

Prepared by and when recorded return to:

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(Space above this line reserved for recording office use only)

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR BEL-AIR BEACH  
CLUB, A CONDOMINIUM, SUPERSEDING AND REPLACING THE EXISTING DOCUMENTS AS  
RECORDED TO DATE

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This Amendment and Restatement, made and entered into this 8<sup>th</sup> day of February,  
2014, by the members of the Bel-Air Beach Club Condominium Association, Inc., is made as permitted  
by the Condominium documents and amends and restates, the Condominium documents for Bel-Air  
Beach Club, a Condominium.

WITNESSETH:

WHEREAS, there has been previously recorded in the public records of Lee County, Florida, the  
Declaration of Condominium for BEL-AIR BEACH CLUB, a Condominium, being dated March 1985,  
and recorded in Official Records Book 1765, Page 1585 (hereinafter referred to as the "Declaration"); and

WHEREAS, pursuant to said Declaration, the members of the Condominium have the right to  
amend the Declaration of Condominium and other Association documents on recommendation of the  
board and approval of the members; and

WHEREAS, the Board of Directors by unanimous approval given November 10, 2012 approved  
and recommended amendments to this Declaration to the members;

WHEREAS, the members by the requisite number approved the recommended amendments at a  
meeting in February 9, 2013; and

WHEREAS, the amendments so recommended and approval also authorized and directed the  
Association by its officers to prepare and record an amended and restated Declaration to facilitate  
understanding of this Declaration.

NOW, THEREFORE, for and in consideration of the covenants herein contained and contained in  
the said Declaration of Condominium, the undersigned hereby executes this Amendment for the purpose  
for amending the Declaration of Condominium as follows herein

IN WITNESS WHEREOF, the undersigned has cause this Amendment and Restatement to be  
executed in its name by its officer duly authorized on the day and year first above written.

Signed in the presence of:

[Signature]  
Witness

[Signature]  
Witnesses

BEL-AIR BEACH CLUB ASSOCIATION, INC.

By: [Signature]  
President

Signed in the presence of:

[Signature]  
Witness

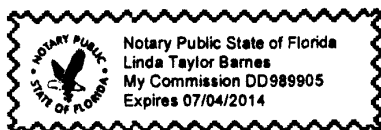
[Signature]  
Witnesses

BEL-AIR BEACH CLUB ASSOCIATION, INC.

By: [Signature]  
Secretary

STATE OF FLORIDA  
COUNTY OF LEE

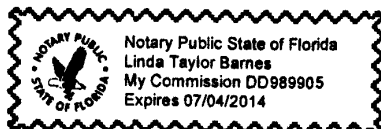
The foregoing instrument was acknowledged before me this 8 day of FEB, 2014,  
by KRIS COZZO, as President of BEL-AIR BEACH CLUB  
ASSOCIATION, INC, a Florida corporation not-for-profit.



Linda Taylor Barnes  
Notary Public

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 8 day of FEB, 2014,  
by JANICE DAVIS, as Secretary of BEL-AIR BEACH CLUB  
ASSOCIATION, INC, a Florida corporation not-for-profit.



Linda Taylor Barnes  
Notary Public

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DECLARATION OF CONDOMINIUM  
BEL-AIR BEACH CLUB, A CONDOMINIUM

I.  
SUBMISSION STATEMENT

BEL-AIR YORK CORPORATION, being the then Owner of record of the fee simple title to the real property situate, lying and being on Estero Island, Lee County, Florida, as more particularly described and set forth as the Condominium Property in the Survey Exhibits attached hereto as "Exhibit No. 1", which are made a part hereof as though fully set forth herein (together with equipment, furnishings and fixtures therein contained not personally owned by Unit Owners), stated and declared that said realty, together with improvements thereon, and together with non-exclusive easements over the Property described and as set forth to this Declaration of Condominium, was submitted to Condominium ownership, in March 1985 pursuant to the Condominium Act of the State of Florida, F.S. 718, et seq., and the provisions of said Act as of said date are hereby incorporated by reference and included herein thereby, and does herewith file for record this Declaration of Condominium.

Definitions: As used in the Declaration of Condominium and By-Laws and Exhibits attached hereto, and all Amendments thereof, unless the context otherwise requires, the following definitions shall prevail:

- A. Declaration, or Declaration of Condominium, means this instrument, as it may be from time to time amended.
- B. Association means Bel-Air Beach Club Association, Inc., a Florida non-profit Corporation, said entity is responsible for the operation of the Condominium.
- C. By-Laws, means the By-Laws of the Association, as they exist from time to time.
- D. Common Elements, means the portion of the Condominium Property not included in the Units. Common Elements shall include the tangible personal property required for maintenance and operation of the Condominium, even though owned by the Association.
- E. 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 all other Units.
- F. Condominium means that form of ownership of Condominium Property under which Units of the improvements are subject to ownership by one or more Owners, and

there is appurtenant to each Unit, as a part thereof, an undivided share in the Common Elements.

- G. Condominium Act means and refers to the Condominium Act of the State of Florida (F.S. 718 et seq.). It shall also mean the applicable provisions of F.S. 721 et seq., related to free time-share developments.
- H. Common Expenses, means the expenses for which the Unit Owners are liable to the Association.
- I. 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 Elements, over and above the amount of common expenses.
- J. Condominium Property, means and includes the land in a Condominium, whether or not contiguous, and all improvements thereon, and all easements and rights appurtenant thereto, intended for use in connection with the Condominium.
- K. Assessment means a share of the funds required for the payment of common expenses which, from time to time, are assessed against the Unit Owners.
- L. Condominium Unit, or Unit, is a Unit as defined in the Condominium Act, referring therein to each of the separate and identified Units delineated in the Survey attached to the Declaration as Exhibit No. 1, and when the context permits, the Condominium Parcel includes such Unit, including its share of the Common Elements appurtenant thereto.
- M. Condominium Parcel, or Parcel, means a Unit, together with the undivided share in the Common Elements which are appurtenant to the Unit.
- N. Unit Owner, or Owner of a Unit, or Parcel Owner, means the Owner of a Condominium Parcel.
- O. Developer means BEL-AIR YORK CORPORATION and its successors and assigns.
- P. Institutional Mortgagee, means a Bank, Savings and Loan Association, Insurance Company or Union Pension Fund authorized to do business in the United States of America, an agency of the United States Government, a real estate or mortgage investment trust, the Developer or any assignee of a mortgage held by the Developer, or a lender generally recognized in the community as an Institutional type lender.

- Q. Occupant means the person or persona, other than the Unit Owner, in possession of a Unit.
- R. Condominium Documents, means this Declaration, the By-Laws and all Exhibits annexed hereto, as the same may be amended from time to time.
- S. Board of Administration, or Board of Directors, means the representative body responsible for administration of the Association.
- T. Management Agreement, means and refers to that certain Agreement attached to this Declaration and made a part hereof, which provides for the management of the Condominium Property.
- U. Management Firm, means and refers to the entity identified as the Management Firm in the Management Agreement attached to this Declaration, its successors and assigns. The Management Firm shall be responsible for the management of the Condominium Property as provided in the Management Agreement attached to this Declaration and made a part hereof.
- V. Maintenance fee means a share of the funds required for the payment of those expenses associated with a Unit committed to the Interval Ownership, which, from time to time, are assessed against the Owners of Unit Weeks within such Unit.
- W. Institutional First Mortgage, any first mortgage held by an Institutional mortgagee.
- X. Unless the context otherwise requires, all other terms used in this Declaration shall be assumed to have the meaning attributed to said term by Section 718.103, of the Condominium Act, or F.S. §721.05, as of the date of this Declaration. Changes of the definitions set forth in the statutes from time to time subsequent to the date of the Declaration shall be incorporated herein unless the result is to contradict the express terms of the Declaration.
- Y. The following definitions shall refer on to those Units committed to and sold under a plan of "Interval Ownership":
  - 1. "Interval Ownership," is a concept whereby Units and the share of the Common Elements assigned to the Unit are conveyed for periods of time, the purchaser receiving a stated time period for a period of years, together with a remainder over in fee simple as tenant in common with all other purchasers of "Unit Weeks" in each such Condominium Unit in the percentage interest determined and established by

Exhibit Number 6, to the Declaration of Condominium at 12:00 noon on the first Saturday in the year 2050.

2. "Unit Week," means a period of ownership in a Unit committed to Interval Ownership which shall consist of not less than seven (7) days. "Unit Week" is equivalent to "Time-Share period."

"Unit Weeks" are computed as follows:

Unit Week No. 1, is the seven (7) days commencing on the first Saturday in each year. Unit Week No. 2, is the seven (7) days succeeding. Additional Weeks up to and including Unit Week No. 51, are computed in a like manner. Unit Week No. 52, contains the seven (7) days succeeding the end of the Unit Week No. 52, without regard to the month or year plus any excess days not otherwise assigned. Unit Weeks run from noon on the first Saturday of the period to noon on the last Saturday of the period.

3. A "Unit Committed to Interval Ownership," shall be any Unit sold under a plan of Interval Ownership.

## II.

### NAME

The name by which this Condominium is to be identified shall be "BEL-AIR BEACH CLUB, A CONDOMINIUM."

## III.

### COMMITTING A UNIT TO INTERVAL OWNERSHIP

Time share estates as defined in section 718.103(19), Florida statutes, have been created with respect to units in this condominium.

16 Units have been committed to Interval Ownership, being the 16 units existing on the first four floors of Units.

There are (20) Units in this Condominium, 16 of which have been committed to Interval Ownership, each of which may contain fifty-two (52) Unit Weeks in the Condominium, and seven (7) of which, identified as Units numbered 201, 203, 404, 501, 502, 503, 504 have not been submitted to Interval Ownership.



## IV.

IDENTIFICATION OF UNITS

The condominium Property consists of essentially of all Units and other improvements as set for in Exhibit No. 1, attached hereto and for purpose of identification, all Units located on said Condominium Property are given identifying numbers and are delineated on the Survey Exhibits, collectively identified as "Exhibit No. 1", hereto attached and made a part of this Declaration. No Unit bears the same identifying number as to the Unit is also the identifying number as to the Condominium Parcel. The said Exhibit No. 1, also contains a survey of the land, graphic description of the improvements, and a plot plan and, together with this Declaration, they are in sufficient detail to identify the location, dimensions and size of the Common Elements and of each Unit, as evidenced by the Certificate of the Registered Land Surveyor hereto attached. The legend and notes contained within the said Exhibit are incorporated herein and made a part hereof by reference.

## V.

IDENTIFICATION OF UNITS COMMITTED TO INTERVAL OWNERSHIP

Wherever the term "Unit Owner" or "Unit Owners" is used anywhere within the context of this Declaration or any Amendment hereto, it shall be construed to include all Owners of the Unit Weeks within any Unit committed to Interval Ownership as one Unit Owner. The respective interests of each Owner of Unit Weeks within such Unit committed to Interval Ownership with respect to each other shall be delineated on Exhibit No. 6, which is annexed to this Declaration and made a part thereof.

## VI.

OWNERSHIP OF COMMON ELEMENTS

Each of the Unit Owners of the Condominium shall own an undivided interest in the Common Elements and Limited Common Elements, and the undivided interest, stated as percentages of such ownership in the said Common Elements are Limited Common Declaration and made a part hereof.

The fee title of each Condominium Parcel shall include both the Condominium Unit and the above respective undivided interest in the Common Elements, said undivided interest in the Common Elements to be deemed to be conveyed or encumbered with its respective Condominium Unit. Any attempt to separate the fee title to a Condominium Unit from the undivided interest in the Common Elements appurtenant to each Unit shall be null and void. The terms "Common Elements" when used throughout this Declaration, shall mean both Common Elements and Limited Common Elements unless the context otherwise specifically requires.

VII.  
VOTING RIGHTS

There shall be one person with respect to each Unit who shall be entitled to vote at any meeting of the Association and such person shall be known (and is hereinafter referred to), as the "Voting Member." If a Unit is owned by more than one person, the Owners of said Unit may designate one of them as the Voting Member, or in the case of a Entity Unit Owner, an officer, member, manager, partner, trustee, or employee thereof as shall be applicable, shall be the Voting Member. The designation of the Voting Member shall be made as provided by and subject to further provisions and restrictions set forth in the By-Laws of the Association not inconsistent with this provision. If the Owners of a Unit have not designated a Voting Member for said Unit than the majority of the Owners present in person or by proxy shall determine the Vote of the Unit on any manner.

Each Owner or group Owners shall be entitled to one vote for each unit week owned. That is, a whole owner shall have 52 votes for his/her unit while interval owners shall be entitled to 1 vote for each unit owned. No unit week owned by the association shall be entitled to vote.

VIII.  
COMMON EXPENSE AND COMMON SURPLUS

The common expense of the Condominium shall be shared by the Unit Owners, as specified and set forth in Exhibit No. 5. Any common surplus of the Association shall be owned by each of the Unit Owners in the same percentage specified for sharing common expenses.

IX.  
MAINTENANCE FEE FOR UNITS COMMITTED TO INTERVAL OWNERSHIP

All Owners of Unit Weeks in the Units committed to Interval Ownership shall pay a "maintenance fee". The maintenance fee shall include all expenses of the Association, which are not common expenses of the Association, and which are attributable uniquely to the operation, maintenance, repair, or management of Interval Ownership Units, including all expenses which would be customarily borne by a Unit Owner and not the Association for a Unit not committed to Interval Ownership, including, but not limited to:

The share of common expenses for all Units committed to Interval Ownership, as set forth in Paragraph VIII, above;

Repair and upkeep of all Units committed to Interval Ownership for normal wear and tear, and reserves therefore (example- repainting, interior walls);

Repair and replacement of furniture, fixtures, appliances, carpeting , utensils, and reserves, for all Units committed by Interval Ownership;

Casualty and/or liability insurance comparable to Condominium Unit Owners Insurance for all Units committed to Interval Ownership;

Utilities for all Units committed to Interval Ownership;

Personal property, real estate, and any other applicable taxes for all Units committed to Interval Ownership;

Any other expenses incurred in the normal operations and maintenance of the Units committed to Interval Ownership which cannot be attributed to a particular Unit Week Owner's wrongdoing and assessed and collected from the Unit Week Owner as a result.

The maintenance fee shall be the amount determined resulting from all such expenses being prorated to each Owners of a Unit Week in a Unit committed to Interval Ownership by applying a fraction, the numerator of which 1, and, the denominator of which is the total of number of Unit Weeks subject to the maintenance fee. The maintenance fee shall not apply to any Unit Week owned by -the Association at the time the maintenance fee is established.

#### X.

##### MAINTENANCE WEEKS IN UNITS COMMITTED TO INTERVAL OWNERSHIP

Upon conveying forty (40) Unit Weeks in any Unit committed to Interval Ownership, or one (1) year from the date of the first conveyance under Interval Ownership in any Unit committed to the Developer, the Developer may convey, and if so, the Association agrees to accept, one (1) Unit Week to be used for maintenance purposes. The Developer shall have the right to choose the Unit Week to be so conveyed. In the event any one person, or other legal entity, becomes holder of record title to all Unit Weeks in any one Unit, that person, or other legal entity, may cause the Association to it by notifying the Association, in writing, of its desire that said Unit Cease being a Unit committed to Interval Ownership. The Association shall execute the necessary instruments to complete said conveyance no later than sixty (60) days after notice. All expenses of said conveyance, including state stamps and recording fees, shall be borne by the person, or other legal entity desiring such conveyance.

#### XI.

##### METHOD OF AMENDMENT OF DECLARATION

This Declaration may be amended at any regular or special meeting of the Unit Owners, called and convened in accordance with the By-Laws, by the affirmative vote of Voting Members casting not less than fifty-one (51%) percent of the total vote of the members of the Association.

All Amendments shall be recorded and certified as required by the Condominium Act. Subject to the provisions of Article VIII, no Amendment shall change any Condominium Parcel, nor a Condominium Unit's proportionate share of the common expenses or common surplus, nor

the voting rights appurtenant to any Unit, unless the record Owner(s) thereof, and all record Owners of mortgages or other voluntarily placed liens thereon, shall join in the execution of the Amendment. No Amendment shall be passed which shall impair or prejudice the rights and priorities of any mortgages or change the provisions of this Declaration with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record, nor shall the provisions of Article XV, of this Declaration be changed without the written approval of all Institutional Mortgagees of record.

No Amendment to this Declaration or the exhibits thereto, shall change the rights and privileges of the Developer without the Developer's written approval.

Notwithstanding the foregoing paragraphs of this Article XI:

- A. The Developer reserves the right to change the interior design and arrangements of all Units and to alter the boundaries between Units, as long as the Developer owns the Units so altered; however, no such change shall increase the number of Units not alter the boundaries of the Common Elements except the party wall between any Condominium Units, without Amendment of this Declaration in the manner hereinbefore set forth. If the Developer shall make any changes in the Units, as provided in this paragraph, such changes shall be reflected by the Amendment of this Declaration with the 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 and the consent of the Unit Owners, the Association, the Owner and holder of any lien encumbering any other Condominium Unit or Unit Week, or any others, shall not be required. The Survey shall be certified in the manner required by the Condominium Act.
- B. The Developer, so long as he owns more than ten (10%) percent of the Condominium Units or Unit Weeks in the Condominium, reserves the right at any time to amend the Declaration, as may be required by any lending institution or public body, or in such manner as the Developer may determine to be necessary in its sole discretion provided that such Amendment shall not change the rights and privileges of Institutional Mortgagees, increasing the proportion of common expenses nor decrease the Ownership of Common Elements borne by the Unit Owners, change a Unit Owner's voting rights or change the size of the Common Elements to the prejudice of the Unit Owners. Said Amendment need only be executed and acknowledged by the Developer and the consent of the Unit Owners, the Association, the Owner and holder of

any lien encumbering a Condominium Unit or Unit Week in this Condominium, or any others shall not be required.

XII.  
BY-LAWS

The operation of the Condominium's Property shall be governed by the By-Laws of the Association, which are set forth in a document which is annexed to this Declaration, marked Exhibit No. 2, and made a part hereof.

No modification of or Amendment to the By-Laws of said Association shall be valid unless set forth in our annexed to a duly recorded Amendment to this Declaration. The By-Laws may be amended 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 mortgage covering any Condominium Parcel, or which would change the provision of the By-Laws with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record. No Amendment shall change the rights and privileges of the Developer without the Developer's written approval. Any Amendment to the By-Laws, as provided herein, shall be executed by the parties as required in this Article and in Article XI, above, and said Amendment shall be recorded in the Public Records of Lee County, Florida.

XIII.  
THE OPERATING ENTITY

The operating entity of the Condominium shall be the Association, which has been organized pursuant to the Condominium Act. The said Association shall have all of the powers and duties set forth in the Condominium Act, as well as, all of the powers and duties granted to or imposed upon it by this Declaration, the By-Laws of the Association and its Articles of Incorporation, a copy of said Articles of Incorporation being annexed hereto as Exhibit No. 3, and made a party hereof, and all of the powers and duties necessary to operate the Condominium, as set forth in this Declaration of the By-Laws, and as they may be amended from time to time.

Every Owner of a Condominium Parcel, whether he has acquired his Ownership by purchase, by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the By-Laws and Articles of Incorporation of the said Association, the provisions of this Declaration and the Management Agreement, and the Rules and Regulations.

XIV.  
ASSESSMENTS

The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the common expenses of the Condominium Property, including without limitation insurance premiums and costs, and reserves as established by the Board of Directors and as may be permitted or required by law, and such other assessments as are specifically provided for in this Declaration and Exhibits attached hereto and the maintenance fee. For all purposes the maintenance fee shall be treated as an assessment under law and shall be enforceable as such.

The common expenses shall be assessed against each Condominium Parcel Owner as provided for in Article VIII, of this Declaration.

Assessments, installments, maintenance fees and holdover charges as defined in Article XVI, E, that are unpaid for over ten (10) days after due date shall bear interest at the maximum rate permitted by law, from due date until paid, and at the sole discretion of the Board of Directors, a late charge of \$25.00, or such amount as is specified in the Rules and Regulations adopted by the Board of Directors, shall be due and payable. Regular assessments shall be due and payable monthly on the first of each month and monthly bills for same shall not be mailed or delivered to Unit Owners. Maintenance fees for Units committed to Interval Ownership shall be due and payable on the first day of January, April, July and October in advance, unless otherwise allowed by law and so ordered by the Board of Directors. Such fees shall contain an amount for estimated taxes due or to become due on the Unit or Unit Week.

The Association shall have a lien on each Condominium Parcel for unpaid taxes, assessments, maintenance fees and holdover charges together with interest thereon, against the Unit Owner of such Condominium Parcel, together with a lien on all tangible personal property located within said Unit, except that such lien upon the aforesaid tangible personal property shall be subordinate to prior bona fide liens of record. Reasonable attorneys' fees incurred by the Association incident to the collection of such assessments, maintenance fees and holdover charges or the enforcement of such lien, together with all sums advanced and paid by the Association 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, shall be payable by the Unit Owner and secured by such lien. The Board of Directors, may take such action as it deems necessary to collect assessments, maintenance fees and holdover charges by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in its best interests. Said lien shall be effective as and in the manner provided for by the Condominium Act, and shall have the priorities established by said Act. The Association, shall be entitled to bid at any sale held pursuant to the suit to foreclose an

assessment, maintenance fee or holdover charges lien, and to apply as a cash credit against its bid, all sums due, as provided herein, covered by the lien enforced. In case of such foreclosure the Unit Owner shall be required to pay a reasonable rental for the Condominium Parcel for the period of time said Parcel is occupied by the Unit Owner or anyone by, through or under said unit Owner, and Plaintiff, in such foreclosure, shall be entitled to the appointment of a Receiver to collect same from the Unit Owner and/or Occupant.

The Association shall have full authority permitted from time to time hereafter under law to suspend or restrict the rights of Members to use of the Condominium Units or Unit Weeks, or to vote, for so long as any assessment due from such Member is not paid.

The Association shall be authorized to assess and collect reasonable amounts to establish and maintain an operating reserve as determined by the Board.

In the case of a lien against an Owner of Unit Weeks in a Unit committed to Interval Ownership, said lien shall be limited to the Unit Weeks owned by said Owner and shall not encumber the Property, real or personal, of any other Owner of Unit Weeks in said Unit.

Where the Mortgage of an Institutional First Mortgage of record, or other Purchaser of a Condominium Unit, obtains title to a Condominium Parcel as a result of foreclosure of the Institutional First Mortgage, or when an Institutional First Mortgagee of record accepts a Deed to said Condominium Parcel in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the shares of common expenses, or assessment by the Association pertaining to such Condominium Parcel, or chargeable to the former Unit Owner of such Parcel, which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of common expenses, or assessments shall be deemed to be a common expense collectible from all of the Unit Owners, including such acquirer, his successors and assigns.

Any person who acquires an interest in a Unit, except through foreclosure of an Institutional First Mortgage of record, or by virtue of an Institutional First Mortgagee accepting a Deed to a Condominium Parcel of Unit Week in lieu of foreclosure, as specifically provided hereinabove including, without limitation, persons acquiring title by operation of law, including Purchasers at Judicial sales, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid assessments, maintenance fees and holdover charges due and owing by the former Unit Owners have been paid. The Association, acting through its Board of Directors, shall have the right to assign its claim and lien rights for the recovery of any unpaid assessments, maintenance fees, or holdover charges to the Developer, or to any Unit Owner or group of Unit Owners, or to any third party

XV.  
INSURANCE PROVISIONS

I. INSURANCE

A. Purchase of Insurance: The Association shall obtain the insurance described herein together with such other insurance as the Association deems necessary in and for the interest of the Associations, all Unit Owners and their Mortgagees, as their interest may appear. The premiums for such coverage and other expenses in connection with said insurance shall be assessed against the Unit Owners as part of the common expense. The named insured shall be the Association, individually and as Agent for the Unit Owners, without naming them, and as Agent for their mortgagees.

Provision shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to the Mortgagees of Unit Owners. Such policies shall provide that payments for loss thereunder by the insurer shall be made to the insurance trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance trustee or upon the written requires of the Developer with such party as the Developer shall designate. All Institutional Mortgagees who own and hold a first mortgage on a Condominium Unit or Unit Week shall have a right to receive a certified copy of the insurance policy(s) which are obtained pursuant to this Article XV, and the party responsible for obtaining said policy(s) shall (a) cause certified copies of said policy(s) to be delivered to all Institutional Mortgagees upon receipt of same, (b) cause to be delivered to all Institutional Mortgagees, not later than 30 days prior to the expiration of any insurance policy, a certified copy of a binder or certificate of the insurer evidencing the replacement thereof and not later than 15 days prior to the expiration of such policy(s), a certified copy of the new policy(s), and (c) cause to be delivered to all Institutional Mortgagees, evidence as to the payment of all premiums dues on insurance policies obtained, pursuant to this Article XV. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

B. Coverage:

(1) Casualty. All buildings and improvements upon the Condominium Property shall be insured in an amount which shall be not less than eighty (80%) percent of the full insurable value (actual replacement value), and all personal property including in the Common Elements shall be insured for its value, all as determined annually by the Board of Directors of the Association in accordance with generally accepted insurance practices. Such coverage shall afford protection against:

- (a) Loss or damage by fire, flood, lightning and such other risks as are included in coverage of the type known as broad form of supplemental or extended coverage; and
- (b) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the



building on the Condominium Property, including but not limited to, vandalism and malicious mischief.

(2) Public Liability including personal injury and property damage, insurance applicable to the Condominium Property in such amounts as shall be determined annually by the Board of Directors of the Association.

(3) Insurance on Units Committed to Interval Ownership. The Board of Directors of the Association, shall obtain casualty and liability insurance, as needed, on all Units committed to Interval Ownership, in such amounts and with such coverage as shall be determined annually by the Board of Directors which shall include, but not be limited to additional living expense coverage. The named insured shall be the Association, individually and as agent for all of the Unit Week Owners in each such Unit, without naming them, and as agent for their mortgagees. The premiums shall be a part of the maintenance fee. All losses thereunder shall be payable to the Insurance Trustee hereinafter designated. All such proceeds shall be used for the purpose of repair or replacement of any loss, or in the event such loss is not to be repaired or replaced, as determined elsewhere, to be divided among all Owners of Unit Weeks in such Unit in accordance with Exhibit No. 6, to the Declaration. Any deficit or overage in such proceeds, after repair or replacement, shall be divided among all such Owners of Unit Weeks in that Unit in accordance with Exhibit No. 6, to the Declaration. Deficits shall be treated as part of the maintenance fee next due.

(4) Workmen's Compensation policy to meet the requirements of law.

(5) Such Other Insurances as the Board of Directors of the Association shall determine from time to time desirable.

C. Premiums: Premiums upon insurance policies other than insurance policies on Units committed to Interval Ownership, as provided for herein, purchased by the Association, shall be paid by the Association as a common expense.

D. Insurance Trustee; Share of Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgages, as their interests may appear, and shall provide that all mortgages, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the 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. The insurance trustee shall not be liable for payment of premiums nor the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purpose elsewhere stated herein and for the benefit of the

Unit Owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

(1) Common Elements. Proceeds on account of damage to Common Elements – 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 damage to Units shall be held in the following undivided shares:

- (a) When the Building is to be Restored – For the Owners damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.
- (b) 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.

(3) Mortgagees. In the event a mortgage endorsement has been issued as to 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 not 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 any 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.

E. Distribution of Proceeds: Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(1) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(2) 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. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners. Remittance to Unit Owners and their mortgagees being payable jointly to them. This is covenant for the benefit of any mortgage of a Unit and may be enforced by such Mortgagee.

(3) 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 to the beneficial Owners, 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 such mortgagee.

(4) Certificate. In making distribution to Unit Owners and their mortgagees, the insurance trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their respective shares of the distribution.

F. Association as Agent: The Association is hereby irrevocably appointed Agent for each Unit Owner and for each Owner of a mortgage or other lien 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.

G. Notice of Insurance Coverage: In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association will give Notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability and they shall have the right to intervene and defend.

H. Inspection of Insurance Policy: A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

## II. RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. Determination to Reconstruct or Repair: If any part of the Common Elements or any building containing Condominium Units shall be damaged by casualty, the damaged Property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(1) Certificate. The insurance trustee 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.

B. Plans and Specifications: Any reconstruction or repair required by this Article XV, must provide for an equal number of Units if the damaged improvements is a building containing Condominium Units, and shall be substantially in accordance with the plans and specifications for the original improvements, portions of which are attached hereto as Exhibits; or if not, then according to the plans and specifications approved by the Board of Directors of the Association and if the damaged Property is a building containing Condominium Units, such approval shall be

by the Owners and Institutional Mortgagees of not less than fifty (50%) percent of the Common Elements, including the Owners and Institutional Mortgagees of all damaged Units, which approval shall not be unreasonably withheld. All reconstruction or repairs shall not be unreasonably withheld. All reconstruction or repairs shall be in accordance with applicable law, regulation, local ordinance or the action of a governmental authority having jurisdiction. The Association shall use its best efforts to overcome any prohibition on reconstruction or repairing a damaged improvement including, without limitation, resort to administrative and/or judicial remedies, unless the Association's legal counsel shall have rendered an opinion to the Association that the likelihood of success of such action is remote. If reconstruction or repair of a damaged improvement containing Condominium Units is prohibited, and the Condominium Units contained therein are not tenantable, the Condominium will be terminated as elsewhere provided. In the event insurance proceeds are insufficient to cover the expenses of reconstruction, the Board of Directors shall levy a special assessment against the Unit Owners to cover any deficit.

C. Responsibility: If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner 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.

D. Estimates 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.

E. Assessments: The amount by which an award of insurance proceeds to the insurance trustee is reduced on account of a deductible clause in an insurance policy shall be assessed against all Unit Owners in proportion to their shares in the Common Elements. If the proceeds of such assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during 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 the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Elements.

F. Construction Funds: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds

collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(1) 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 \$25,000.00, then the sums paid upon such assessments 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.

(2) Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the insurance trustee by the Association from collection of assessment 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;

- (a) Association – Lesser Damage – If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$25,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors, provided, however, that upon requires to the insurance trustee by a 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 hereafter provided for the reconstruction and repair of major damage.
- (b) Association – Major Damage – If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$25,000.00, then the construction fund shall be disbursed in the 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.
- (c) Unit Owner – The portion of the insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the insurance trustee to the Unit Owner, or if there is a mortgage endorsement as to such Unit,

then to the Unit Owner and mortgagee jointly, who may use such proceeds as they may be advised.

- (d) Surplus – It shall be presumed that the first monies disbursed in payment of costs and reconstruction and repair shall be from insurance proceeds. If there is a balance in a 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 the 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.
- (e) Certificate – Notwithstanding the provisions herein, the insurance trustee shall not be required to determine whether or not sums paid by 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. 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 name of the payee and the amount to be paid; provided, that when a mortgagee is herein required to be named as payee, the insurance trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Association or a mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

XVI.  
USE AND OCCUPANCY

A. Use Restriction: The Owner of a Unit shall occupy and use his Unit as a single family private dwelling for himself and the members of his family, his social guests, lessees, licenses and invitees. Notwithstanding the foregoing, nothing in this Declaration shall be construed to restrict the Developer, or any successor in interest to the Developer, from selling and/or conveying any Unit under a plan of Interval Ownership, or any person, group of persons, corporation, partnership, or other entity, from selling, reconveying or in any other way, transferring same, at any time under said plan of Interval Ownership.

B. Prohibited Acts: The Unit Owner shall not permit or suffer anything to be done or kept in his Unit which will increase the rate of insurance in the Condominium Property, or which will obstruct or interfere with the rights of the other Unit Owners, or annoy them by unreasonable noises, or otherwise, nor shall the Unit Owners commit or permit any nuisance, immoral or illegal acts in or about the Condominium Property.

C. Restriction on Alterations: The Owner of a Unit shall not cause anything to be affixed or attached to, hung, displayed or placed, on the exterior walls, doors or windows of the Units not the Limited Common Elements or the Common Elements, nor shall they cause any type of ground coverage to be installed nor shall they grow any type of plant, shrubbery, flower, vine or grass outside their Unit, nor shall they cause awnings or storm shutters, screens, enclosures and the like to be affixed or attached to any Units, Limited Common Elements or Common Elements; nor shall they place any furniture or equipment outside their Unit except with the prior written consent of the Board of Directors, and further, when approved, subject to the Rules and Regulations adopted by the Board of Directors. No clothes line or similar device shall be allowed on any portion of the Condominium Property, nor shall clothes be hung anywhere except where designated by the Board of Directors of the Association.

D. Common Elements: No person shall use the Common Elements and Limited Common Elements or any part thereof, or a Condominium Unit, or the Condominium Property, or any part thereof, in any manner contrary to or not in accordance with such Rules and Regulation pertaining thereto, as from time to time promulgated by the Board of Directors.

E. Holdover Interval Owners: In the event any Owner of a Unit Week in a Unit committed to Interval Ownership fails to vacate his Unit at the expiration of his period of Ownership each year, or at such earlier time as may be fixed by the Rules and Regulations adopted by the Board of Directors from time to time, he shall be deemed a "Holdover Owner." It shall be the responsibility of the Association to take such steps as may be necessary to remove any such Holdover Owner from the Unit, and to assist the Owner of any subsequent Unit Week,

who may be affected by the Holdover Owner's failure to vacate, to find alternate accommodations during such holdover period.

In addition to such other remedies as may be available to it, the Association shall secure, at its expense, alternate accommodations for any Owner who may not occupy his Unit due to the failure to vacate of any Holdover Owner. Such accommodations shall be as near in Value to the Owner's own Unit as possible. The Holdover Owner shall be responsible for the following "holdover charges": the cost of such alternate accommodations; any other costs incurred due to this failure to vacate; and an administrative fee of one hundred (\$100.00) dollars per day, or such administrative fee which is specified in the Rules and Regulations adopted by the Board of Directors during his period of holding over. In the event it is necessary that the Association contract for a period greater than the actual period of holding over, in order to secure alternate accommodations as set forth above, the entire period shall be the responsibility of the Holdover Owner, although the administrative fee shall cease upon actual vacating by the Holdover Owner.

The Association shall submit a bill to the Holdover Owner in accordance with this paragraph for the holdover charges. In the event the Holdover Owner fails to pay same within ten (10) days of the date of same, a lien shall be filed against Holdover Owner's Unit Week in accordance with the provisions of Article XIV, hereof.

The above provisions of Article XVI, E, shall not abridge the Association's right to take such other action as is provided by law.

## XVII.

### MAINTENANCE AND ALTERATIONS

A. The Board of Directors of the Association may enter into a Contract with any firm, person or corporation, or may join with other Condominium association and entities in contracting for the maintenance and repair of the Condominium Property and other type properties, and may contract for or may join with other Condominium Association, in contracting for the management of the Condominium Property and other type properties. The Contractor or Manager may be authorized to determine the budget, make assessments for common expenses and maintenance fees and collect assessments and maintenance fees subject to the approval of the Board of Directors as provided by this Declaration, By-Laws, and Exhibits to the Declaration.

B. Each Owner of a Unit not committed to Interval Ownership agrees as follows:

(1) To maintain in good condition and repair his Unit and all interior surface within or surrounding his Unit (such as the surface of the walls, ceilings, floors) whether or not a



part of the Unit or Common Elements, and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his Unit.

(2) Not to make or cause to be made any structural addition, alteration, decoration, repair, replacement or change of the Common Elements, or to any outside or exterior portion of the building whether within a Unit or part of the Limited Common Elements without the prior written consent of the Board of Directors of the Association.

C. Each Owner of Unit Weeks in a Unit committed to Interval Ownership agrees:

(1) To pay his proportionate share of the cost of the maintenance and repair of all interior and exterior components of said Unit, the cost of maintenance, repair, and replacement of all appliances, furniture, carpeting, fixtures, equipment, utensils, and other personal property with said Unit, and such other costs of repair, maintenance, upkeep and operation of the Unit as is necessary to the continued enjoyment of said Unit by all said Owners of Unit Weeks therein. The Association shall be responsible to cause the maintenance and repair of all of the items described herein. All telephone charges, including long distance calls, shall be paid by the Owner of the Unit Week in which they are incurred.

(2) Not to make, cause, or allow to be made, any repairs, modifications, alterations, or replacements to the Common Elements, outside or exterior portion of the buildings whether within a Unit or part of the Limited Common Elements or Common Elements, exterior or interior of his Unit, or of the furnishings, appliances, personal property, or décor thereof, without the prior written consent of the Board of Directors of the Association, and all other Owners of Unit Weeks therein.

(3) Expenses of repairs or replacements to the Unit or its components, furnishings, carpeting, appliances, or other property, real, personal, or mixed, occasioned by the specific use or abuse of any Owner of Unit Weeks in any Unit, or any licensee or tenant of said Owner, shall be borne in the their entirety by said Owner.

(4) The Association, shall determine the interior color scheme, décor and furnishings, of each such Unit, as well as the proper time for redecorating and replacements thereof.

D. All Owners of Units, including Owners of Unit Weeks in Units committed to Interval Ownership, agree as follows:

(1) To allow the Board of Directors, or the agents or employees of any Management Firm or the Association, to enter into any Unit for the purpose of maintenance, inspection, repair, replacement of the improvements within the Units, Limited Common Elements or the Common Elements, or to determine compliance with the provisions of this Declaration and the By-Laws of the Association.

(2) To show no signs, advertisements or Notices of any type on the Common Elements, Limited Common Elements, or his Unit, and to erect no exterior antenna or aerials, except as consented to by the Board of Directors of the Association.

E. In the event the Owner of a Unit fails to maintain the said Unit and Limited Common Elements, as required herein, or makes any alterations or additions without the required written consent, or otherwise violates or threatens to violate the provisions hereof, the Association, shall have the right to proceed in a Court of equity for an injunction to seek compliance with provisions hereof. In lieu thereof and in addition thereto, the Association shall the right to levy an assessment against the Owner of a Unit, and the Unit, for such necessary sums to remove any unauthorized addition or alteration and to restore the Property to good condition and repair. Where said failure, alteration, addition, or other violation is attributable to an Owner of Unit Weeks in a Unit committed to Interval Ownership, and such levy of an assessment shall be limited to the Unit Weeks owned by said Owner of Unit Weeks and shall be of no force and effect as to any other Owner of Unit Weeks in said Unit.

Said assessment shall have the same force and effect as all other special assessments. The Association, shall have the further right to have its employees or agents, or any subcontractors appointed by it, enter a Unit at all reasonable times to do such work as is deemed necessary by the Board of Directors of the Association, to enforce compliance with the provisions hereof.

F. The Association, shall determine the exterior color scheme of the buildings and all exteriors, and interior color scheme of the Common Elements, and shall be responsible for the maintenance thereof, and no Owner shall paint an exterior wall, door, window, or any exterior surface, or replace anything thereon or affixed thereto, without the written consent of the Board of Directors of the Association.

G. The Association shall be responsible for the maintenance, repair and replacement of the Common Elements and all property not required to be maintained, repaired and/or replaced by the Unit Owners. Notwithstanding the Unit Owner's duty of maintenance, repair, replacement and other responsibilities as to his Unit, as is provided in this Declaration and Exhibits attached thereto, the Association, may enter into an agreement with such firms or companies as it may determine to provide certain services and/or maintenance for and on behalf of the Unit Owners whereby maintenance and service are provided on a regularly scheduled basis for air conditioning maintenance and service and appurtenance thereto, exterminating services and other types of maintenance and services as the Association deems advisable and for such period of time and on such basis as it determines. Said agreements shall be on behalf of all Unit Owners and the assessments due from each Unit Owner for common expenses shall be increased by such sum as the Association deems fair and equitable under the circumstances in relation to the monthly charge for said maintenance or service. Each Unit Owner shall be deemed a party to said agreement with the same force and effect as though said Unit Owner had executed said

agreement and it is understood and agreed that the Association shall execute said agreements as the agent for the Unit Owners. The aforesaid assessment shall be deemed to be an assessment under the provisions of Article XIV, of this Declaration.

#### XVIII.

#### LIMITED COMMON ELEMENTS

If any, those areas reserved for the use of certain Unit Owners or a certain Unit Owner, to the exclusion of other Unit Owners, are designated as "Limited Common Elements", and are shown and located on the Surveys annexed hereto as "Exhibit No.1". 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. The Limited Common Elements are comprised of the private porches appurtenant to the Units as described in Exhibit No. 1.

#### XIX.

#### TERMINATION

A. If fifty-one (51%) percent of the Unit Owners and holders of all liens and mortgages affecting any of the Condominium Parcels execute and duly record an instrument terminating the Condominium Property, or if there exists a prohibition in the reconstruction or repair of a damaged improvement containing Condominium Units which are not tenantable as required by Article XV, said Property shall be deemed to be subject to termination and thereafter owned in common by the Unit Owners. The undivided interest in the Property owned in common by each Unit Owner shall then become the percentage of the undivided interest previously owned by such Owner in the Common Elements upon termination of the Condominium.

D. It is understood that in the year 2050, Owners of the Unit Weeks related to the Units committed to Interval Ownership shall become tenants in common. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days, prior to the actual date of such conversion to tenancy in common, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting, a vote shall be taken to decide the disposition of the Units committed to Interval Ownership. A quorum at such meeting shall be Voting Member for a majority of the total votes all Units committed to Interval Ownership. At such meeting, Voting Member for a majority of the total votes for all Units committed to Interval Ownership may vote to discontinue the commitment of the Units to Interval Ownership, in which case the provision set forth herein related to termination of the Interval Ownership will be effective. If the majority vote is not to discontinue the commitment of the Units shall continue in perpetuity. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days, prior to the actual expiration of said ten (10) year period, call a meeting of all Owners of

Unit Weeks in Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. The Owners may then vote to continue the intervals for an additional ten (10) year period. This process shall be repeated at the end of each successive ten (10) year period approaches. Should less than a majority of the Owners vote to continue the intervals at any such meeting, then the Board of Directors of the Association shall take the necessary steps to discontinue the Interval Ownership program at the Condominium, at which time the Board of Directors of the Association and each Owner of a Unit Week in a Unit committed to Interval Ownership shall have the right to take such action as is permitted by this Declaration and laws of the State of Florida. This shall include, but not be limited to, filing suit in a court of competent jurisdiction in Lee County, Florida for partition of the Units, if permitted by applicable law.

In the event the Owners vote to continue their Unit Weeks as provided above, then each Owner shall have the exclusive right to occupy his Unit, and as between Owners to use and enjoy the Common Elements of the Condominium, and the rights and easements appurtenant to his Unit during his Unit Weeks (and, in the case of Developer, during all Unit Weeks not theretofore conveyed, and to authorize others so to do, together with the non-exclusive right in common with all other Owners, but only when acting through the Association), to maintain and repair the Units. No Owner shall occupy his Unit, or exercise any other rights of Ownership with respect to his Unit other than the rights herein provided to him, during any other Unit Weeks unless expressly so authorized by the Owner entitled to occupy the Unit during such Unit Weeks except when acting through the Association. Each Owner shall keep his Unit and all furnishings in good condition and repair during his Unit Weeks, vacate the Unit at the expiration of his Unit Weeks, remove all persons and property therefore excluding only furnishings, leave the Unit in good and sanitary condition, and repair, and otherwise comply with such reasonable checkout and other procedures as may from time to time be contained in rules promulgated by the Association.

Subject to the laws of the State of Florida, no Owner or other person or entity acquiring any right, title or interest in a Unit shall seek or obtain through any legal procedures, judicial partition of the Unit or sale of the Unit in lieu of partition at any date prior to the expiration of each successive ten (10) year period voted by a majority of the Owners. If, however, any Unit Weeks shall be owned by two or more persons as tenants in common or as joint tenants, nothing herein contained shall prohibit a judicial sale of the Unit Weeks in lieu of partition as between so co-tenants or joint tenants.

XX.

#### USE OF COMMON ELEMENTS AND RECREATIONAL FACILITIES

The Association, its members, the Developer and its successors and assigns and all parties who own an interest in and to the recreational facilities agree that they shall not have any

right to bring any action for partition or division of the real Property that constitutes said recreational facilities and said parties do hereby waive said rights of partition or division of said recreational facilities. The initial Rules and Regulations, and all Amendments thereof and revision thereof, pertaining to use of the Common Elements and recreational facilities shall be posted in conspicuous places on the Common Elements or recreational facilities. The Unit Owners hereby covenant and agree to be bound by all of such Rules and Regulations and said parties shall obey same and be responsible for their being obeyed by the said Unit Owners, their family, guests, invitees, lessees and servants. Should a Unit Owner fail to pay an assessment for common expenses or his maintenance fee, as required under the terms of this Declaration of Condominium for the period of time specified herein whereby said assessment or maintenance fee becomes delinquent, the Association may deny the Unit Owner and/or the authorized user of the recreational facilities the use and enjoyment of same until such time as all assessments or maintenance fees are paid. The Association shall further have the right in its sole discretion to suspend any Unit Owner and/or authorized user of said recreational facilities from the use of same for a period not to exceed thirty (30) days for any infraction of the promulgated Rules and Regulations pertaining to said recreational facilities, and in the case of a Unit committed to Interval Ownership for a period not to exceed seven (7) days. Should the Unit Owner or the authorized user of said recreational facilities rights to use same be suspended, there shall be no reduction in the assessments or maintenance fees due and payable by said Unit Owner or authorized user. In the case of a Condominium Unit committed to Interval Ownership, all sanctions, as outlined above, shall be limited to the delinquent Unit Week Owner and shall be of no force and effect against non-delinquent Owners of Unit Weeks in such Condominium Unit committed to Interval Ownership.

Any person who is the Owner of a Condominium Parcel, together with members of his family, social guest, lessees, invitees and licensees, may use the recreational facilities. Where a corporation is a Parcel Owner, the use of said recreational facilities shall be limited at any one time to such Officer, Director or employee of said corporation who is in actual residence or possession of the Unit and such individual shall be deemed to be the Condominium Parcel Owner for the purposes of this paragraph. Where a party owns one Condominium Unit and leases same, the lessee shall be entitled to the use of the recreational facilities and said lessee's rights thereto shall be the same as though said lessee were the Unit Owner and during the term of said lease, the Unit Owner and his family shall not be entitled to the use of the recreational facilities. Use of the recreational facilities by Owners of Unit Weeks in Units committed to Interval Ownership, or any other person using the facilities through said Owner, shall be limited to the period of Ownership each year of said Owner of Unit Weeks in such Unit.

XXI.

MANAGEMENT AGREEMENT

A. Pursuant to the provisions of Article XVII A, the Association has entered into a Management Agreement, a copy of which is annexed hereto as Exhibit No. 4, and made a part hereof. Each Unit Owner, his heirs, successors and assigns, shall be bound by said Management Agreement for the purposes therein expressed, including, but not limited to:

(1) Adopting, ratifying, confirming and consenting to the execution of said Management Agreement by the Association.

(2) Covenanting and promising to perform each and every of the covenants, promises and undertakings to be performed by Unit Owners in the cases provided therefore in said Management Agreement.

(3) Ratifying, confirming and approving each and every provision of said Management Agreement, and acknowledging that all of the terms and provisions thereof are reasonable.

(4) 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.

(5) It is specifically recognized that some or all of the persons comprising the original Board of Directors of the Association, are or may be stockholders, Officers and Directors of the Management Firm, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate such Management Agreement, in whole or in part.

(6) The acts of the Board of Directors and Officers of the Association in entering into the Management Agreement be and the same are hereby ratified, approved, confirmed and adopted.

XXII.

MISCELLANEOUS PROVISIONS

A. The Owners of the respective Condominium Units shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors, and ceilings surrounding their respective Condominium Units, nor shall the Unit Owner be deemed to own pipes, wires. Conduits, or other public utility lines running through said respective Condominium Units which are utilized for or serve more than one Condominium Unit, which items are, by these presents, hereby made a part of the Common Elements. Said Unit Owner, however, shall be deemed to

own the walls and partitions which are contained in said Unit Owner's Condominium Unit, and shall also be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings, including plaster, paint, wallpaper, etc., however, all load bearing walls are a part of the Common Elements to the unfinished surface of said walls.

B. The Owners of the respective Condominium Units agree that if any portion of a Condominium Unit or Common Element or Limited Common Element encroaches upon another, a valid easement for the encroachment and maintenance of same, so long as it stands, shall and does exist. In the event the Condominium building is partially or totally destroyed and then rebuilt, the Owners of the Condominium Parcels agree that encroachments on parts of the Common Elements or Limited Common Elements or Condominium Units, as for described, due to construction, shall be permitted, and that a valid easement for said encroachments and the maintenance thereof shall exist.

C. No Owner of a Condominium Parcel may exempt himself from liability for his contribution toward the common expenses or, in the case of an Owner of Unit Weeks in a Condominium Unit committed to Interval Ownership, the maintenance fee, by waiver of the use and enjoyment of any of the Common Elements or the recreation facilities or by the abandonment of his Condominium Unit.

D. The Owners of each and every Condominium Parcel shall return the same for the purpose of ad valorem taxes with the Tax Assessor of the County wherein the Condominium is situate, or for such other future legally authorized governmental Officer or authority having jurisdiction over same. Nothing herein shall be construed, however, as given to any Unit Owner the right of contribution or any right of adjustment against any other Unit Owner on account of any deviation by the taxing authorities from the valuation herein prescribed, each Unit Owner to pay ad valorem taxes and special assessment as are separately assessed against his Condominium Parcel. Subject to the provisions of Article IX, ad valorem taxes on a Unit committed to Interval Ownership shall be paid by the Association and said taxes shall be collected as part of the maintenance fee in the event the Unit Week Owners are not billed individually for ad valorem taxes.

For this purpose of ad valorem taxation, the interest of the Owner of a "Condominium Parcel" in his "Condominium Unit" and in the "Common Elements", shall be considered a Unit. The value of said Unit shall be equal to the percentage of the value of the entire Condominium, including land and improvements, as had been assigned to said Unit in this Declaration. The total of all of said percentages equals 100% of the value of all of the land and improvements thereon.

E. All provisions of this Declaration and Exhibits attached hereto, and any Amendments thereof, shall be construed as covenants running with the land and of every part thereof and interest therein, including, but not limited to every Unit and the appurtenances thereto, and every Unit Owner and Occupant of the Condominium Property, or any part thereof, or of any interest

therein, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and Exhibits annexed hereto and any Amendments thereof.

F. If any of the provisions of this Declaration, or of the By-Laws, the Articles of Incorporation of the Association, the Management Agreement, or of the Condominium Act, or any section, clause, phrase, word, or the application thereof, in any circumstances, is held invalid the validity of the remainder of this Declaration, the By-Laws, Articles of Incorporation and Management Agreement, or the Condominium Act, and of the application of any such provision, action, sentence, clause, phrase or word, in other circumstances, shall not be affected thereby.

G. Whenever notices are required to be sent hereunder, the same may be delivered to Unit Owners either personally or by mail, addressed to such Unit Owners at their place of residence on file with the Condominium Association from time to time. Proof of such mailing or personal delivery by the Association or any Management Firm shall be given by the Affidavit of the person mailing or personally delivering said notices. Notices to the Association shall be delivered by mail to the Secretary of the Association, or the President of the Association, or to any member of the Board of Directors of the Association. The change of the mailing address of any party as specified herein shall not require an Amendment to Declaration.

Notices to the Developer shall be delivered by mail at: P.O. Drawer 4070, Fort Myers Beach, Florida 33931, or to 780 Estero Boulevard, Fort Myers Beach, FL 33931, or such other address as designated in writing.

Notices to the Management Firm shall be delivered by mail at: P.O. Drawer 4070, Fort Myers Beach, FL 33931.

All notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written notice duly receipted for. Notices required to be given the personal representatives of a deceased Owner or devisee, when there is no personal representative, may be delivered either personally or by mail to such party at his or its address appearing in the records of the Court wherein the estate of such deceased Owner is being administered. The change of the mailing address of any party, as specified herein, shall not require an Amendment to the Declaration.

H. The Developer shall have the right so long as one (1) Condominium Unit or Unit Weeks in being held by the Developer for sale in the ordinary course of business to use such portions of the Common Elements as the Developer shall determine in his sole discretion for the purpose of aiding in the sale of Condominium Units and/or Unit Weeks including the right to use portions of the Condominium Property for parking for prospective purchasers and such other parties as Developer determines. The foregoing right shall mean and include the right to display and erect signs, billboards and placards and store, keep and exhibit same and distribute audio and visual



provisional materials upon the Common Elements, and to maintain a sales office, its usual attributes and telephone.

I. Each Unit Owner and the Association shall be governed by and shall comply with this Declaration and the By-Laws attached hereto, and the Condominium Act of the State of Florida. Failure to do so shall entitle the Association or any Unit Owner to recover sums due for damages or injunctive relief or both. Such actions may be maintained by or against a Unit Owner or the Association in a proper case by or against one or more Unit Owners, and the prevailing party shall be entitled to receive reasonable attorneys' fees. Such relief shall not be exclusive of other remedies provided by law.

J. The Board of Directors of the Condominium Association, when authorized by a vote of the majority of the total vote of the members of the Association, may, individually, or together with other Condominium Associations and others, purchase and/or acquire and enter into agreements, from time to time, whereby it acquires leaseholds, memberships, and other possessory or use interests in lands or facilities, including, but not limited to private clubs, marinas and/or other recreational 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, rental fees, membership fees, operations, replacements and other undertakings in connection therewith shall be included in the common expense assessment.

K. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and the plural shall include the singular. The provisions of the Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium.

L. The captions used in this Declaration of Condominium and Exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text of this Declaration or Exhibits hereto annexed.

M. Where an Institutional First Mortgage, by some circumstance, fails to be a First Mortgage, but it is evident that it is intended to be a First Mortgage, it shall, nevertheless, for the purpose of this Declaration and Exhibits annexed, be deemed to be an Institutional First Mortgage.

N. Subject to the provisions of Section 718.203 of the Condominium Act, the Developer specifically disclaims any intent to have made any warranty or representation in connection with the Property or the Condominium documents, except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made therein unless otherwise stated. Maintenance fees, common expenses, taxes, or other charges are estimates only

and no warranty, guaranty or representation is made or intended, nor may one be relied upon, except for the Developer's guarantee under F.S. 718.116 (8) (b).

O. Condominium Association, by its execution of this Declaration of Condominium, approves the foregoing and all of the covenants, terms and conditions, duties and obligations of this Declaration of Condominium and Exhibits attached thereto. The Condominium Unit Owners, by virtue of their acceptance of the Deed of Conveyance as to their Condominium Unit or Unit Week, and other parties by virtue of their occupancy of Units hereby approve the foregoing and all of the terms and conditions, duties and obligations of this Declaration of Condominium and Exhibits attached thereto.

P. No Condominium Parcel Owner shall bring, or have any right to bring, any action for partition or division of the Condominium Property, nor shall any Owner of Unit Weeks within any Condominium Unit committed to Interval Ownership have any right to bring any such action with reference to other Owners of Unit Weeks in such Condominium Unit, if permitted by law, until such time as is provided for in Article XXX.

The Interval Conveyance consists of an estate for years, together with a remainder over as tenants in common with all other Purchasers of Unit Weeks, in each such Condominium Unit as set forth in the Deed of Conveyance. No Owner of Unit Weeks in a Unit committed to Interval Ownership, shall have the right to separate the estate for years from the remainder interest. The estate for years shall not merge with the remainder interest.

Q. The real property submitted to Condominium Ownership herewith is subject to conditions, limitations, restrictions, reservations, all matters of record and the rights of the United States of America, the State of Florida or any governmental authority or agency as to any submerged lands and as to any lands lying below the natural ordinary high-water line of the surrounding bodies of water, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for ingress and egress for pedestrian and vehicular purposes, utility service, and drainage now existing or hereafter granted by the Developer for the benefit of such persons as the Developer designates, and the said Developer shall have the right to accept and grant such easements and designate the beneficiaries thereof for such time as the Developer determines in his sole discretion, and thereafter, the Association shall be empowered to accept and grant such easements on behalf of its members. During the period of time that the Developer has the right to accept and grant the foregoing easements, the Developer shall have the right to move, substitute and vacate said easements, and the consent and approval of the Association, its members, or anyone else, shall not be required. The right to accept and grant the foregoing easements shall be subject to said easements not structurally weakening the buildings and improvements upon the Condominium Property, nor unreasonably interfering with the enjoyment of the Condominium Property by the Association's members.

R. In order to insure the Condominium Property with adequate and uniform water service and sewerage disposal service, the Developer shall and hereby reserves the exclusive right to contract for the servicing of said Condominium and the Unit Owners therein with said services. Pursuant to the foregoing, the Developer has, will or may contract with, a utility company which may include a municipal or governmental agency or authority for the furnishing of said services and the Association and Unit Owners agree to pay the charges therefore pursuant to and to comply with all of the terms and conditions of said utility Agreement.

S. Notwithstanding the fact that the present provisions of the Condominium Act of the State of Florida are incorporated by reference and included herein thereby, the provisions of this Declaration and Exhibits attached hereto shall by paramount to the Condominium Act as to those provisions where permissive variances are permitted, otherwise, the provisions of said Condominium Act shall prevail and shall be deemed incorporated therein. This paragraph shall also apply to the provisions of Chapter 721, Florida Statutes, the Florida Real Estate Time-Sharing Act applicable to fee Time-Sharing plans.

T. Leasing or renting of a Condominium or Unit Weeks within a Condominium Unit committed to Interval Ownership is permitted.

U. Owners of Units shall have as an appurtenance thereto a perpetual easement for ingress and egress to and from their Units over stairs, terraces, balconies, walks, and other Common Elements. These easements apply to a Unit Week Owner during his ownership period.

V. The Owner of a Unit shall have an easement for ingress and egress, over such streets, walks, and other rights-of-way serving the Units within the Condominium as a part of the "Common Elements" as may be necessary to provide reasonable access to said public ways, and such easement shall extend to the invitees and licensees of said Unit Owner. In the event that any of said easements for ingress and egress shall be encumbered by any leasehold or lien, other than those on the Condominium Parcels, such leaseholds or liens shall hereby be subordinate to the use rights of any Condominium Unit Owner or Owners whose Condominium Parcel is not also encumbered by said lien or leasehold. These easements apply to a Unit Week Owner during his ownership period.

W. The Developer, pursuant to Florida Statute 718.116 (8) (b) exercises the option to delay paying assessments for common expenses upon unsold units or unit weeks during such period of time as it may guarantee that the assessment for common expenses shall not increase over the dollar amount stated in the projected operating budget, and Developer hereby obligates itself to pay any excess amounts incurred during that period not produced by assessments at the guaranteed level receivable from other Unit or Unit Week Owners. The period of this guarantee shall continue until 30 days notice of its termination has been given in writing to all Unit or Unit

Week Owners by the Developer. The notices shall be considered given as of the date of mailing or hand delivery.

XXIII.

DEVELOPER'S RIGHT TO ADD ADDITIONAL RECREATIONAL FACILITIES

The Developer reserves the right, but not the obligation, until December 31, 1986, to convey to the Association one or more Parcels of real property on which the Developer constructs additional recreational facilities for the Condominium, hereinafter referred to as the "Recreational Parcel". The Developer shall have the right to determine the type or types of recreational facilities to be provided.

Relative to said Recreational Parcel:

- (1) The Association agrees that it will accept title to the Recreational Parcel to be conveyed from the Developer, and will hold the same for the use and benefit of all Condominium Unit Owners in the Condominium.
- (2) The Association shall operate and administer the Recreational Parcel, including the collection of any income therefrom and the payment of all costs and expenses incurred therewith. All income shall inure to the benefit of the Association and all such expenses including, but not limited to real estate taxes, utilities, insurance, maintenance and repairs shall be common expenses assessable and collectible by the Association against all of the Unit Owners in the manner provided by the Declaration.
- (3) The Developer shall convey the Recreational Parcel to the Association by statutory warranty deed, free and clear of all encumbrances except: conditions, restrictions, reservations, limitations, zoning and easements of record and taxes for the then current and subsequent years.
- (4) All expenses of conveying the Recreational Parcel to the Association, including state stamps and recording fees shall be borne by the Developer.

ARTICLE XXIV.

ADDITIONAL PROVISIONS ON TAXES

In addition to the provisions of ARTICLE XIV, and as an enlargement of those provisions,

Taxes and tax assessments:

- (1) For the purposes of ad valorem taxation and special tax assessment, the Association or Management Company shall be considered the taxpayer as an agent of the Time-Share period titleholder.
- (2) Fee Time-Share real property shall be listed on the assessment rolls as a simple entry. The assessed value of each Time-Share development shall be the value of the combined individual Time-Share periods or Time-Share estates contained therein.
- (3) The property appraiser shall annually notify the managing entity of the proportions to be used in allocating the valuation, taxes, and special assessments on Time-Share property among the various Time-Share periods. Such notice shall be provided on or before the mailing of notices pursuant to S194.011. Ad valorem taxes and special assessments shall be allocated by the managing entity based upon the proportions provided by the property appraiser pursuant to subsection.
- (4) All rights and privileges afforded property owners by chapter 194 with respect to contesting or appealing assessments shall apply both to the managing entity responsible for operating and maintaining the Time-Sharing plan and to each person having a fee interest in a Time-Share Unit.
- (5) The managing entity, as an agent of the Time-Share period titleholders, shall collect and remit the taxes and special assessments due on the fee Time-Share real property. In allocating taxes, special assessments, and common expenses to individual Time-Share period titleholders, the managing entity must clearly label the portion of any amounts due which are attributable to ad valorem taxes and special assessments.
- (6) (a) Funds received by a managing entity, its successors or assigns, from time-share titleholders for ad valorem taxes or special assessments, shall be placed in escrow for release as provided herein;
- (b) The escrow account shall be placed with an independent escrow agent who shall comply with the provisions of F.S. Chapter 721 relating to escrow agent.
- (c) The principal of such escrow account shall only be paid to the tax collector, or his deputy, of the county in which the time time-share development is located.
- (d) Interest earned upon any sum of money placed in escrow under the provisions of this section, shall be paid to the managing entity, its successors or assigns, for the benefit of the owners of time-share units provided, however, that no interest shall be paid unless all taxes on the time-share development have been paid.
- (e) A statement of receipts and disbursements of the escrow account shall be forwarded to the Division of Land Sales and Condominiums within 30 days after any

disbursement shall have been made, appropriately showing the amount of principal and interest reflected in such account.

(7) The tax collector will accept only full payment of the taxes and special assessments due on the Time-Share development.

(8) The managing entity shall have a lien pursuant to S718.121 or S721.16 on the Time-Share periods for the taxes and special assessments.

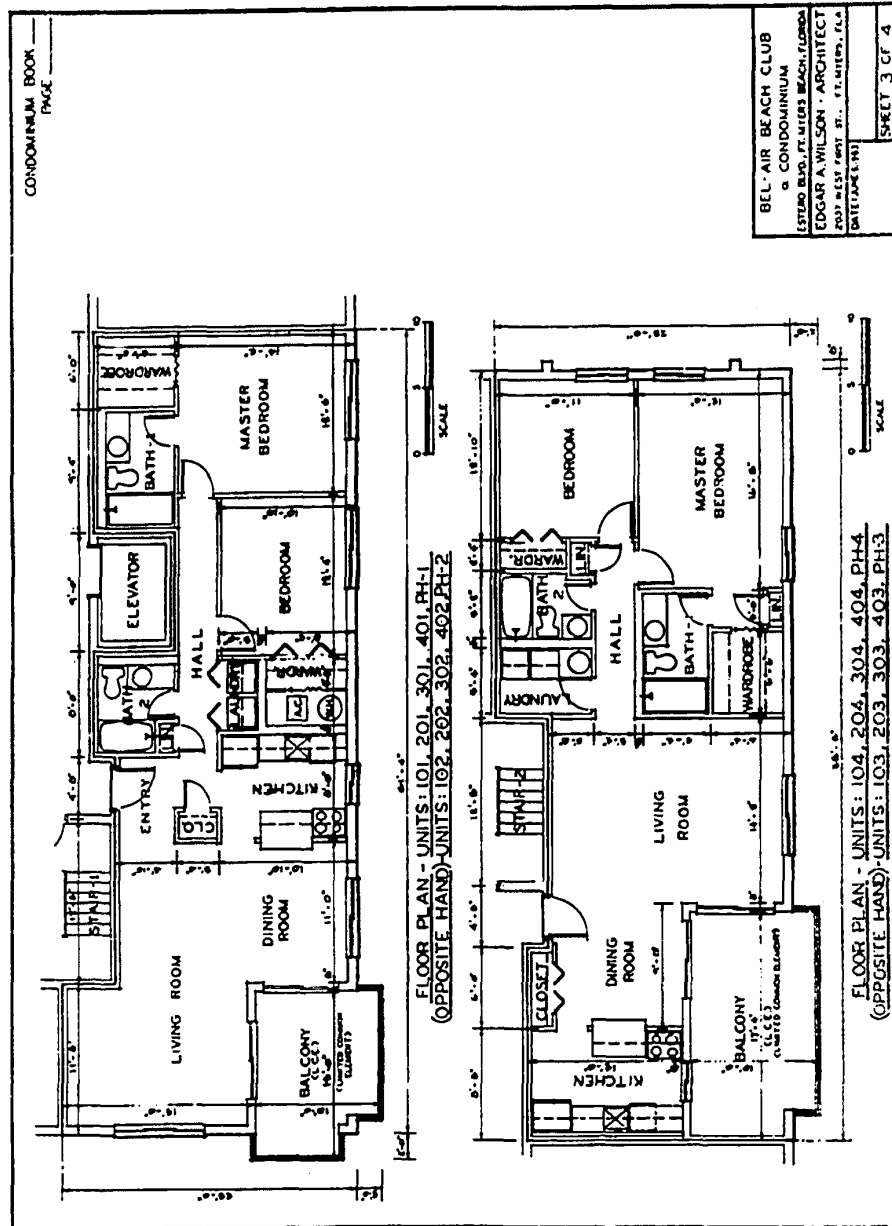
(9) All provisions of law relation to enforcement and collection of delinquent taxes shall be administered with respect to the Time-Share development as a whole and the managing entity as an agent of the Time-Share period titleholders; if, however, an application is made pursuant to S197.241, the Time-Share period titleholders shall receive the protections afforded by Chapter 197, Florida Statutes.

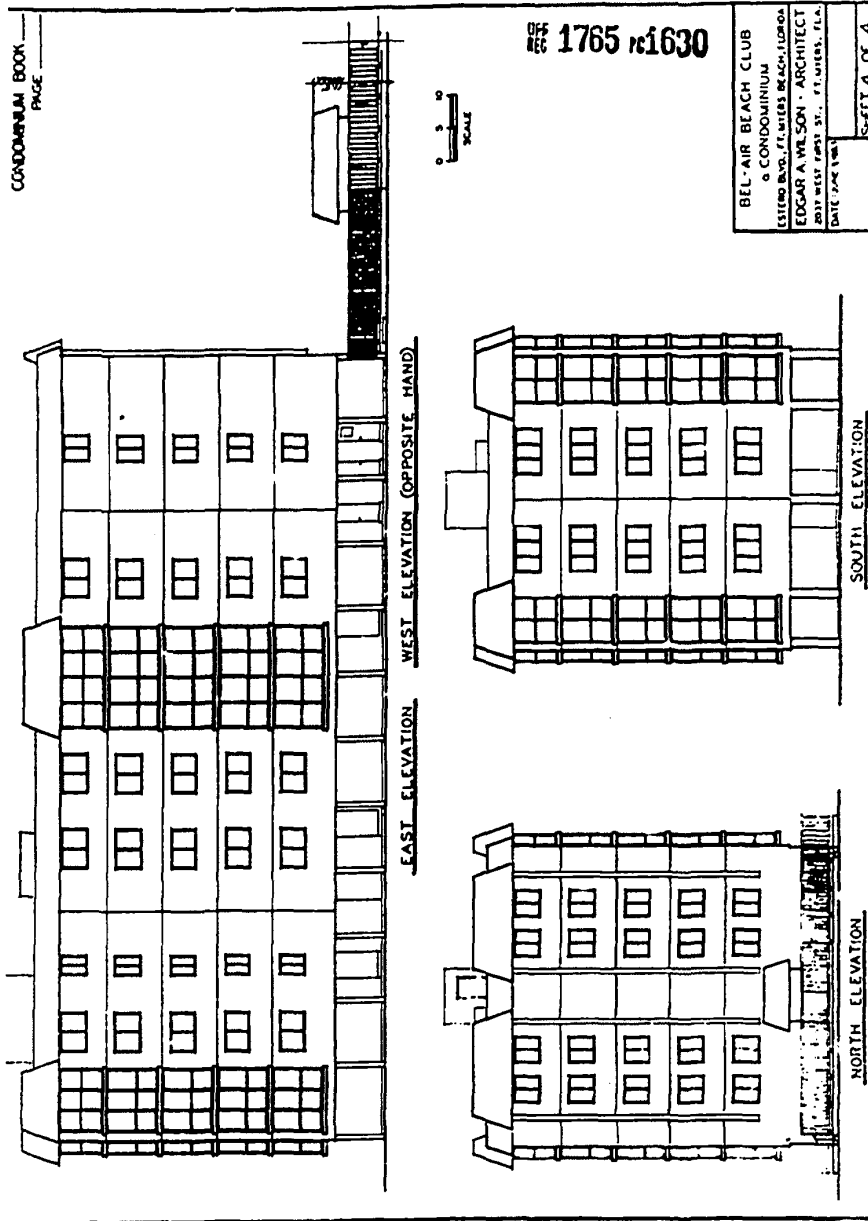
(10) The Association and managing entity shall have the authority to comply with changes in the tax laws without amendment to this Declaration.











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# 1765 #1631

PERCENTAGE OF OWNERSHIP

EACH UNIT WITHIN THE CONDOMINIUM SHALL HAVE THE INTEREST IN AND TO THE COMMON ELEMENTS AND COMMON SURPLUS, AND SHALL BE RESPONSIBLE FOR THE PERCENTAGE OF THE COMMON EXPENSES OF THE CONDOMINIUM AS SHOWN ON THE PLOT PLAN, EXHIBIT 1 TO THE DECLARATION. THAT IS ONE-TWENTIETH OR 5%.

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OFF  
REC 1765 1632PERCENTAGE INTEREST IN UNITS

Each Condominium Unit is identified by number and is delineated on the Survey Exhibits collectively identified as Exhibit No. 1, to the Declaration of Condominium to which this Exhibit No. 6, is attached.

In the case of a Unit committed to Interval Ownership, each Owner of Unit Weeks in said Unit will own in remainder, a percentage share of the Unit and the percentage interest assigned to the Unit by Exhibit No. 5, hereof according to the following schedule:

<u>Unit Week Numbers</u> <u>Owned</u>	<u>Percentage Share in Remainder</u> <u>For Each Unit Week Owned</u>
1 - 51	1.9165
52	2.2585

OFF REC 1765 K1633

CONSENT OF HOLDER OF ENCUMBRANCE

THE UNDERSIGNED, NCNB, NATIONAL BANK OF FLORIDA, the owner and holder of a certain encumbrance, to-wit: a mortgage encumbering the property herein, which mortgage has been filed and recorded in Official Record Book 1752, Page 4071, of the Public Records of Lee County, Florida, hereby evidences its consent to the Declaration of Condominium for BEL-AIR BEACH CLUB, A CONDOMINIUM.

IN WITNESS WHEREOF, the undersigned has executed this Consent this 23rd day of January, 1985.

NCNB, NATIONAL BANK OF FLORIDA

By *Richard S. Yankowski*  
Richard S. Yankowski,  
Vice President

STATE OF FLORIDA

COUNTY OF LEE

I HEREBY CERTIFY, that on this 23rd day of January, 1985, before me personally appeared RICHARD S. YANKOWSKI, Vice President of NCNB, NATIONAL BANK OF FLORIDA, a National Banking Corporation, to me known to be the person described in and who executed the foregoing Consent and severally acknowledged the execution thereof to be their free act and deed as such officer, for the uses and purposes therein mentioned; and that he affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal the day and year last aforesaid.

*Law A. Packard*  
Notary Public  
(notary seal)

My commission expires:

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NOTARY PUBLIC STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES MAY 17 1985  
NOTARY PUBLIC STATE OF FLORIDA AT LARGE

OFF REC 1765 n1634

SURVEYOR'S CERTIFICATION

I have examined the Declaration of Condominium and attached Exhibits, including the "Plot Plan" of BEL-AIR BEACH CLUB, A CONDOMINIUM, which is to be recorded simultaneously herewith in the Public Records of Lee County, Florida, and do hereby certify that the construction of the improvements is substantially complete so that the material, together with the provisions of the Declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials. I further certify that all planned improvements, including, but not limited to, landscaping, utility services, and access to the Unit and common element facilities serving BEL-AIR BEACH CLUB, A CONDOMINIUM, as set forth in the Declaration, have been substantially completed and such certification is to be recorded with the original Declaration.

By /s/ Gerald W. Smith  
Gerald W. Smith, Registered  
Land Surveyor  
Reg. Land Surv. # 1456

STATE OF FLORIDA

COUNTY OF LEE

BEFORE ME, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared GERALD W. SMITH, to me well known to be the person described in and who executed the foregoing Surveyor's Certification, and he acknowledged before me that he executed the same freely and voluntarily for the uses and purposes therein expressed and set forth, and that he is over the age of twenty-one (21) years.

WITNESS my hand and official seal this 9th day of June, 1983.

/s/ Margaret A. Pigott  
Notary Public

My commission expires:

April 11, 1986

See Surveyor's Certification on Plot  
Plan, Page -D-40- hereinbefore.

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1765 1635

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ARTICLES OF INCORPORATION  
BEL-AIR BEACH CLUB ASSOCIATION, INC.

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REC 1765 1636

# State of Florida



Department of State

*I certify that the attached is a true and correct copy of the Articles  
of Incorporation of*

BEL-AIR BEACH CLUB ASSOCIATION, INC.

*a corporation organized under the Laws of the State of Florida,  
filed on January 21, 1985.*

*The charter number for this corporation is* NO7195.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
21st day of January, 1985



George Firestone  
Secretary of State

WP-104 CER-101

D-48a



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1765 #1637

ARTICLES OF INCORPORATION OF  
BEL-AIR BEACH CLUB ASSOCIATION, INC.

The undersigned, desiring to form a non-profit Corporation under the laws of the State of Florida, pursuant to Florida Statutes 617 et seq., hereby certifies as follows:

ARTICLE I.

The name of this Corporation shall be:

BEL-AIR BEACH CLUB ASSOCIATION, INC.

ARTICLE II.

The general purpose of this non-profit Corporation shall be as follows: To be the "Association" (as defined in the Condominium Act of the State of Florida, F.S. 718 et seq.), for the operation of the Condominium known as Bel-Air Beach Club, a Condominium, on Estero Island, Lee County, Florida to be created pursuant to the provisions of the Condominium Act, and as such Association, to operate and administer said Condominium, as set forth in the Declaration of Condominium establishing said Condominium and Exhibits annexed thereto.

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JUN 21 12 10 PM '85  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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REC 1765 1638

ARTICLE III.

All persons who are Owners of Condominium Parcels within said Condominium shall automatically be members of this Corporation. Such membership shall automatically terminate when such person is no longer Owner of a Condominium Parcel. Membership in the Corporation shall be limited to such Condominium Parcel Owners.

Persons who own interests in Condominium Parcels under a plan of Interval Ownership, as defined in the By-Laws of this Corporation, shall be members of this Corporation, their rights and duties to be defined in the Declaration of Condominium.

Subject to the foregoing, admission to and termination of membership shall be governed by the Declaration of Condominium that shall be filed for said Condominium among the Public Records of Lee County, Florida.

ARTICLE IV.

This Corporation shall have perpetual existence.

ARTICLE V.

The name and residence of the subscriber to these Articles of Incorporation are as follows:

Arnold D. Barr

418-C Chitwood Drive  
Fort Myers, FL 33908

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REC 1765 1639

## ARTICLE VI.

Section 1. The affairs of the Corporation shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than the number specified in the By-Laws. The Directors, subsequent to the first Board of Directors, shall be elected at the annual meeting of the membership, for a term of one (1) year, or until their successors shall be elected and shall qualify. Provisions for such election, and provisions respecting the removal, disqualification and resignation of Directors and for filling vacancies on the Directorate, shall be established by the By-Laws.

Section 2. The principal officers of the Corporation shall be: President; Vice-President; Secretary; Treasurer (the last two Officers may be combined) who shall be elected from time to time, in the manner set forth in the By-Laws adopted by the Corporation.

## ARTICLE VII.

The names of the Officers who are to serve until the first election of Officers, pursuant to the terms of the Declaration of Condominium and By-Laws, are as follows:

M. D. Young - 805 Pearl St. Denver, Co	President
Pacia J. Brown - 142 Washington, Ft. Myers, Fl.	Vice-President
Arnold D. Barr 418-C Chitwood Dr. Ft. Myers, Fl.	Secretary/Treasurer

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ARTICLE VIII.

The following persons shall constitute the first Board of Directors and shall serve until the first election of the Board of Directors at the first regular meeting of the membership:

M. D. Young  
Pacia J. Brown  
Arnold D. Barr

ARTICLE IX.

The By-Laws of the Corporation shall initially be made and adopted by its first Board of Directors.

Prior to the time the property described in Article II, hereinabove has been submitted to Condominium Ownership by the filing of the Declaration of Condominium, said first Board of Directors shall have full power to amend, alter or rescind said By-Laws by a majority vote.

After the property described in Article II, hereinabove has been submitted to Condominium Ownership by filing of the Declaration of Condominium, the By-Laws may be amended, altered, supplemented or modified by the membership at the annual meeting, or at a duly convened special meeting of the membership, by vote as follows:

- A. If the proposed change has been approved by the unanimous approval of the Board of Directors, then it shall require only a majority vote of the total membership to be adopted.

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REC 1765 #1641

B. If the proposed change has not been approved by the unanimous vote of the Board of Directors, then the proposed change must be approved by three-fourths (3/4ths) of the total vote of the membership.

ARTICLE X.

Amendments to these Articles of Incorporation may be proposed by any member or Director and shall be adopted in the same manner as is provided for the Amendment of the By-Laws as set forth in Article IX, above. Said Amendment(s) shall be effective when a copy thereof, together with an attached Certificate of its approval by the membership, sealed with the Corporate Seal, signed by the Secretary or an Assistant Secretary, and executed and acknowledged by the President or Vice-President, has been filed with the Secretary of State, and all filing fees paid.

ARTICLE XI.

This Corporation shall have all of the powers set forth in Florida Statute 617.021, all of the powers set forth in the Condominium Act of the State of Florida, and all powers granted to it by the Declaration of Condominium and Exhibits annexed thereto, including the power to contract for the management of the Condominium and recreational facilities.

ARTICLE XII.

There shall be no dividends paid to any of the members, nor shall any part of the income of the Corporation be distributed to

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LIFE  
REC 1765 K1642

its Board of Directors or Officers. In the event there are any excess receipts over disbursements as a result of performing services, such excess shall be applied against future expenses. The Corporation may pay compensation in a reasonable amount to its members, Directors and Officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its members as is permitted by the Court having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income.

This Corporation shall issue no shares of stock of any kind or nature whatsoever. Membership in the Corporation and the transfer thereof, as well as, the number of members, shall be upon such terms and conditions as provided for in the Declaration of Condominium and By-Laws. The voting rights of the Owners of Parcels in said Condominium Property shall be as set forth in the Declaration of Condominium and/or By-Laws.

ARTICLE XIII.

The street address of the initial registered office of this Corporation is 418-C Chitwood Drive, Fort Myers, Florida 33908, and the name of the initial registered agent of this Corporation is Arnold D. Barr, at that address.


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REC 1765 121643

ARNOLD D. BARR, the above named registered agent joins in the execution of these Articles to evidence acceptance of his designation as Registered Agent and he agrees to comply with the Florida Statutes governing corporate registered agents.

IN WITNESS WHEREOF, the Subscribers hereto have hereunto set their hands and seals this 17<sup>th</sup> day of JANUARY, 1985.


 (SEAL)  
Arnold D. Barr  
As a subscriber and  
As Resident Agent

STATE OF FLORIDA

COUNTY OF LEE

BEFORE ME, the undersigned authority, personally appeared ARNOLD D. BARR, as a Subscriber and as Resident Agent, being by me first duly sworn, acknowledged that he executed the foregoing Articles of Incorporation of Bel-Air Beach Club Association, Inc., a Florida Corporation not-for-profit, for the purposes therein expressed.

WITNESS my hand and Official Seal, in the State and County last aforesaid this 17<sup>th</sup> day of JANUARY, 1985.

  
Notary Public, State of  
Florida, at Large

My commission expires:

5-22-87

(notary seal)

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FILED  
JUN 21 12 10 PM '85  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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REC 1765 n1644

EXHIBIT C  
BY-LAWS

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BEL-AIR BEACH CLUB ASSOCIATION, INC.  
A FLORIDA NON-PROFIT CORPORATION

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BY-LAWS OF  
BEL-AIR BEACH CLUB ASSOCIATION, INC.  
A FLORIDA NON-PROFIT CORPORATION

ARTICLE I. IDENTITY

(a) The following By-Laws shall govern the operation of the Condominium created by the Declaration of Condominium to which these By-Laws are attached.

(b) The Association whose name appears at the end of this instrument is a Florida Corporation not-for-profit, organized and existing under the laws of the State of Florida for the purpose of administering the Condominium created by the Declaration of Condominium to which these By-Laws are attached.

Section 1. The office of the Association shall be at the Condominium Property, or at such other place as may be subsequently designated by the Board of Directors of the Association.

Section 2. The Seal of the Corporation shall bear the name of the Corporation, the word "Florida", the words, "Corporation not for profit", and the year of incorporation.

Section 3. As used herein, the word, "Corporation", shall be the equivalent of "Association"; as defined in the Declaration of Condominium to which these By-Laws are attached. All other words as used herein, shall have the same definitions as attributed to them in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE II. MEMBERSHIP AND VOTING PROVISIONS

Section 1. Membership: Membership in the Association shall be limited to Owners of the Condominium Units in Condominiums wherein this Corporation has been designated the Association to operate and administer said Condominium by virtue of the Declaration of Condominium of said Condominium. Transfer of Unit Ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership is to become vested in the transferee. If Unit Ownership is vested in more than one person, then all of the persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be

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cast by the "voting member". If Unit Ownership is vested in a Corporation, said Corporation may designate an individual officer or employee of the Corporation as its "voting member". Notwithstanding the foregoing, each Owner of Unit Weeks in a Condominium Unit committed to Interval Ownership shall be entitled to cast his share of the vote of the Unit in which he owns his Unit Weeks. "Unit committed to Interval Ownership" and "Interval Ownership" are defined in the Declaration of Condominium.

Section 2. Voting:

(a) The Owner(s) of each Condominium Unit shall be entitled to one (1) vote. If a Condominium Unit Owner owns more than one (1) Unit, he shall be entitled to one (1) vote for each Unit owned. The vote of a Condominium Unit shall not be divisible. Notwithstanding the foregoing, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to 1/52 of the total vote assigned to the Unit in which he owns his Unit Weeks for each Unit Week owned. The Association shall have a vote for any Unit Weeks conveyed to it.

(b) A majority of the Unit Owners' total votes shall decide any question, unless the Declaration of Condominium, By-Laws or Articles of Incorporation of the Association, or Florida Laws provide otherwise.

Section 3. Quorum: Unless otherwise provided in these By-Laws, the presence in person or by proxy of twenty-five (25%) percent of the Unit Owners' total votes shall constitute a quorum.

Section 4. Proxies: Votes may be cast in person or by proxy. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5). Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife where a third person is designated.

a. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meeting thereof.

b. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given.

c. Every proxy shall be revocable at any time at the pleasure of the Unit owner executing it.

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Section 5. Designation of Voting Member: If a Condominium Unit is owned by one person, his right to vote shall be established by the recorded title to the Unit. If a Condominium Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated in a Certificate signed by all of the recorded Owners of the Unit and filed with the Secretary of the Association. If a Condominium Unit is owned by a Corporation, the officer or employee thereof entitled to cast the vote of the Unit for the Corporation shall be designated in a Certificate for this purpose, signed by the President or Vice-President, attested to by the Secretary or Assistant Secretary of the Corporation, and filed with the Secretary of the Association. The person designated in such Certificate who is entitled to cast the vote for a Unit shall be known as the "voting member". If such a Certificate is not on file with the Secretary of the Association for a Unit owned by more than one person or by a Corporation, the vote of the Unit concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Unit, except if said Unit is owned by a husband and wife. Such Certificates shall be valid until revoked or until superseded by a subsequent Certificate, or until a change in the Ownership of the Unit concerned. If a Condominium Unit is owned jointly by a husband and wife, the following three provisions are applicable thereto:

(a) They may, but they shall not be required to, designate a voting member.

(b) If they do not designate a voting member and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting. (As previously provided, the vote of a Unit is not divisible).

(c) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

Section 6. Units Committed to Interval Ownership: Notwithstanding any other provisions in these By-Laws, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to cast the fractional vote attributable to his Unit Week owned. In the case of a Unit committed to Interval Ownership, the provisions of Section 5, Designation of Voting Member, shall apply to each Unit Week owned.

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REC 1765 11649ARTICLE III. MEETING OF THE MEMBERSHIP

Section 1. Place: All meetings of the Association membership shall be held at such place and at such time as shall be designated by the Board of Directors of the Association and stated in the notice of the meeting, and shall be open to all Unit Owners.

Section 2. Notices: It shall be the duty of the Secretary to mail or deliver a notice of each annual or special meeting, stating the time and place thereof, to each Unit Owner of record at least fourteen (14) but not more than thirty (30) days prior to such meeting. Notice of any special meeting shall state the purpose thereof. All notices shall be mailed to or served at the address of the Unit Owner as it appears on the books of the Association.

a. Adequate Notice of all meetings shall be given and shall be posted at least 48 hours in advance in a conspicuous place on the Condominium property.

b. Notice of any meeting where assessments against Unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

Section 3. Annual Meeting: The annual meeting shall be held in February of each year at a date, time and place to be determined by the Board for the purpose of electing Directors and transacting any other business authorized to be transacted by the members, provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next secular day following. At the annual meeting, the members shall elect by plurality vote - (cumulative voting prohibited), a Board of Directors, and shall transact such other business as may properly be brought before the meeting.

Section 4. Special Meeting: Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, and shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors, at at the request, in writing of voting members representing twenty-five (25%) percent of the members' total votes, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the objects stated in the Notice thereof.

Section 5. Waiver and Consent: Whenever the vote of members at a meeting is required or permitted by any provision of

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these By-Laws to be taken in connection with any action of the Association, the meeting and vote of members may be dispensed with if not less than a majority of the members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken; however, notice of such action shall be given to all members, unless all members approve such action.

Section 6. Adjourned Meeting: If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.

Section 7. Approval or Disapproval: Approval or disapproval of a Unit Owner upon any matter, whether or not the subject of an Association meeting, shall be by the voting members provided, however, that where a Unit is owned jointly by a husband and wife, and they have not designated one of them as a voting member, their joint approval or disapproval shall be required where they are both present, or in the event only one is present, the person present may cast the vote without establishing the concurrence of the absent person.

Section 8. The Management Firm: The Management Firm, as long as any Management Agreement remains in effect, shall be entitled to notice of all Association meetings, and shall be entitled to attend the Association's meetings, and it may designate such person(s) as it desires to attend such meetings on its behalf.

Section 9. Minutes of Meetings: The minutes of all meetings of the Unit owners and the Board of Administration shall be kept in a book available for inspection by Unit owners, or their authorized representatives, and Board members at any reasonable time.

#### ARTICLE IV. DIRECTORS

Section 1. Number, Term and Qualifications: The affairs of the Association shall be governed by a Board of Directors composed of not less than three (3) nor more than seven (7) persons, as is determined from time to time by the members. All Directors, except those designated by the Developer, shall be members of the Association. All officers of a Corporate Unit Owner shall be deemed to be members of the Association so as to qualify as a Director herein. The term of each Director's service shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3, below.

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**Section 2. First Board of Directors:**

(a) The first Board of Directors of the Association who shall hold office and serve until their successors have been elected and qualified, shall consist of the following:

M. D. Young  
Pacia J. Brown  
Arnold D. Barr

(b) The organizational meeting of a newly elected Board of Directors of the Association shall be held within ten (10) business days of their election, at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further Notice of the organizational meeting shall be necessary, provided a quorum shall be present.

**Section 3. Removal of Directors:** Subject to the provisions of F.S. §718.301, at any time at any duly convened annual meeting of the membership or at any duly convened regular or special meeting, any one or more of the Directors may be removed, with or without cause, by the affirmative vote of the voting members casting not less than a majority of the total votes of all members of the Association, and a successor may then and there be elected to fill the vacancy thus created. Should the membership fail to elect said successor, the Board of Directors may fill the vacancy in the manner provided in Section 4, below.

a. The calling of a special meeting of Unit owners to recall Board Members of the Administration may be called by 10% of the Unit owners giving notice as required by law and as set forth in F.S. §718.112(2)(g).

**Section 4. Vacancies on Directorate:** If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, shall choose a successor or successors, who shall hold office for the balance of the unexpired term in respect to which such vacancy occurred. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors.

**Section 5. Disqualification and Resignation of Directors:** Any Director may resign at any time by sending a written notice of such resignation to the office of the Corporation, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the

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Secretary. Commencing with the Directors elected at such first annual meeting of the membership, the transfer of title of his Unit by a Director shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors. No member shall continue to serve on the Board should he be more than thirty (30) days delinquent in the payment of any assessment or maintenance fee and said delinquency shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors.

**Section 6. Regular Meetings:** The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such regular meetings shall nevertheless, be given to each Director personally or by mail, telephone or telegraph at least five (5) days prior to the day named for such meeting. All meetings of the Board of Directors, including special meetings in accordance with Section 7 below, shall be open to all Unit Owners.

**Section 7. Special Meetings:** Special meetings of the Board of Directors may be called by the President, and in his absence by the Vice-President, or by a majority of the members of the Board of Directors, by giving five (5) days notice, in writing, to all of the members of the Board of Directors of the time and place of said meeting. All notices of special meetings shall state the purpose of the meeting.

**Section 8. Directors' Waiver of Notice:** Before or at any meeting of the Board of Directors, any Director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no Notice shall be required and any business may be transacted at such meeting.

**Section 9. Quorum:** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At each such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice. A Director may join in the action of a meeting by signing and concurring in the Minutes thereof, but such concurrence shall not constitute the presence of such Director for the purpose of determining a quorum.

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Section 10. Compensation: The Directors' fees, if any, shall be determined by the voting members.

Section 11. Developer's Selection of Directors: Subject to the provisions of Section 718.301, of the Condominium Act, the Developer shall have the right to designate the Directors who need not be Owners of Units or Unit Weeks in the Condominium, and said Directors may not be removed by members of the Association, as elsewhere provided herein; and where a vacancy occurs for any reason whatsoever, the vacancy shall be filled by the person designated by the Developer.

Section 12. The Management Firm: The Management Firm, as long as any Management Agreement remains in effect, shall be entitled to notice of all Directors' meetings and shall be entitled to attend the Directors' meetings and it may designate such person(s) as it desires to attend such meetings on its behalf.

Section 13. Powers and Duties: The Board of Directors of the Association shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by the Declaration of Condominium, this Association's Articles of Incorporation, or these By-Laws, directed to be exercised and done by Unit Owners. These powers shall specifically include, but shall not be limited to the following:

- (a) To exercise all powers specifically set forth in the Declaration of Condominium, this Association's Articles of Incorporation, in these By-Laws, and in the Condominium Act, and all powers incidental thereto.
- (b) To make and determine assessments and maintenance fees, collect said assessments and maintenance fees, and use and expend the assessments and maintenance fees, to carry out the purposes and powers of the Association.
- (c) To employ, dismiss and control the personnel necessary for the maintenance and operation of the Condominium, and of the common areas and facilities including the right and power to employ attorneys, accountants, contractors, and other professionals as the need arises.
- (d) To make and amend regulations respecting the operation and use of the Common Elements and Condominium Property, and the use and maintenance of the Condominium Units therein.
- (e) To contract for the management of the Condominium. To contract for the management or operation of portions of the

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Common Elements susceptible to the separate management or operation thereof, and to lease or concession such portions.

(f) The further improvement of the Condominium Property, both real and personal, and the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and the right to acquire and enter into agreements pursuant to Section 718.114, of the Condominium Act, and as amended, subject to the provisions of the applicable Declaration of Condominium, this Association's Articles of Incorporation and these By-Laws.

(g) Designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the Association. Such committee shall consist of at least three (3) members of the Association. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular Minutes of their proceedings and report the same to the Board of Directors, as required. The foregoing powers shall be exercised by the Board of Directors or its contractor or employees, subject only to approval by Unit Owners when such is specifically required.

(h) To enter into and terminate Agreements with organizations providing Owners of Unit Weeks the opportunity to exchange their time periods with Owners of time periods at other resorts.

#### ARTICLE V. OFFICERS

Section 1. Elective Officers: The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors.

(a) One person may not hold more than one of the aforementioned offices, except one person may be both Secretary and Treasurer. The President and Vice-President shall be members of the Board of Directors. Notwithstanding the foregoing, the restriction as to one person holding only one of the aforementioned offices or the President and Vice-President being members of the Board of Directors shall not apply while the Association is under the control of the Developer, the control being the right of the Developer to select a majority of the Board of Directors in accordance with Section 718.301, of the Condominium Act.

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Section 2. Election: The officers of the Association designated in Section 1, above shall be elected annually by the Board of Directors at the organizational meeting of each new Board following the meeting of the members.

Section 3. Appointive Officers: The Board may appoint Assistant Secretaries and Assistant Treasurers, and such other officers as the Board of Directors deems necessary.

Section 4. Term: The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors, provided however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors (e.g., if the Board of Directors is composed of five persons, then three of said Directors must vote for removal). If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. The President: He shall be the chief executive officer of the Association; he shall preside at all meetings of the Unit Owners and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the Association and other officers. He shall sign all written contracts to perform all of the duties incident to his office and which may be delegated to him from time to time by the Board of Directors.

Section 6. The Vice-President: He shall perform all of the duties of the President in his absence, and such other duties as may be required of him from time to time by the Board of Directors of the Association.

Section 7. The Secretary: He shall issue notices of all Board of Directors' meetings and all meetings of the Unit Owners; he shall attend and keep the Minutes of same; he shall have charge of all of the Association's books, records and papers, except those kept by the Treasurer. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent.

Section 8. The Treasurer:

(a) He shall have custody of the Association's funds and securities, except the funds payable to any Management Firm, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and

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to the credit of the Association, in such depositories as may be designated from time to time by the Board of Directors. The books shall reflect an account for each Unit in the manner required by Section 718.111(7)(b), of the Condominium Act.

(b) He shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these By-Laws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the Treasurer and of the financial condition of the Association.

(c) He shall collect the assessments and maintenance fees and shall promptly report the status of collections and of all delinquencies to the Board of Directors.

(d) He shall give status reports to potential transferees on which reports the transferees may rely.

(e) The Assistant Treasurer shall perform the duties of the Treasurer when the Treasurer is absent.

(f) The duties of the Treasurer may be fulfilled by a Management Firm employed by the Association, and said Management Firm shall fulfill the duties of the Treasurer, and shall have custody of such books and of the Association as the Board of Directors determines in their sole discretion and the foregoing may include any books required to be kept by the Secretary of the Association.

#### ARTICLE VI. FINANCES, ASSESSMENTS AND MAINTENANCE FEES

Section 1. Depositories: The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board of Directors, and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be sign by at least two officers of the Association; provided, however, that the provisions of any Management Agreement between the Association and a Management Firm relative to the subject matter in this Section shall supersede the provisions hereof.

Section 2. Fidelity Bonds: The Treasurer and all directors and officers who are authorized to sign checks, and all officers and employees of the Association, and any contractor handling or responsible for Association funds shall be bonded in the amount of at least \$10,000.00. The premiums on such Bonds shall be paid

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by the Association. The Bond shall be in an amount sufficient to equal the monies an individual handles or has control of via a signatory or a bank account or other depository account, but not less than \$10,000.00 in any case.

Section 3. Fiscal Year: The fiscal year for the Association shall begin on the first day of January of each year provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board of Directors deems it advisable.

Section 4. Determination of Assessments:

(a) The Board of Directors of the Association shall fix and determine from time to time, the sum or sums necessary and adequate for the common expenses of the Condominium. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, and any other expenses designated as common expenses from time to time by the Board of Directors of the Association, or under the provisions of the Declaration of Condominium to which these By-Laws are attached. The Board of Directors is specifically empowered, on behalf of the Association to make and collect assessments and to lease, maintain, repair and replace the Common Elements and Limited Common Elements of the Condominium. Funds for the payment of common expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing common expenses, as provided in the Declaration. Regular assessments shall be due and payable monthly on the first day of each month. Maintenance fees for Units committed to Interval Ownership shall be payable quarterly and shall be due on the first day of January, April, July and October in advance, unless otherwise ordered by the Board of Directors. Special assessments, should such be required by the Board of Directors, shall be levied in the same manner as hereinbefore provided for regular assessments, and shall be payable in the manner determined by the Board of Directors.

(b) A copy of the proposed annual budget of common expenses shall be mailed to the Unit Owners not less than thirty (30) days prior to the meeting at which the budget will be considered, together with a notice of that meeting. The Unit Owners shall be given written notice of the time and place at which the meeting of the Board of Directors shall be held to consider the proposed annual budget of common expenses, and such meeting shall be open

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to the Unit Owners. If a budget is adopted by the Board of Directors which requires assessment against the Unit Owners in any fiscal or calendar year exceeding 115% of such assessments for the preceding year, upon written application of 10% of the Unit Owners, a special meeting of the Unit Owners shall be held upon no less than ten (10) days written notice to each Unit Owner, but within thirty (30) days of the delivery of such application to the Board of Directors or any member thereof, at which special meeting Unit Owners may consider and enact a revision of the budget, or recall any and all members of the Board of Directors and elect their successors. In either case, unless these By-Laws shall require a larger vote, the revision of the budget or the recall of any and all members of the Board of Directors shall require a vote of not less than a majority of the whole number of votes of all Unit Owners. The Board of Directors may in any event propose a budget to the Unit Owners at a meeting of members or by writing, and if such budget or proposed budget be approved by the Unit Owners at the meeting, or by a majority of their whole number by a writing, such budget shall not thereafter be reexamined by the Unit Owners in the manner hereinabove set forth. In determining whether assessments exceed 115% of similar assessments in prior years, there shall be excluded in the computation, any provision for reasonable reserves made by the Board of Directors with respect to repair or replacement of the Condominium Property or with respect to anticipated expenses by the Condominium Association which are not anticipated to be incurred on a regular or annual basis and there shall be excluded from such computation, assessment for betterments to the Condominium Property if these By-Laws so provide or allow the establishment of reserves, or assessments for betterments to be imposed by the Board of Directors, provided, however, that so long as the Developer is in control of the Board of Directors, the Board shall not impose an assessment for a year greater than 115% of the prior fiscal or calendar year's assessment without approval of a majority of the Unit Owners. When the Board of Directors has determined the amount of any assessment, the Treasurer of the Association shall mail or present to each Unit Owner a statement of said Unit Owner's assessment. All assessments shall be payable to the Treasurer of the Association and, upon request, said Treasurer shall give a receipt for each payment made to him.

Section 5. Determination of Maintenance Fee:

(a) The Board of Directors of the Association shall fix and determine from time to time, the sums necessary and adequate for the maintenance fee on Condominium Units committed to Interval Ownership. The maintenance fee on such Units shall include the items specified in the Declaration of Condominium to which these By-Laws are attached.

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(b) When the Board of Directors has determined the amount of the maintenance fee, the Treasurer of the Association shall mail or present to each Owner of Unit Weeks within all Units committed to Interval Ownership a statement of said maintenance fee. All maintenance fees shall be payable to the Treasurer of the Association and, upon, receipt, said Treasurer shall give a receipt for each payment made to him, if requested by the Unit Owners.

(c) Assessments shall be made against Unit owners of not less frequently than quarterly as provided in F.S. §718.112(2)(h).

Section 6. Application of Payments and Co-Mingling of Funds: All sums collected by the Association from assessments and maintenance fees may be co-mingled in a single fund or divided into more than one fund, as determined by the Board of Directors of the Association. All assessment payments and maintenance fees by a Unit Owner shall be applied as to interest, delinquencies, costs and attorneys' fees, other charges, expenses and advances as provided herein and in the Declaration of Condominium and general or special assessments, in such manner and amounts as the Board of Directors determines in its sole discretion.

Section 7. Acceleration of Assessment Installments Upon Default: If a Unit Owner shall be in default in the payment of an installment upon any assessment or maintenance fee, the Board of Directors may accelerate the remaining monthly or quarterly installments for the fiscal year upon notice thereof to the Unit Owner and, thereupon, the unpaid balance of the assessment or maintenance fee, shall become due upon the date stated in the notice, but not less than fifteen (15) days after delivery of or the mailing of such notice to the Unit Owner.

Section 8. Audits: An audit of the accounts of the Association shall be made annually. Said audit shall be prepared by such accountant as the Board of Directors determines, and a copy of said report shall be available to the members of the Association in the office of said Association and with the Treasurer of the Association. Such report shall be available not later than three (3) months after the end of the year for which the report is made.

Section 9. Application of Surplus: Any payments or receipts to the Association, whether from Unit Owners or otherwise, paid during the year in excess of the operating expenses and other common expenses of the Association shall be kept by the Association and applied against the Association's expenses for the following year.

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REC 1765 rc1660ARTICLE VII. ADDITIONS OR ALTERATIONS

(a) There shall be no additions or alterations to the common elements or limited common elements of the Condominium(s) which this Association operates and maintains except as specifically provided for in said Condominium's Declaration of Condominium.

ARTICLE VIII. COMPLIANCE AND DEFAULT

Section 1. Violations: In the event of a violation (other than the nonpayment of an assessment or maintenance fee) by the Unit Owner in any of the provisions of the Declaration of Condominium, of these By-Laws, or of the applicable portions of the Condominium Act, the Association, by direction of its Board of Directors, may notify the Unit Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of seven (7) days from date of notice, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional and inexcusable and material breach of the Declaration of the By-Laws, or of the pertinent provisions of the Condominium Act, and the Association may then, at its option, have the following elections:

(a) An action at law to recover for its damage, on behalf of the Association or on behalf of the other Unit Owners.

(b) An action in equity to enforce performance on the part of the Unit Owner; or

(c) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

(d) Any violations which are deemed by the Board of Directors to be a hazard to public health may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Unit Owner as a specified item, which shall be a lien against said Owner's Unit or Unit Week with the same force and effect as if the charge were a part of the common expenses.

Section 2. Negligence or Carelessness of Unit Owner, Etc.: All Unit Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, abandonment of any Unit or its appurtenances. Nothing



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herein contained, however, shall be construed so as to modify any waiver by any insurance company of its right of subrogation. The expense for any maintenance, repair or replacement required, as provided in this Section, shall be charged to said Unit Owner as a specific item which shall be a lien against said Owner's Unit or Unit Week with the same force and effect as if the charge were a part of the common expenses.

Section 3. Costs and Attorneys' Fees: In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

Section 4. No Waiver of Rights: The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 5. Election of Remedies: All rights, remedies and privileges granted to the Association or Unit Owner, pursuant to any terms, provisions, covenants or conditions of the Condominium documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such other party by the Condominium documents, or at law or in equity.

Section 6. Units Committed to Interval Ownership: Any liens or sanctions against an Owner of Unit Weeks in a Unit committed to Interval Ownership for an alleged default as set forth in this Article VIII, shall be limited to the Unit Weeks owned by such Owner and shall be of no force and effect as to any other Unit Weeks or Owner thereof. The term "Unit Owner" as used throughout this Article shall be deemed to include Owners of Unit Weeks in Units committed to Interval Ownership.

ARTICLE IX. ACQUISITION OF UNITS OR UNIT WEEKS ON FORECLOSURE

Section 1. Acquisition of Units or Unit Weeks on Foreclosure: At any foreclosure sale of a Unit or Unit Week, the Board of Directors may, with the authorization and approval by the affirmative vote of voting members casting not less than sixty (60%) percent, of the total votes of the members present at any regular or special meeting of the members wherein said matter is voted upon, acquire in the name of the Association, or its

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designee, a Condominium Parcel or Unit Week being foreclosed. The term "foreclosure", as used in this Section, shall mean and include any foreclosure of any lien, excluding the Association's lien for assessments, maintenance fees or holdover charges.

(a) The power of the Board of Directors to acquire a Condominium Parcel or Unit Week at any foreclosure sale shall never be interpreted as any requirement or obligation on the part of the said Board of Directors or of the Association to do so at any foreclosure sale, the provisions hereof being permissive in nature and for the purpose of setting forth the power in the Board of Directors to do so should the requisite approval of the voting members be obtained. The Board of Directors shall not be required to obtain the approval of Unit Owners at the foreclosure sale of a Unit or Unit Week, due to the foreclosure of the Association's lien for assessments, maintenance fees or holdover charges under the provisions of the Declaration of Condominium to which these By-Laws are attached notwithstanding the sum the Board of Directors determines to bid at such foreclosure sale.

Section 2. Transfer of Units: All Owners of Units or Unit Weeks in a Unit committed to Interval Ownership shall notify the Association, of any transfer, by sale or otherwise, of said Unit or Unit Week within ten (10) days of the date of same. Said notice shall include such information and be in the form that the Association shall prescribe from time to time. The Association may send all necessary notices to the person shown as Owner of said Unit or Unit Weeks in its records, and said notice shall be binding as to any other Owner of said Unit or Unit Weeks where the Association has not been notified as provided herein.

ARTICLE X. AMENDMENTS TO THE BY-LAWS

(a) The By-Laws may be altered, amended or added to at any duly called meeting of the Unit Owners, provided:

(1) Notice of the meeting shall contain a statement of the proposed Amendment prepared according to F.S. §718.112(i).

(2) If the Amendment has received the unanimous approval of the full Board of Directors, then it shall be approved upon the affirmative vote of the voting members casting a majority of the total votes of the members of the Association.

(3) If the Amendment has not been approved by the unanimous vote of the Board of Directors, then the Amendment shall be approved by the affirmative vote of the voting members casting not less than three-fourths (3/4ths) of the total votes of the members of the Association; and

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(4) Said Amendment shall be recorded and certified as required by the Condominium Act.

(5) Notwithstanding the foregoing, these By-Laws may only be amended with the written approval when required of the parties specified in the Declaration of Condominium to which these By-Laws are attached.

(6) No By-Laws shall be revised or amended by reference to its title or number only.

(7) When amended, the full text of the By-Laws shall be amended as set forth in F.S. §718.112(2)(i).

(8) Nonmaterial errors or omissions in the By-Laws shall not invalidate an otherwise properly promulgated amendment.

ARTICLE XI. NOTICES

(a) Whatever notices are required to be sent hereunder shall be delivered or sent in accordance with the applicable provisions for notices as set forth in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE XII. INDEMNIFICATIONS

(a) The Association shall indemnify every Director and every Officer, his heirs, executors, and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or Officer of the Association, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding, to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE XIII. LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

(a) The termination of membership in the Condominium shall not relieve or release any such former Owner or member from any liability or obligations incurred under or in any way connected with the Condominium during the period of such ownership and membership, or impair any rights or remedies which the Association may have against such former Owner and member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.

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ARTICLE XIV. LIMITATION OF LIABILITY

(a) Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage caused by the elements or by other Owners or persons.

ARTICLE XV. PARLIAMENTARY RULES

(a) Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Condominium Act, the Declaration of Condominium, or these by-Laws.

ARTICLE XVI. LIENS

Section 1. Protection of Property: All liens against a Condominium Unit, other than for mortgages, taxes or special assessments, shall be satisfied or otherwise removed within thirty (30) days of the date the lien attached. All taxes and special assessments upon a Condominium Unit or Unit Week shall be paid before becoming delinquent, as provided in these Condominium documents or by law, whichever is sooner.

Section 2. Notice of Lien: A Unit Owner shall give notice to the Association of every lien upon his Unit, other than for mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

Section 3. Notice of Suit: Unit Owners shall give notice to the Association of every suit or other proceeding which will or may affect title to his Unit or any part of the property, such notice to be given within five (5) days after the Unit Owner receives notice thereof.

Section 4. Failure to Comply: Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

Section 5. Units Committed to Interval Ownership: In the case of a Unit committed to Interval Ownership, an Owner of Unit Weeks in such Unit shall be required to give notices under Section 2, and Section 3, of this Article XVI, only as to liens, suits, and proceedings affecting title to the Unit Weeks which he owns. Any lien against an Owner of Unit Weeks in a Unit committed to Interval Ownership, or against the Unit Weeks owned by him, shall be limited to the Unit Weeks owned by him and shall not encumber the property, real or personal, of any other Owner of Unit Weeks in said Unit.

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**ARTICLE XVII. RULES AND REGULATIONS**

Section 1. The Board of Directors may, from time to time, adopt or amend previously adopted administrative Rules and Regulations governing the details of the operation, use, maintenance, management and control of the Common Elements and Limited Common Elements of the Condominium and of the Condominium Property and any facilities or services made available to the Unit Owners. A copy of the Rules and Regulations adopted from time to time as herein provided shall from time to time be posted in a conspicuous place and/or copies of same shall be furnished to each Unit Owner.

Section 2. As to Condominium Units: The Board of Directors, may from time to time adopt or amend previously adopted Rule, and Regulations governing and restricting the use and maintenance of the Condominium Units provided, however, that copies of such Rules and Regulations, prior to the time the same become effective, shall be posted in a conspicuous place and/or copies of same shall be furnished to each Unit Owner.

Section 3. Conflict: In the event of any conflict between the Rules and Regulations adopted, or from time to time amended, and the Condominium documents, or the Condominium Act, the latter shall prevail. If any unreconciled conflict should exist or hereafter arise with respect to the interpretation of these By-Laws and the Declaration of Condominium, the provisions of said Declaration shall prevail.

**ARTICLE XVIII. VOLUNTARY BINDING ARBITRATION**

Section 1. Pursuant to Florida Statute §718.112(2)(m), internal disputes arising from the operation of the Condominium among Unit Owners, associations, and their agents and assigns may be submitted to binding arbitration upon the agreement of all parties that are in dispute. Such arbitration shall be conducted pursuant to the provisions of Florida Statute §718.1255 and the Rules of Procedure adopted by the Florida Division of Land Sales and Condominiums pursuant to such Statute.

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