner's post disapproval lease notice, the association or its designee (the "designated lessee") shall have the first right over the prospective lessee to accept such lease at the rental and on the terms provided with the owner's post disapproval lease notice; provided, however, that the making of a good faith deposit and the time for closing on the lease by the designated lessee shall be controlled by the terms as hereinafter provided. In the event that the association or the designated lessee wishes to exercise its right of first refusal to lease, such designated lessee shall notify the secretary of the association in writing and shall deposit with the secretary the full amount of the security deposit called for in the lease together with one (1) month's rent as a good faith deposit prior to the expiration of the forty-five (45) day period hereinbefore described. The secretary shall promptly forward to the unit owner any such notice together with a notice of deposit. The association or the designated lessee shall, upon timely delivery of the good faith deposit, close upon the subject lease within thirty (30) days of the making of such deposit.

In the event that the secretary of the association has not received the aforescribed good faith deposit within forty-five (45) days from the date of an owner's deposit in the mails of the post disapproval lease notice, then that member may complete the lease transaction on the day and at the price and terms given in or provided with his post lease disapproval notice, but on no other day or at no other price or terms without repeating the procedure outlined above. In the event the subject unit owner enters into a lease without first complying with the terms hereof, the association or its designated lessee shall have the right to reimburse such lessee for all monies whereupon any such lease shall become null and void as to such lessee. Thereupon, the association or the designated lessee shall have and enjoy all rights as lessee under such lease.

- c. If the purchaser or lessee is a corporation or other entity other than an individual person, the approval may be conditioned upon the approval by the association of all occupants of the condominium parcel.
- d. In the case of the death of the owner of a condominium parcel, the surviving spouse, if any, and if no surviving spouse, the other member or members of such owner's family residing with the owner at the time of his death, may continue to occupy the said condominium parcel; and if such surviving spouse or other member or members of the decedent owner's family shall have succeeded to the ownership of the condominium parcel, the ownership thereof shall be transferred by legal process to such new owner. In the event said decedent shall have conveyed or bequeathed the ownership of his condominium parcel to some designated person or persons other than the surviving spouse or members of his family, as aforescribed, or if some other person is designated by such decedent's legal representative to receive the ownership of the condominium parcel, or if under the laws of descent and distribution of the State of Florida the condominium parcel descends to some person or persons other than his surviving spouse or members of his family as aforescribed, the board of directors of the association shall, within thirty (30) days of proper evidence or rightful designation served upon the president or any other officer of the association, or within thirty (30) days from the date the association is placed on actual notice of the said devisee or descendant, express its refusal or acceptance of the individual or individuals so designated as owners of the condominium parcel. If the board of directors of the association shall consent, ownership of the condominium parcel may be transferred to the person or persons so designated, who shall thereupon become the owner of the condominium parcel, subject to the provisions of this enabling declaration and by-laws of the association. If, however, the board of directors of the association shall refuse to consent, then the members of the association shall be given an opportunity during thirty (30) days next after said last above mentioned thirty (30) days to purchase or to furnish a purchaser, for cash, for the said condominium parcel, at the then fair market value thereof; should the parties fail to agree on the value of such condominium parcel, the same shall be determined by an appraiser appointed by the senior judge of the Circuit Court in and for Dade County, Florida, upon ten (10) days' notice, on petition of any party in interest. The expense of appraisal shall be paid by the said designated person or persons or the legal representatives of the deceased owner out of the amount realized from the sale of said condominium parcel. In the event the then members of the association do not exercise the privilege of purchasing or furnishing a purchaser of said condominium parcel within such period, and upon such terms, the person or persons so designated may then, and only in such event, take title to the condominium parcel; or such person or persons or the legal representative of the deceased owner may sell the said

condominium parcel; but such sale shall be subject in all other respects to the provisions of this enabling declaration and by-laws of the association.

- e. Mortgage - No parcel owner may mortgage his parcel or any interest therein without the approval of the association, except to an institutional mortgagee. The approval of any other mortgagee may be upon conditions determined by the association or may be arbitrarily withheld.
- f. Any sale, mortgage or lease not authorized pursuant to the terms of the declaration shall be void unless subsequently approved by the association.
- g. At the discretion of the board of directors, there shall be deposited and delivered to the association a reasonable screening fee not to exceed Fifty Dollars (\$50.00) simultaneously with the giving of notice of intention to sell or lease, or of transfer, gift, devise or inheritance, for the purpose of defraying the association's expenses. It is understood that no fee shall be charged in connection with a transfer or approval in excess of the expenditures reasonably required. No charge shall be made in connection with an extension or renewal of a lease.
- h. The foregoing provisions of this paragraph 17 shall not apply to transfer by a unit owner to any member of his immediate family (i.e., spouse, children or parents); or if a parcel is owned by a form of co-tenancy, to transfers from one co-tenant to the other co-tenant.
- i. No judicial sale of a parcel or any interest therein shall be valid unless:
 - (1) The sale is to a purchaser approved by the association which approval shall be in recordable form, executed by two (2) officers of the association, and delivered to the purchaser; or
 - (2) The sale is a result of a public sale with open bidding.
- j. Notwithstanding anything contained in this paragraph 18 to the contrary, the board of directors of the association shall have the right to withhold consent and approval of prospective unit owners or lessees, to any lease, sale, transfer, conveyance bequest, devise, or otherwise in the event those prospective unit owners or lessees by being such a unit owner or lessee would automatically violate or breach a term, condition, restriction, rule or regulation, or covenant under this declaration or exhibits hereto.
- k. The foregoing provisions of this paragraph 18 shall not apply to a transfer to or purchase by an institutional mortgagee that acquires its title as a result of owning a mortgage upon the unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or

assigns, or through foreclosure proceedings; nor shall such provision apply to a transfer, sale or lease by an institutional mortgagee that so acquires its title; nor shall such provisions apply to a transfer, sale or lease by a "bulk grantee" of an institutional mortgagee upon the unit concerned. A "bulk grantee" is defined as a grantee acquiring three (3) or more units from said institutional mortgagee. The assignee or successor of a mortgage originally given to an institutional mortgagee shall enjoy the same rights, immunities and privileges as are herein granted to said institutional mortgagee. Neither shall such provisions apply to the developer or the assignee or nominee of the developer or any person who is an officer, stockholder or director of the developer, and any such person or corporation shall have the right to freely sell, lease, transfer, or otherwise deal with the title and possession of a unit without complying with the provisions of this paragraph 18, and without the approval of the association, and without payment of any screening fee.

- l. Subject to the provisions of paragraph 18m, the foregoing provisions of this paragraph 18 shall not apply to the sale, lease, transfer, conveyance, bequeath or devise of any cabana units, and any owner or lessee of a cabana unit shall have the right at any time and as many times as he desires to freely sell, lease, transfer or otherwise deal with the title and possession of such unit without the approval or consent of the association and without the payment of any screening fees, except and subject to restrictions on sale, lease, transfer and conveyancing as more particularly set forth in paragraph 18j above. The board of directors of the association shall have the right to withhold consent and approval of prospective unit owners or lessees, to any lease, sale, transfer, conveyance bequest, devise, or otherwise in the event those prospective unit owners or lessees by being such a unit owner or lessee would automatically violate or breach a term, condition, restriction, rule or regulation, or covenant under this declaration or exhibits hereto.
- m. As to cabana units only, the sale, leasing, transfer, conveyance, bequeath or devise of same are restricted to parties who are unit owners in this condominium and, in the event of termination of ownership of the condominium unit, then such party must likewise sell, convey or transfer his cabana unit to any other unit owner in this condominium. However, in the event that a deed has not been recorded on or before July 31, 1984, to a third-party purchaser for each and every available cabana unit, then, in such event, the preceding restriction requiring ownership of cabana units to be vested in unit owners or their lessees within the condominium shall be void. In such case, the provisions of this paragraph 18m shall control and be paramount to the provisions of paragraph 18l.
- n. Notwithstanding anything herein to the contrary, the developer shall have the right of first refusal to purchase or lease any unit which the members or association shall have the right to purchase or lease upon the same price and at the same terms available to the association or members; such right of first refusal to continue until such time as the developer shall have

completed, sold and closed on the sale of all units in the condominium, or until two (2) years after the recordation of this declaration, whichever shall first occur. Developer's right of first refusal to purchase shall be superior to any such rights in favor of the association or its designee provided that the developer complies with the terms of subparagraph a. hereof. In the event that the association or its designee shall, within the forty-five (45) day period, have deposited the required deposit prior to the receipt of any such deposit by the developer, such prior deposit shall promptly be returned.

19. Restraint upon Separation and Partition. Any transfer of a condominium parcel must include all elements thereof as aforedescribed and appurtenances thereto whether or not specifically described, including, but not limited to, the condominium parcel owner's share in the common elements, the unit, and his association membership. Recognizing that the proper use of a condominium parcel by any owner or owners is dependent upon the use and enjoyment of the common elements in common with the owners of all other condominium parcels and upon the ownership of the common elements being retained in common by the owners of condominium parcels in the condominium, it is declared that the percentage of the undivided interest in the common elements appurtenant to each condominium parcel shall remain undivided and no unit owner shall bring any action for partition or division.

20. Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a unit owner to comply with the terms of the declaration, by-laws, and rules and regulations adopted pursuant thereto, and said documents and rules and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court, provided no attorneys' fee may be recovered against the association in such action.

In addition to the foregoing, if a unit owner fails to comply with the terms of this declaration, the by-laws, and/or the rules and regulations adopted pursuant thereto, as they may be amended from time to time, and as a result of such failure it becomes necessary for either the association or its agent to employ an attorney in order to insure that the unit owner complies with his said obligation, then and in such event the unit owner will be obligated to reimburse the association for the costs of such attorneys' fees, regardless of whether or not suit may be instituted.

21. No Waiver of Rights. The failure of the developer, or the association, or any unit owner to enforce any covenant, restriction, or other provision of the condominium act, this declaration, the articles of incorporation of the association, the by-laws, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

22. Assignability of Rights of Developer. The rights and privileges reserved in this declaration of condominium and the exhibits hereto in favor of the developer are freely assignable, in whole or in part, by the developer to any party who may be hereafter designated by the developer to have and exercise such rights, and such rights

may be exercised by the nominee, assignee or designee of the developer and/or exercised by the successor or successors in interest of the developer and/or the successor or successors in interest of the nominees, assignees or designees of the nominees, assignees or designees of the developer.

23. Amendments. Except as elsewhere provided otherwise, this declaration and the articles and by-laws of the association may be amended in the following manner:

a. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

b. A resolution for the adoption of a proposed amendment may be proposed by either a majority of the board of directors of the association or by not less than one-third (1/3) of the members of the association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

- (1) Not less than sixty-six and two-thirds percent (66 2/3%) of the entire membership of the board of directors and by not less than sixty-six and two-thirds percent (66 2/3%) of the entire membership of the association; or
- (2) Not less than seventy-five percent (75%) of the votes of the entire membership of the association; or
- (3) 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 Dade County, Florida.

Proviso: Provided, however:

- (4) That no amendment shall be made or be valid which shall in any manner impair the security of any institutional mortgagee having a mortgage or other lien against any condominium parcel.
- (5) That no amendment shall be made increasing or decreasing a unit owner's percentage of ownership in the common elements as hereinabove stated, unless the unit owner or unit owners so affected and all record owners of liens thereon shall join in the execution of the amendment.

- (6) No provisions of paragraph 17 of this declaration may be changed without the written consent and approval of seventy-five percent (75%) of all institutional mortgagees of record of this condominium.
- (7) No amendment that would be detrimental to the sale of units by the developer shall be made or be valid so long as the developer is the owner of any unit within the condominium unit unless the approval of the developer is expressly noted thereon in writing.
- (8) 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 Dade 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.
- (9) 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

in paragraphs 23a and 23b 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 directors 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 by 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 entire membership 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 percent (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 Dade County, Florida.
- (c) The foregoing provisions relating to amendments for defects, errors or omissions is in accordance with and pursuant to Florida Statute Section 718.304 (1).
- (d) That the amendment made pursuant to this paragraph 23b(9) need only be executed and acknowledged by the developer or the association and by no other parties whatsoever.
- (10) 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. The alterations as provided for in this paragraph may be horizontally and/or vertically altered between units. However, no such change shall materially alter the boundaries of the common elements, except the party wall between any units and/or the ceiling and floor between

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any 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.

(11) Any amendment which would affect the Surface Water Management System, including, but not limited to, drainage easements, and the water management portions of the common elements, must have the prior approval of the South Florida Water Management District.

(12) In the event of dissolution or final liquidation of the association, the assets, both real and personal, of the association, consisting of the surface water management system, including, but not limited to, drainage easements, shall be dedicated to an appropriate public agency or utility to be devoted to the purposes, as nearly as practicable, the same as those to which they were required to be devoted by the association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization, to be devoted to the same purposes, as nearly as practicable, as those to which they were required to be devoted by the association. No such disposition of association properties shall be effective to divest or diminish any right or title of any unit owner vested in him under the recorded declaration of condominium and deeds applicable to The Hamptons West, a Condominium, unless made in accordance with the provisions of such declaration of condominium and deeds.

c. A copy of each amendment shall be certified by the president or vice-president and secretary or assistant secretary or treasurer when recorded in the Public Records of Dade County, Florida.

24. Termination. This condominium may be voluntarily terminated in the manner provided for in Section 718.117, Florida Statutes, at any time. In addition

thereto, when there has been "very substantial" damage, as defined in paragraph 17g above, this condominium shall be subject to termination, as provided in paragraph 17g above. In addition thereto, if the proposed voluntary termination is submitted to a meeting of the members of the association pursuant to notice and is approved in writing within sixty (60) days of the said meeting by three-fourths (3/4) of the total vote of the members of the association and by all institutional mortgagees, then the association and the approving owners shall have an option to purchase all of the parcels of the other non-consenting owners within a period expiring one hundred twenty (120) days from the date of such meeting. Such approvals shall be irrevocable until the expiration of the option, and if the option is exercised, the approvals shall be irrevocable. The option shall be exercised upon the following terms:

- a. Exercise of Option - An agreement to purchase, executed by the association and/or the record owners of the condominium parcels who will participate in the purchase, shall be delivered by personal delivery, or mailed by certified mail or registered mail to each of the record owners of the condominium parcels to be purchased, and such delivery shall be deemed the exercise of the option. The agreement shall indicate which parcels will be purchased by each participating owner and/or the association, and shall require the purchase of all parcels owned by owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.
- b. Price - The sale price for each unit shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price it shall be determined by appraisers appointed by the senior judge of the Circuit Court in and for the area wherein the condominium is located, on the petition of the seller. The expenses of appraisal shall be paid by the purchaser.
- c. Payment - The purchase price shall be paid in cash.
- d. Closing - The sale shall be closed within thirty (30) days following the determination of the sale price.

25. Apartment Unit Boundaries. Each unit shall include that part of the building containing the unit that lies within the boundaries of the unit, which boundaries are as follows:

- a. The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:
 - (1) Upper Boundaries - The horizontal plane of the lower surface of the undecorated finished ceiling.

- (2) Lower Boundaries - The horizontal plane of the upper surface of the undecorated finished floor.
- b. The perimetrical boundaries of the unit shall be the vertical planes of the undecorated finished interior of the walls bounding the unit extending to intersections with each other and with the upper and lower boundaries.
- c. Owners shall not be deemed to own the outer undecorated and/or unfinished surfaces of the perimeter walls, floors and ceiling surrounding their respective units, nor shall owners be deemed to own pipes, wires, conduits, chases, chase areas or other public utility lines running through units which are utilized by or serve more than one (1) unit. Owners shall not be deemed to own the exterior of unit entrance doors which provide access to the corridors and hallways. These items are hereby made a part of the common elements. However, an owner shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings, including plaster, paint and wallpaper of his unit.
- d. In the event that any boundary contains apertures, including, without limitation, windows, doors, skylights and conversation pits, such boundaries shall be extended or modified to include the undecorated finished interior surfaces of such apertures, including all frameworks thereof. Exterior surfaces made of glass or other transparent material, and all framings and casings therefor, shall be included in the boundaries of the unit.
- e. With respect to matters that are not expressly addressed in this paragraph 25, or in the event of conflict or ambiguity, the boundary descriptions set forth in the plot plan, survey and graphic description attached as exhibit "B" to the declaration shall control, except that provisions of subparagraph d. above shall control unless specifically reflected on said exhibit "B" hereto.
26. Covenant Running With the Land. All provisions of this declaration, the articles of incorporation, by-laws and rules and regulations of the association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the land and with every part thereof and interest therein, and all of the provisions thereof shall be binding upon and inure to the benefit of the owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future unit owners, tenants and occupants of units shall be subject to and shall comply with the provisions of this declaration and the articles of incorporation, by-laws and rules and regulations, as they may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering