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DECLARATION OF CONDOMINIUM

OF

MIRIMAR ARMS CONDOMINIUM

RECORD VERIFIED - SAL CERACI, CLERK
BY: J. TURNER, D.C.

THIS INSTRUMENT PREPARED BY:
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1820 COLONIAL BOULEVARD
FORT MYERS, FL 33907

DECLARATION OF

MIRIMAR ARMS CONDOMINIUM

MIRIMAR PARTNERSHIP, a Florida partnership, (hereinafter called the "Developer") does hereby declare as follows:

1. Introduction and Submission.

- 1.1 The Land. The Developer wishes to create a residential Condominium on certain land located in Lee County, Florida, as more particularly described in Exhibit "1" annexed hereto (the "Land").
- 1.2 Submission Statement. The Developer hereby submits the land described in Exhibit "1" and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date hereof.
- 1.3 Name. The name by which this condominium is to be identified is MIRIMAR ARMS CONDOMINIUM (hereafter called the "Condominium").
- 1.4 Conveyance in Fee Simple. The Condominium will be created and Units will be sold in Fee Simple interests. Time share estates shall not be created with respect to any Units.
- 1.5 Estimated Latest Date of Completion. The estimated latest date of completion of the Units and recreational facilities contained within the Condominium project is September 1, 1984.

2. Definitions. The following terms when used in this Declaration and in its Exhibits, and as they may hereafter be amended, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning.

- 2.1 "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as hereafter renumbered.
- 2.2 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Unit (though not necessarily against all other Units).
- 2.3 "Association" means MIRIMAR ARMS CONDOMINIUM ASSOCIATION, INC., a not for profit Florida corporation, the entity responsible for the operation of the Condominium.
- 2.4 "Building" means the structure or structures in which units are located, regardless of the number thereof.
- 2.5 "By-Laws" means the By-Laws of the Association.
- 2.6 "Common Elements" means and includes:
 - (a) The portions of the Condominium property which are not included within the Units.
 - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the common elements.

(c) An easement of support in every portion of a Unit which contributes to the support of the building, including but not limited to, all load bearing interior walls within the Units.

(d) The property and installations required for the furnishing of utilities and other services to more than one (1) Unit or to the common elements.

(e) Any other parts of the Condominium property designated as common elements in this Declaration.

2.7 "Common Expenses" means all expenses and assessments properly incurred by the Association for the Condominium.

2.8 "Common Surplus" means the excess of all receipts of the Association, including but not limited to, assessments, rents, profits and revenues on account of the common expenses.

2.9 "Condominium Parcel" means a Unit together with the undivided share in the common elements which is appurtenant to said Unit; and when the context permits, the term includes all of the appurtenances to the Unit.

2.10 "Condominium Property" means the land and personal property that is subjected to Condominium ownership under this Declaration, all improvements on the land and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

2.11 "County" means the County of Lee, State of Florida.

2.12 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.

2.13 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium property, including but not limited to, the building.

2.14 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker or any other lender generally recognized as an institutional type lender, or the Developer, holding a first mortgage on a Unit or Units.

2.15 "Limited Common Elements" mean those common elements the use of which are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. Reference herein to common elements shall include also all limited common elements unless the context would prohibit or it is otherwise expressly provided.

2.16 "Primary Institutional First Mortgage" means the Institutional First Mortgagee which owns at any time Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.

2.17 "Unit" means a part of the Condominium property which is subject to exclusive ownership.

2.18 "Unit Owner" or "Owner of a Unit" means the Owner of a Condominium parcel.

3. Description of Condominium.

3.1 Identification of Units. The Condominium will consist of three (3) buildings, one containing eight (8) Units, one containing nine (9) Units and one containing thirteen (13) Units. Each Unit is identified by a separate numerical or alpha-numerical designation. The designation of each Unit

is set forth on Exhibit "3" annexed hereto. Exhibit "3" also consists of a survey of the land, a graphic description of the Improvements located thereon, including but not limited to, the buildings in which the Units are located and a plot plan thereof. Said Exhibit "3" together with this Declaration are sufficient in detail to identify the common elements and each Unit and their relative locations and approximate dimensions. There shall pass with a Unit as appurtenances thereto (a) an undivided share in the common elements and common surplus; (b) the exclusive right to use such portion of the common elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; and (d) other appurtenances as may be provided in this Declaration.

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

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(i) Upper Boundaries: The horizontal plane of the unfinished lower surface of the ceiling.

(ii) Lower Boundaries: the horizontal plane of the unfinished upper surface of the concrete floor.

(b) Perimetrical boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extending to their planar intersections with each other and with the upper and lower boundaries.

3.3 Limited Common Elements. Each Unit shall have, as a limited common element appurtenant thereto:

(a) Balconies, Terraces and Patios. Any patio or terrace, if any, which is enclosed on four sides and as to which direct and exclusive access shall be afforded to any particular Unit shall be a limited common element of such Unit. Balconies, if any, shall also be limited common elements of those Units having direct and exclusive access thereto.

3.4 Recreational Facilities: The following facilities form a part of the common elements of the Condominium and are to be used by the Unit Owners, their tenants and guests. The maximum number of Units that may ultimately be able to use the recreational facilities is thirty (30).

(a) Swimming Pool: One (1) 15' by 30' pool, with operating equipment. The pool will be surrounded by a concrete deck of approximately 1,058 square feet.

(b) Pool Furniture: The developer shall spend no less than Two Hundred Dollars for pool furniture for the pool.

APPROXIMATE CAPACITIES:

POOL: 9 people
DECK: 40 people

(c) Out Building: There shall be an out building of approximately 336 square feet, containing two

bathrooms. The building will have a capacity of two (2) people at any given time.

There will be no recreational or other common facilities used by the Condominium Unit Owners that are not owned by the Condominium.

3.5 Easements. The following easements are hereby created (in addition to any easements created under the Act):

(a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the common elements.

(b) Utility Services: Drainage. Easements are reserved under, through and over the Condominium property as may be required for utility and other services and drainage in order to serve the Condominium; provided, however, such easements running through a Unit shall be limited to those provided in the plans and specifications for the building, or existing in the building as constructed or reconstructed, unless approved in writing by the affected Unit Owner. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other services or drainage facilities or the use of 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 and drainage facilities, and common elements contained in the Unit or elsewhere in the Condominium property, and to remove any improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day's notice.

(c) Encroachments. If (a) any portion of the common elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the common elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the improvements; (ii) settling or shifting of the improvements; (iii) any alteration or repair to the common elements made by or with the consent of the Association, or (iv) any repair or restoration of the improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the common elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

(d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the common elements as from time to time may be paved and intended for such purposes. Additionally, should certain phases not be constructed and the property upon which said phases were to have been built has been cut off from vehicular access to public roads, there shall be a perpetual easement in favor of the present and future owners of said property for ingress and egress over and across the paved portion of the condominium property.

(e) Construction; Maintenance. The Developer (including its designees, successors and assigns) shall have the right in its sole discretion from time to time to enter the Condominium property for the purpose of completing the remodeling thereof and for repair, replacement and maintenance purposes where the Association fails to do so, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the Unit Owners of the Condominium property.

(f) Sales Activity. The Developer (so long as it owns any Units) and the Association each shall have the right to grant such additional electric, gas or other utility or service easements, or relocate any existing utility or service easements or drainage facilities, in any portion of the Condominium property, as the Developer or the Association shall deem necessary or desirable 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 reasonable use of the Units for dwelling purposes.

4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the common elements and common surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant limited common elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the common elements and common surplus, and the exclusive right to use all limited common elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit. The respective share in the common elements appurtenant to a Unit shall remain undivided, and no action for partition of the common elements, the Condominium property, or any part thereof shall lie except as provided herein.

5. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.

5.1 Percentage Ownership and Shares. The undivided percentage interest in the common elements and common elements and common surplus, and the percentage share of the common expenses, appurtenant to each Unit, is set forth in Exhibit "4" annexed hereto.

5.2 Voting. Each Unit shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association.

6. Amendment to the Declaration. Except as elsewhere provided herein, this Declaration may be amended as follows:

6.1 By the Association. 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. A resolution for the adoption of a proposed amendment may be proposed either by 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, provided that such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, approvals must be by affirmative vote of any of the following:

(a) Unit Owners owning not less than fifty percent (50%) of the Units and by not less than sixty-six and two-thirds percent (66 2/3%) of the Board of Directors of the Association; or

- (b) Unit Owners owning not less than eighty percent (80%) of the Units; or
- (c) One hundred percent (100%) of the Board of Directors; or
- (d) Not less than fifty percent (50%) of the entire membership of the Board of Directors in the case of amendments to the section hereof entitled "Insurance" that are reasonably required by insurers or Institutional First Mortgagees.

6.2 By the Developer. The Developer, during the time it is in control of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association to correct an omission or error or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would, in the reasonable opinion of the Developer, materially adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing. The execution and recording of any amendment by the Developer pursuant hereto shall be conclusive evidence that the amendment does not materially adversely affect substantial property rights of Unit Owners who did not join in or consent to such execution, and any such amendment shall be effective as provided below unless subsequently rescinded.

6.3 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording date identifying the Declaration and shall be executed in the form required for the execution of a deed. Amendments by the Developer must be evidenced in writing but a certificate of the Association is not required. An amendment of the Declaration is effective when properly recorded in the Public Records of the County.

6.4 Proviso. Notwithstanding other provisions of this Declaration, no amendment hereto shall change the description of the land which may become a part of the Condominium or the land upon which each phase is to be built, change the configuration or size of any Unit in any fashion, materially alter or modify the appurtenances to any Unit, alter the voting rights of any Unit, or change the percentage by which the Owner of a Unit shares the common expenses and owns the common elements and common surplus unless all record Unit Owners and all record owners of mortgages or other liens relating to the Condominium or any Unit thereof shall join in the execution of the amendment. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer or mortgagees in each instance; nor shall an amendment make any change in the Sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless all Institutional First Mortgagees whose mortgages are of record shall join in the amendment.

7. Maintenance and Repairs.

7.1 Units. All maintenance, repairs and replacements of, in or to any Unit and limited common elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including without limitation, maintenance, repair and replacement of screens, windows, balconies, patios, terraces, the interior side of the entrance door and

all other doors within a Unit, and the electrical plumbing, heating and air-conditioning fixtures, if any, within the unit shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. The balconies and terraces shall be maintained by the Unit Owners with the same type and color paint and floor covering.

- 7.2 Common Elements. Except to the extent proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the common elements (other than limited common elements as provided above) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a common expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners. Air conditioning compressors for each Unit, which are located on the roof tops of the building are part of the common elements.

8. Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors the common elements, or any of them, shall require capital additions, alterations, or improvements (as distinguished from repairs and replacement) costing in excess of \$5,000.00 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by (i) a majority of the Unit Owners voting at a meeting at which a quorum is attained, and (ii) the Primary Institutional First Mortgagee. Any such additions, alterations or improvements to such common elements, or any of them, costing in the aggregate \$5,000.00 or less in a calendar year may be made by the Association without approval of the Unit Owners or any Institutional First Mortgagee. The cost and expense of any such additions, alterations or improvements to such common elements shall constitute a part of the common expenses and shall be assessed to the Unit Owners as common expenses.

9. Additions, Alterations or Improvements by Unit Owners. No Unit Owner shall make any structural additions, alterations or improvements in or to his Unit or any alteration to limited common elements without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such additions, alterations or improvements in such Unit Owner's Unit or limited common elements within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent to the proposed additions, alterations or improvements by the Unit Owner. Any such additions, alterations or improvements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, to hold the Association and all other Unit Owners harmless from any liability and expenses arising therefrom.

10. Operation of the Condominium by the Association.

10.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association (respectively Exhibits "5" and "6" annexed hereto) as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including without limitation:

- (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 necessary to prevent damage to the common elements or to any other Unit or Units, or to determine compliance with

the terms and provisions of this Declaration, the Exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time.

(b) The power to make and collect assessments and other charges against Unit Owners 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 or their authorized representatives at reasonable times.

(d) The Association may enter into a contract with any person, firm, or entity for the operation, maintenance or repair of the Condominium property. However, any such contract shall not be in conflict with the powers and duties of the Association or the rights of Unit Owners as provided in the Condominium Act and these establishing documents.

(e) Subsequent to the recording of this Declaration, the Association, when authorized by the majority of the total votes of the members of the Association and approved by the Primary Institutional First Mortgagee, acquisition of leaseholds, memberships, and other possessory or use interests in lands or facilities, including but not limited to, country clubs, golf courses, marinas, and other recreational facilities, whether or not contiguous to the lands of the Condominium, intended to provide for the use or benefit of the Unit Owners. The expense of ownership, rental, membership fees, operations, replacements and other undertakings in connection therewith shall be common expenses.

(f) The power to adopt and amend rules and regulations covering the details of the operation and use of the Condominium property.

In the event of conflict between the powers and duties of the Association as set forth in this Declaration, Articles of Incorporation and By-Laws, the Declaration shall take precedence over the Articles of Incorporation and By-Laws, and the Articles of Incorporation shall take precedence over the By-Laws.

10.2 Limitations upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium property, the Association shall not be liable to Unit Owners for injury or damage other than for the cost of maintenance and repair, caused by any latent condition of the property.

10.3 Restraint upon Assignment of Shares in Assets. The share of a Unit Owner in the funds of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

10.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of record Owners is specifically required by this Declaration.

11. Determination of Common Expenses and Other Charges and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of assessments payable by the Unit Owners to meet the common expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the

assessment payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The common expenses shall include the expenses of the operation, maintenance, repair and replacement of the common elements, costs of carrying out the powers and duties of the Association and any other expenses designated as common expenses by the Act, this Declaration, the Articles of Incorporation, or By-Laws of the Association or by the Association. The funds or working capital contributions may be used as the Board shall determine from time to time and need not be restricted to replacements or otherwise. Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws.

12. Collection of Assessments.

12.1 A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the Unit Owner. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by the abandonment of the Unit for which the assessments are made.

12.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the maximum rate of interest allowed by law from the due date until paid. The Association has a lien on each Condominium parcel for any unpaid assessments on such parcel, with interest and for reasonable attorneys' fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien. The lien is effective from and after recording a claim of lien in the Public Records of the County, stating the description of the Condominium parcel, the name of the record Owner, the amount due and the due dates. The lien is in effect until all sums secured by it have been fully paid or until barred by law. The claim of lien includes only assessments which are due when the claim is recorded. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

12.3 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid assessments including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the Court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this Subsection are satisfied if the

Unit Owner records a Notice of Contest of Lien as provided in the Act.

12.4 Liability of Institutional First Mortgagee for Unpaid Assessments. In the event an Institutional First Mortgagee shall obtain title to the Unit as a result of foreclosure of its mortgage, or as a result of a deed given in lieu of foreclosure, such Institutional First Mortgagee, its successors and assigns, shall not be liable for the share of the common expenses or assessments or other charges imposed by the Association pertaining to such Condominium Unit or chargeable to the former Unit Owner of such Condominium Unit which became due prior to the acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu thereof, unless such share is secured by a claim of lien that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of the common expenses or assessments or other charges shall be deemed to be common expenses collectable from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.

13. Insurance. Insurance covering the Condominium shall be governed by the following provisions:

13.1 Purchase, Custody and Payment of Policies.

(a) Purchase. All insurance policies covering the Condominium property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida and with an office or agent located in the county.

(b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee hereinafter designated shall be subject to the approval of the Primary Institutional First Mortgagee.

(c) Named Insured. The named insured shall be the Association, individually and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them.

(d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer may be paid to the Insurance Trustee, and all policies and endorsements thereto shall be deposited with the Insurance Trustee, provided, however, that if at any point in time there is no Insurance Trustee, said policies and endorsements shall be kept in the possession of the Association.

(e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy and all endorsements thereto, shall be furnished by the Association to each Institutional First Mortgagee included in the mortgage roster who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, whichever date shall first occur.

(f) Personal Property and Liability. Unit Owners may obtain insurance coverage at their own expense and at their own discretion upon their personal property and for their personal liability and living expense and for flood damage to their property.

13.2 Coverage. The Association shall maintain insurance covering the following:

(a) Casualty. The building (including all of the Units and the bathroom and kitchen fixtures and appliances and common elements therein, but not including furniture, furnishings, or other personal property supplied or installed by Unit Owners or tenants of Unit Owners) and improvements on the common elements, together with all service machinery contained therein, shall be insured in an amount not less than one hundred percent (100%) of the replacement value thereof, excluding foundation and excavation costs, and may contain reasonable deductible limits, all as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

(i) Loss or damage by Fire and other hazards covered by a standard extended coverage endorsement; and

(ii) Such other risks as from time to time be customarily covered with respect to buildings similar in construction, location and use, including but not limited to, vandalism and malicious mischief.

(b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Condominium property or adjoining driveways and walkways, or any work, matters or things related to the Condominium property or this Declaration and its Exhibits, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$300,000.00 for each accident or occurrence, \$100,000.00 per person and \$50,000.00 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner and vice versa.

(c) Workmen's Compensation and other mandatory insurance when applicable.

(d) Machinery Insurance.

(e) Plate Glass Insurance.

(f) Flood Insurance. If required by the Primary Institutional First Mortgagee, if required by law, or if the Association so elects.

(g) Fidelity Insurance covering all Directors, officers and employees of the Association and managing agents who handle Association funds.

(h) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (1) subrogation against the Association and against the Unit Owners individually and as a group, (ii) the clause that reserves to the insurer the right to pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association or by one or more Unit Owners.

13.3 Additional Provisions. All policies of physical damage insurance shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all of the insureds, including all mortgagees of Units. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the building and the insured improvements on the common

elements (exclusive of foundations), including all of the Units and all of the common elements therein, without deduction for depreciation, for the purpose of determining the amount of fire insurance to be effected pursuant to this Section.

- 13.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more Units or their appurtenances or of the common elements by particular Unit Owners shall be assessed against and paid by such Owners.
- 13.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their interest may appear, and shall provide that all proceeds covering property losses in excess of \$10,000.00 shall be paid to an Insurance Trustee, which shall be designated by the Board of Directors and which shall be any bank or trust company in Florida with trust powers and with its principal place of business in this County. The Insurance Trustee need not be selected until immediately prior to the payment of said insurance proceeds.
- (a) Common Elements. Proceeds on account of damage to the common elements shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the common elements appurtenant to each Unit.
- (b) Units. Proceeds on account of damage to Units shall be held in the following undivided shares:
- (i) When the Building is to be Restored - for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.
- (ii) When the Building is not to be Restored - an undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his Unit.
- (c) Mortgagees. 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, and no mortgagee shall have the right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.
- 13.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee or other named insured shall be distributed to or for the benefit of the beneficial owners in the following manner:
- (a) Expense of the Trustee. All expenses of the Insurance Trustee shall be first paid or provision made therefor.
- (b) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, 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 such mortgagee.

(c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by same.

(d) Certificate. In making distribution to Unit Owners and their mortgagees, the Insurance Trustee or other named insured may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

13.7 Association as Agent. The Association is hereby irrevocably appointed agent for each Unit Owner and for each owner of a mortgage or other liens upon a Unit and for each owner of any other interest in the Condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

13.8 Unit Owners Personal Coverage. The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Condominium Unit nor casualty or theft loss to the contents of an Owner's Unit or flood damage to Unit contents. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such risks.

13.9 Benefit of Mortgagees. Certain provisions of this Section 13 entitled "Insurance" are for the benefit of mortgagees of Condominium Units and may be enforced by such mortgagees.

14. Reconstruction or Repair after Fire or Other Casualty.

14.1 Determination to Reconstruct or Repair. In the event of damage to or destruction of the building and improvements as a result of fire or other casualty (unless seventy-five (75%) or more of the building is destroyed or substantially damaged and Unit Owners owning eighty percent (80%) or more of the Units and interests in the common elements elect not to proceed with repairs or restoration and the Primary Institutional First Mortgagee approved such election), the Board of Directors shall arrange for the prompt repair and restoration of the building (including all common elements in any damaged Units contained therein, and the bathroom and kitchen fixtures and appliances initially installed therein by the Developer, but not including furniture, furnishings or other personal property supplied or installed by a Unit Owner or a tenant of a Unit Owner), and the Insurance Trustee or other named insured shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If seventy-five (75%) or more of the building is substantially damaged or destroyed and if Unit Owners owning eighty percent (80%) of all Units and interests in the common elements duly and promptly resolve not to proceed with the repair or restoration thereof and the Primary Institutional First Mortgagee approved such resolution, the Condominium property will not be repaired and shall be subject to an action for partition instituted by a Unit Owner, mortgagee or lienor, as if the Condominium property were owned in common, in which event, the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the common elements, provided however, that

no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens. Whenever in this Section the words "promptly repair" are used, it shall mean repairs are to be no more than sixty (60) days from the date the Insurance Trustee notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such work and not more than ninety (90) days after the Insurance Trustee notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay said estimated costs of such work. The Insurance Trustee or other named insured may rely upon a Certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

- 14.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the building containing Units, by the Owners of not less than eighty (80%) of the common elements, including the Owners of all Units (and their respective mortgagees) the plans for which are to be altered.
- 14.3 Special Responsibility. If the damage is only to those parts of one or more Units for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.
- 14.4 Estimate of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.
- 14.5 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners in sufficient amount to provide funds for the payment of such costs. Such assessments on account of damage to common elements shall be in proportion to the Owner's share in the common elements and on account of damage to Units alone, in proportion to the cost of repairing the damage suffered by each Unit Owner as determined by the Association (without regard to improvements which may have been made to certain Units by the Unit Owners thereof).
- 14.6 Construction Funds. The funds for payment of the costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee or other named insured and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:
- (a) Association. If the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the Association is more than \$10,000.00, then the sums paid upon such assessment shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments

and disburse the same in payment of the costs of reconstruction and repair.

(b) Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$10,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided however, that upon request to the Insurance Trustee by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

(ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$10,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

(iii) Unit Owner. If there is a balance of insurance proceeds after payment of costs of reconstruction and repair that is the responsibility of the Association, this balance may be used by the Association to effect repairs to Units or may be distributed to Owners of damaged Units who have the responsibility for reconstruction and repair of their Units. The distribution shall be the proportion that the estimated costs of reconstruction and repair of such damage in each damaged Unit bears to the total of such estimated costs in all damaged Units as determined by the Board; provided however, that no Unit Owner shall be paid an amount in excess of the estimated costs for his Unit. All proceeds must be used to effect such repairs to Units. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly.

(iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in the construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except however, that the part of a distribution to a beneficial owner which is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

(v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by the Unit Owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the

Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the assessments paid by Owners, nor to determine the payees nor the amounts to be paid. Instead, the Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

14.7 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

15. Condemnation.

15.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium property by condemnation shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and may be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association a special assessment shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

15.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by condemnation shall be deemed to be a casualty.

15.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided for insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made useable in the manner provided below. The proceeds of the awards and special assessment shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee after a casualty.

15.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium.

(a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

(b) Distribution of Surplus. The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner of the Unit and the mortgagee.

15.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable, the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium:

(a) Payment of Award. The award shall be paid first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages due from those Units which are not habitable; second to the Association for any due and unpaid assessments; third jointly to the Unit Owners and mortgagees of Units in an amount not to exceed the market value of the Unit immediately prior to the taking and with credit being given for payments previously reserved for Institutional First Mortgagees; and the balance, if any, to repairing and replacing the common elements.

(b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the common elements and shall be placed in condition for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required for further improvement of the common elements.

(c) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the Units shall be adjusted to distributed the ownership of the common elements among the reduced number of Unit Owners. This shall be done by restating the shares of continuing Unit Owners in the common elements as a fraction, the numerator of which shall be one (1) and the denominator of which shall be the number of remaining Units.

(d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagee as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the common elements, the additional funds required for such purposes shall be raised by assessments against all Owners of Units after the changes in the Condominium effected by the taking. The assessments shall be made in proportion to the shares of those Owners in the common elements after the changes effected by the taking.

(d) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within thirty (30) days after notice by either party, the value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their appraisals of the Unit; and a judgment of specific performance upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all Unit Owner in proportion to the shares of the Owners in the common elements as they exist prior to the changes effected by the taking.

15.6 Taking of Common Elements. Awards for the taking of common elements shall be used to make the remaining portion of the common elements useable in the manner approved by the Board of Directors of the Association; provided that if the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for further improvement of the common elements. The balance of the

awards for the taking of the common elements, if any, shall be distributed to the Unit Owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If there is a mortgagee of a Unit, the distribution shall be paid jointly to the Owner and the Mortgagees of the Unit.

15.7 Amendment of Declaration. The changes in Units, in the common elements and in the ownership of the common elements that are affected by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Association.

16. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium property and for the protection of the values of the Units, the use of the Condominium property shall be restricted to and shall be in accordance with the following provisions:

See Exhibit "7" attached hereto and made a part hereof for Restrictions.

17. Selling, Leasing and Mortgaging of Units. A Unit Owner may freely sell, lease or mortgage his Unit without restrictions, except as specifically provided herein to the contrary.

18. Compliance and Default. Each Unit Owner and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all Exhibits annexed hereto, and the Rules and Regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association and Unit Owners shall be entitled to the following relief in addition to the remedies provided by the Act:

18.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance collected by the Association.

18.2 Maintenance. In the event a Unit Owner fails to maintain his Unit in the manner herein required, the Association or any other Unit Owner shall have the right to proceed in a court of equity to seek compliance; or the Association shall have the right to assess the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner in compliance herewith, and to collect such assessment and have a lien therefor as elsewhere provided. In addition, the Association shall the right, for itself and its employees and agents, to enter the Unit and perform all necessary work to enforce compliance with the above provisions.

18.3 Costs and Attorneys' Fees. In any proceedings arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the Exhibits annexed hereto, or the Rules and Regulations adopted pursuant to said documents, as the same 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 (including appellate attorneys' fees) as may be awarded by the Court.

18.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Exhibits annexed hereto, or the Rules and Regulations adopted pursuant to said documents as the same may be amended from time to time, shall not constitute a waiver of their rights to do so thereafter.

19. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more

particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium property from the provisions of the Act is authorized by a vote of Owners of at least eighty percent (80%) of the Units and common elements (after twenty percent (20%) of the Units have been sold to Unit Owners other than the Developer, the Developer will not vote the Units owned by it for such withdrawal unless the Owners of at least eighty percent (80%) of all other units and common elements so elect for such withdrawal, at which time Developer may choose to vote either in favor of or against withdrawal from Condominium ownership, as it sees fit), and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event, the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the common elements, provided however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the Public Records of the County. This Section may not be amended without the consent of all Institutional First Mortgagees and the Developer so long as it owns any Unit.

20. Additional Rights of Institutional First Mortgagees. In addition to all other rights herein set forth, Institutional First Mortgagees shall have the right to:

- 20.1 Examine the Association's books;
- 20.2 Receive the notice of Association meetings and attend such meetings;
- 20.3 Receive notice of an alleged default by any Unit Owner for which mortgagee owns a mortgage which is not cured within thirty (30) days of notice to such Unit Owner; and
- 20.4 Receive notice of any substantial damage or loss to any portion of the Condominium property.

21. Covenants Running with the Land. All provisions of this Declaration, the Articles of Incorporation, the 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 with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Owner of all or 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, 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 into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration and the Articles, By-Laws and Rules and Regulations of the Association by such Unit Owner, tenant or occupant.

22. Additional Provisions.

- 22.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association c/o its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing to the Association. All notices to mortgagees of Units shall be sent by certified mail (return receipt requested) to their respective addresses, or such

other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in postage prepaid sealed wrapper, except notices of changes of address which shall be deemed to have been given when received, or five (5) days after mailing.

- 22.2 Exhibits. There is hereby incorporated in this Declaration any materials contained in the Exhibits annexed hereto which, under the Act, are required to be part of the Declaration.
- 22.3 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a Vice-President may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an Assistant Secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 22.4 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration; the Exhibits annexed hereto or the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 22.5 Severability. The invalidity in whole or in part of any covenants or restrictions or any Section, Subsection, sentence, clause, phrase or word, or other provisions of this Declaration, the Exhibits annexed hereto, or the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof.
- 22.6 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.
- 22.7 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) and each occupant by reason of his occupancy shall be deemed to have acknowledged and agreed that all the provisions of this Declaration, and the Articles and By-Laws of the Association, are fair and reasonable in all material respects.
- 22.8 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 22.9 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the particular document or any provision thereof.

IN WITNESS WHEREOF, MIRIMAR PARTNERSHIP, a Florida partnership, has caused these presents to be signed in its name by its proper partner and its corporate seal to be affixed, this 6 day of June, 1984.

Signed, sealed and delivered

[Signature]
Witness

[Signature]
Witness

MIRIMAR PARTNERSHIP, a Florida partnership

BY: [Signature]
RONALD L. DAVIS,
Managing Partner

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 6 day of June, 1984, by RONALD L. DAVIS, Managing Partner of MIRIMAR PARTNERSHIP, a Florida partnership.

[Signature]
Notary Public

My Commission Expires:
Notary Public, State of Florida at-Large
My Commission Expires Aug. 29, 1987

Notary Seal _____

