

**Declaration of Condominium for  
Grace in the Grove Condominium**

MADE this 10<sup>th</sup> day of March, 2001, by RANGO CONST. CORP., a Florida corporation, hereinafter called the "Developer," the owner in fee simple title to the land described herein and by which the Developer makes the following declaration:

**I. Submission to Condominium Ownership.**

Developer hereby submits to the Condominium form of ownership and use the land described in Article III hereof, the improvements now and thereafter situated thereon, and the easements and rights appurtenant thereto (the "Condominium Property") pursuant to Chapter 718, Florida Statutes, as amended to the date hereof (the "Condominium Act"). Except as terms are expressly defined herein, the terms used herein shall have the meaning given them in the Condominium Act.

**II. Name and Address.**

The name by which this Condominium is to be identified is Grace in the Grove Condominium, sometimes herein called the "Condominium." The Condominium is located at 3120-3122 Virginia Street, Coconut Grove, Florida 33133.

**III. The Land.**

The land submitted to Condominium (the "Land") is situated in Miami-Dade County, Florida, and it is described in Exhibit "2" annexed hereto as a part hereof.

**IV. Description of Condominium Property.**

The description of the improvements comprising the Condominium Property, consisting of two (2) buildings of two (2) floors with two (2) residential units.

The identification of the residential units shall be identified by letter name or number, or combination thereof, so that no unit bears the same designation as any other unit. Exhibits 3, 4, 5 and 6 of this Declaration of Condominium contains a survey of the Land showing the location of the building, a graphic description of the building contents, of the units and of the elevations of the buildings, of the common elements and of the limited common elements in sufficient detail to reflect their respective locations and dimensions prepared and certified by a registered land surveyor in the manner required by the Condominium Act. The improvements are further described as:

A. Residential Buildings: The improvements include two (2) buildings. The buildings contain two (2) units.

B. Other improvements: In addition to the residential buildings, the Condominium Property also includes improvements other than buildings such as parking areas, walks, landscaping and all other underground structures and improvements which are not a part or located within residential buildings such as wires, cables, drains, pipes, ducts, conduits, valves and fittings.

**V. Definition of Units, Common Elements and Limited Common Elements.**

The Condominium will consist of "Units," "Common Elements," and "Limited Common Elements."

A Units: The terms "Units" as used herein, shall mean and comprise of two (2) separate dwellings in the Condominium which are located and individually described in Exhibit "3" hereto. Each unit shall include the enclosed apartment living areas depicted on Exhibit "4." The vertical boundaries thereof shall be the vertical plane, or planes; formed by the finished perimeter exterior wall surfaces thereof. The lower horizontal boundary shall be the horizontal plane formed

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by the undecorated or unfinished interior floor surface of the unit and the upper horizontal boundary shall be the horizontal plane formed by the undecorated or unfinished exterior ceiling surface of the unit. Provided however, all heating, cooling, plumbing apparatus, utility installations and bearing columns or supports within a unit which service more than one unit shall be part of the common elements. Doors, glass, screen and other material covering openings in vertical exterior walls shall be part of the unit.

B. Common Elements: The term "Common Elements" as used herein, shall mean and comprise of all the real property on the Condominium except units, including as a part of the Common Elements, without limitations: (1) Easements through units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services, heating and cooling and/or ventilation to units and Common Elements; (2) Easements of support in every portion of a Unit which contributes to the support of other units and/or common elements; (3) Installations for the furnishing of utility services to more than one unit or to the common elements or to a Unit other than the unit containing the installation; (4) The property and installations in connection therewith required for the furnishing of services to more than one unit or to the common elements; (5) Fixtures owned or held for the common use, benefit and enjoyment of all owners of units in this Condominium; (7) The fence surrounding the condominium.

C. Limited Common Elements: The term "Limited Common Elements" as used herein, shall mean and be comprised of the common elements which are reserved or assigned or granted separately here for the use of a certain unit or units (as an appurtenance thereto) to the exclusion of other units, consisting of the roof, pool, yard, motorized gates, and parking area abutting each unit as depicted in the Floor Plans, Elevations and Survey of this Condominium included as Exhibits to this Declaration in Exhibit "6" to this Declaration. The "Limited Common Elements" shall be maintained by the unit owner the limited common element serves.

#### VI. Appurtenances to Units.

There shall be appurtenant and pass with title to each condominium unit the right, shares and interests provided by the Condominium Act which shall be deemed to include, without limitation, the following:

A. An undivided share in the Common Elements and in the Common Surplus (as that term is elsewhere herein defined). The undivided share in the Common Elements and the Common Surplus of the Condominium appurtenant to each unit is that proportion of the total set forth and made a part hereof as Exhibit " 7;" and

B. The right to use exclusively those portions of the Common Elements designated and/or reserved herein and/or granted elsewhere or assigned by the Association to a certain Condominium Unit as Limited Common Element; and

C. An exclusive easement for the use of the air space occupied by the Unit as it exist at any particular time (as shown in Exhibit "3" hereto) and as it may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space permanently vacated from time to time; and

D. Irrevocable, perpetual, non-exclusive easements, to be used and enjoyed in common with the owners of all units in the Condominium for use of those Common Elements (not designated elsewhere herein as Limited Common Elements, including without limitation, easements for:

1. The furnishing and maintenance of public utility services to all parties of the real property of the condominium over, across, in and through the land, buildings and other improvements, as the fixtures and equipment therefore now exists and/or may be modified or relocated; and

2. Vehicular and pedestrian access over, across, upon in and through the drives, entries, gates, walks, grounds and other portions, of any of the Common Elements as are intended and/or provided for pedestrian and vehicular traffic through out the Condominium; and

3. Recreational purposes, pedestrian access, over, across, upon, in

and through to drives, entries, gates, walks, ground and other portions, if any of the GRACE IN THE GROVE CONDOMINIUM; and

E. An exclusive easement for the unintentional and non-negligent encroachment by any unit upon any other unit or Common Elements or vice-versa for any reason not caused by or resulting from the willful or negligent act of Developer or any owner or owners including without limitation, encroachments, caused by or resulting from the original construction of improvements, which exclusive easement shall exist at all times during the continuance of such encroachments as easements appurtenant to the encroaching unit or other improvement, to the extent of such encroachment; and

F. An exclusive easement for the use of the area of land and air space occupied by air conditioning compressors, and the equipment and fixtures appurtenant thereto, situated in and/or common elements of the condominium but exclusively servicing and individually owned by the owner of a unit, as the same exist in and on each building and/or unit, which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air conditioning compressor, and the equipment and fixtures appurtenant thereto; provided, however that the removal of the same for repair and/or replacement shall not be construed to be a permanent vacation of the air space which it occupies; and

G. Membership in the Association designated in the Declaration with the full voting rights appertaining thereto.

VII. Common Expenses and Common Surplus.

The term Common Expenses as used herein shall mean all the expenses for which all the owner of units in the Condominium (except the Association) shall be liable to the Association. The term Common Surplus as used herein shall mean the excess of all receipts of the Association including without limitation assessments, rents, profits and revenues on account of the Common Elements over the amount of the Common Expenses. All of the owners of units shall share the portions of percentages set forth in the schedule annexed hereto and made a part hereof as Exhibit "7."

VIII. Voting Rights of Unit Owners.

The owner or owners of each unit shall become a member or members of the Association automatically upon and simultaneously with delivery of a deed of conveyance of fee simple title thereto from Developer, in conveyance by a grantee or a remote grantee of Developer, a deed that complies with the terms and conditions of the Declaration of Condominium, the Articles of Incorporation and the Bylaws of the Association. There shall be appurtenant and pass with title, to each unit owner (1) vote as member of the Association, which may be exercised by the owner or owners or the duly constitute proxy of the owner or owners, from time to time, of each unit at all meetings of members and in connection with all matters upon which members of the Association are entitled to vote. The qualifications for member and manner of admission to membership in the Association, the determination of such membership and voting by member shall be as provided for in the Articles of Incorporation and Bylaws of the Association.

IX. Name of the Association.

The entity responsible for the operation of the condominium shall be GRACE IN THE GROVE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit (The Association, a copy of the certificate of incorporation is annexed hereto and made part hereof as Exhibit "8B").

X. Bylaws of the Association.

A copy of the Bylaws of the Association is annexed hereto and made a part hereof as Exhibit "9."

XI. Amendment of Declaration.

Except for amendments which Developer is authorized and or obligated elsewhere herein to make and except as may be elsewhere herein or in the Condominium Act otherwise specifically

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provided, this Declaration may be amended only in the following manner:

A. Notice: Notice of the subject matter of any proposed amendment to this Declaration shall be included in the notice of any meeting at which such proposed amendment is to be considered.

B. Proposal: Amendments to this Declaration may be proposed by the Board of Administration of the Association by resolution adopted by a majority vote of the members present at any regular or special meeting of the Board at which a quorum is present, or in the alternative, by a written instrument signed by a majority of the Board, or by owners of a majority of the units, whether by vote of such owners as members of the Association at a special or regular meeting of the member or by written instrument signed by them.

C. Adoption: Any amendment to this Declaration so proposed by the Board or members of the Association shall be transmitted to the President of the Association or in the absence of the President, to a Vice-President or other acting chief executive officer, who shall thereupon call a special meeting of the members of the Association to consider and vote upon such proposed amendment; provided, however, that a proposed amendment may be considered and voted upon at any annual meeting of the member of the Association if the next such meeting is to be held within the time hereafter limited and if notice of the proposed amendment shall be included in the notice of such meeting. The special or annual meeting, as the case may be, of the members shall be held not sooner than thirty days nor later than sixty days from the date of receipt by the Association of the proposed amendment. Notice of the meeting shall be in the form and shall be delivered and the meeting shall be called and held as provided for in the Bylaws of the Association and such waiver, when delivered to the Secretary of the Association for filing in its records, whether before, during or after such meeting shall be construed to be the equivalent of notice to such member. The proposed amendment may be adopted and shall become effective, by and upon the affirmative vote at such meeting of at least 67% of the members owning units, which are appurtenant to the common elements; provided that any amendment so proposed may be adopted, without a formal meeting of the members owning units of not less than a majority of the common elements, except for those matters listed in Paragraph XXIIIK herein. Notwithstanding the foregoing provisions, for adoption of amendments to this Declaration or any other provisions for amendments in the Condominium Act no amendment may:

1. Change the size or configuration or size of any condominium unit in any material fashion, unless the record owner of the unit and all record owners of liens join in the execution of the amendment and unless at least a majority of the record owners of all other units approve the amendment, or

2. Discriminate against any unit owner or against any unit or buildings comprising part of the condominium property, unless all record owners and all record holders of lien shall join in the execution and acknowledgement of the amendment, unless approved by more than two-thirds of all the unit owners; or

3. Change, modify or alter the appurtenances to any unit or units or the share of any unit owner in the common elements or common surplus unless the record owner of all such units so affected and the record owner of all liens encumbering such units join in the execution of the document and unless at least a majority of the record owners of all other units approve the amendment.

4. No amendment to this declaration shall make any change in the provisions of this Declaration regarding "Insurance" and "Reconstruction or Repair after Casualty" unless the record owners of all mortgages of units shall join the execution and acknowledgement of the amendment, unless approved by more than two-thirds of all the unit owners; or

5. No new amendment shall adversely affect the interest of any and all record owners of all mortgage liens thereon unless that record owner-mortgagee joins in a consent to the execution and/or acknowledgement of the amendment, unless approved by more than two-thirds of all the unit owners.

D. Effective Date and Recording Evidence of Amendment: As to the members of the Association and non members, the amendment same shall be effective at the time of filing the

amendment or certificate of amendment in the Public Records of Miami-Dade County, Florida. The President of the Association or in the absence of the President, a Vice-President or other acting chief executive officer of the Association shall cause to be filed in the Public Records of Miami-Dade County, Florida, the original amendment to the Declaration, if it is in the form of an instrument executed and acknowledged by unit owners and the holders of liens thereon, or a certificate of amendment, if it is a certification by the proper officers of the Association that such amendment was adopted by the Association at a meeting of the members. A true and correct copy of each such amendment or certificate shall be delivered, after adoption thereof, to the record owners of all units and to the record owners of all liens on units by the President, Vice-President or other acting chief executive officer of the Association upon request to such officer, but delivery of such copies shall not be a condition precedent to the effectiveness of any such amendment.

## XII. Maintenance, Repairs and Replacements.

Responsibility for maintenance, repairs and replacements of condominium property and property of unit owners located or situated within the condominium shall be as follows:

A. Units: Each unit, and the fixtures, equipment, such as air conditioning equipment, plumbing, heating and electrical wiring and appliances comprising a part thereof, located therein or inside the unit shall be maintained, kept in good repair and replaced by and at the expense of the owner thereof. Exterior doors, gates, fences and windows shall be maintained and replaced at the expense of the unit owner whose unit is service by such items. All maintenance, repairs and/or replacement for which unit owners are responsible and obligated to perform, which, if not performed or omitted would affect other units or common elements, shall be performed promptly as the need arises. Notwithstanding the obligation of the unit owner for maintenance, repair and replacement, the proceeds of all insurance awards or payments under insurance carried by the Association for loss of or damage to or within units shall be applied against repairs and replacement to the extent that such award or payments exceed the deductible provisions of such insurance.

B. Common Elements: The Association shall be responsible for, and shall assess against and collect from the owners of all units in the Condominium, as common expense, the cost of maintaining, repairing and replacing and keeping in clean and orderly condition, all of the common elements except each owner shall be responsible for painting the exterior walls of the units they own. The Association shall, at the expense of the owners of all units in the Condominium, repair all incidental damage to units resulting from maintenance, repair and/or replacement of or to common elements. All limited common elements shall be maintained by the unit owner the limited common element serves, who shall bear the cost of said maintenance.

## XIII. Insurance.

Insurance shall be carried and kept in force at all times in accordance with the following provisions:

A. Duty and Authority to Obtain: The Association shall obtain and keep in force at all times the insurance coverage which it is required hereby to carry and may obtain and keep in force any or all such other or additional insurance coverage as it is authorized hereby to carry. All insurance obtained by the Association shall be purchased for the benefit of the Association and the unit owners and their mortgagees, provided that a certificate evidencing a mortgagee endorsement shall be issued to the mortgagee of each unit.

B. Required Coverage: The Association shall purchase and carry insurance coverage as follows:

1. Casualty Insurance: Casualty insurance covering all of the buildings and other improvements of the condominium including without limitation units and common elements in an amount equal to the maximum insurance replacement value thereof, exclusive of excavation and foundation costs, as determined annually by the Board of Administration of the Association; such insurance to afford protection against:

a. Loss of damage by fire or other hazards covered by the

standard extended coverage or other perils endorsement; and

b. Such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to buildings and other improvements similar in construction, location and use to the buildings and other improvements of the condominium including without limitation, vandalism, malicious mischief, windstorm, water damage and war risk insurance, if available; and

c. Public liability insurance, in such amounts with such coverage and in such forms as shall be required by the Board of Administration of the Association to protect the Association and the owners or all units, including without limitation, hired automobiles, non-owned automobiles, comprehensive automobile, off-premises employee coverage, host liquor liability, employer liability, contractual and all written contract liability, water damage and legal liability, with cross-liability endorsements to cover liability of all unit owners as a group to each unit owner, bodily injury, including death of persons and or property damage arising out of a single occurrence, such coverage shall be for at least \$500,000.00; and

d. Workmen's compensation and employer's liability insurance to meet the requirements of the law; and

e. Flood insurance, if the same shall be necessary under the laws of the United States for federally related mortgage lenders to make mortgage loans on units.

f. Errors and omissions in favor of all officers and members of the Board of Administration.

g. The association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the association. The association shall bear the cost of bonding.

h. Notice - The insurance policy above described shall include at least 10 days, prior written cancellation and/or modification notice to the owners association and to each holder of a first mortgage on any unit in the condominium which is listed as a scheduled holder of a first mortgage in the insurance policy.

C. Optional Coverage: The Association may purchase and carry such other insurance coverage other than title insurance as the Board of Administration in its sole discretion may determine from time to time to be in the best interest of the Association and the unit owners or as institutional lenders may reasonably require while it holds a mortgage encumbering any unit.

D. Premiums: Premiums for all insurance obtained and purchased by the Association shall be paid by the Association. The cost of insurance premiums and other incidental expenses incurred by the Association in administering and carrying out the provision of this Article, shall be assessed against and collected from unit owners as common expenses.

E. Assured: All policies of insurance obtained and purchased by the Association shall be for the benefit of the Association, the owners of units and their mortgagees as their interest may appear, and shall be provided that all proceeds covering casualty, losses shall be paid to the Insurance Trustee as herein identified, or their successors and the proceeds from insurance against any casualty loss shall be held for the use of the Association, the unit owners and their

19961PG2265

respective mortgagees, as their interest may appear to be applied or distributed in the manner herein provided. The Association has hereby constituted an appointed agent for all unit owners with authority to negotiate and settle the value and extent of any and all losses covered under any policy of casualty insurance, and the association is granted full right and authority to execute in favor of any insurer, a release of liability arising out of any occurrence coverage by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.

F. Insurer: All persons beneficially interested in the insurance coverage obtained, purchased and maintained by the Association shall be bound by the Association's selection of its insurer and the amount of insurance coverage carried and kept in force by the Association.

G. Insurance Trustee: The Association shall have the right, prior to or upon the occurrence of any event causing or resulting in the need for the same to designate the Insurance Trustee and all persons beneficially interested in such insurance coverage shall be bound by the Association's selection of the Insurance Trustee.

1. Qualifications, Rights and Duties: The Insurance Trustee shall be a bank with trust powers doing business in the State of Florida. The Insurance Trustee shall not be liable for the payment of premiums, the renewal of any policy or policies of casualty insurance, the sufficiency of coverage, the form or content of policies nor the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds of casualty insurance as are paid and to hold the same in trust for the purposes herein stated and for the benefit of the Association, unit owners and their respective mortgagees to be disbursed as herein provided. The Association shall pay a reasonable fee to the Insurance Trustee for services rendered hereunder and shall pay such costs and expenses which the Insurance Trustee may incur in the performance of its duties hereunder. Such fees and costs are to be assessed against and collected from unit owners as a common expense. The Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence and then only for such money as may come into possession of the Insurance Trustee. If and when the Insurance Trustee is required to distribute insurance proceeds to unit owners and their mortgagees, as their respective interest may appear, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association executed under oath and provided to the Insurance Trustee upon request to the Association. Such certificate to certify the name or names of the owners of each unit, the mortgagees thereof, and the respective percentages of any distribution which is to be made to such owners and mortgagees as their respective interest may appear. If and when insurance proceeds are paid to the Insurance Trustee for any casualty loss, the holders of any mortgage or mortgages encumbering a unit shall not have the right to determine or participate in the determination of repair or replacement of any loss or damage and shall not have the right to elect to apply insurance proceeds to the reduction of indebtedness secured by such mortgages unless the insurance proceeds represent a distribution to the owners of the unit and the mortgagees thereof, after such insurance proceeds have been first applied to the repair, replacements or reconstruction of any loss or damage or unless such casualty insurance proceeds are authorized to be distributed to the owners of the unit and mortgagees thereof by reason of loss of or damage to personal property constituting a part of the common elements and as to which a determination is made not to repair, replace or restore such personal property.

H. Application of Insurance Proceeds: The proceeds of casualty insurance paid to the Insurance Trustee by an insurer for loss or damage to real and/or personal property upon which the Association carries insurance, shall be applied and paid as follows:

1. Limited Common Elements Only: The proceeds paid to the Insurance Trustee for loss or damage to real property constituting Limited Common Elements only shall be applied to the repair, replacement of the roof, or repainting of the building, and repairing of any other Limited Common Elements as described in Paragraph VC. If such insurance proceeds exceed the cost of repair, replacement or reconstruction of such common elements, the excess shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote

19961PG2266

of the majority of the voting interest, voting in person or by limited proxy at a duly called meeting of the Association. If the insurance proceeds shall be insufficient to pay the cost of the repair, replacement or reconstruction of such common elements the Association shall deposit with the Insurance Trustee, from any Association Reserve Fund which may have been established, the difference between the total cost of repairing, replacing or reconstructing such loss or damage and the amount of the insurance proceeds. If no such Association Reserve Fund has been established or is insufficient to pay to the Insurance Trustee such difference, the Association shall assess the amount of the difference against and collect said sum from the unit owners as a common expense. Reserve Funds and any interest accruing thereon shall only be employed if said expenditure is approved in advance by a majority vote at a duly called meeting of the association.

2. Units: The proceeds paid to the Insurance Trustee for a loss or damage to a building, constituting common elements and one or more units thereof, shall be first applied to the repair, replacement or reconstruction of common elements, then to the repair, replacement or reconstruction of any unit or units in such building which have been destroyed or damaged. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such common elements and units, the excess shall be paid by the Insurance Trustee to the owners of the damaged or destroyed units and their respective mortgagees as their interest may appear in shares or proportions equal to the undivided interest appurtenant to each such unit in the common elements. If the insurance proceeds shall be insufficient to pay the cost of the repairs, replacement or reconstruction of the common elements to which the Insurance Trustee is required first to apply such proceeds before applying any part thereof to the repair, replacement or reconstruction of unit(s) the difference between the total cost of repairing, replacing or reconstructing the common elements and the amount of the insurance proceeds shall be collected as a special assessment from the unit owners according to each unit owner's proportionate share by the Association against and in such event, the cost of repairing, replacing or reconstructing the common elements destroyed or damaged shall be assessed by the Association against and collected from the owner(s).

1. Deposits to Insurance Trustee After Damage: Within sixty (60) days after a loss or damage to Condominium Property covered by casualty insurance, the Association shall obtain estimates of the cost of repairing, replacing or reconstructing the same including the cost of professional fees and any construction bond which the Board of Administration may require. If, from such estimates, it shall appear that the insurance proceeds payable for such loss or damage will be insufficient to pay the cost of such repair, replacement or reconstruction, the additional money required to pay the total cost thereof, whether it is to be paid by one or more unit owners, shall be deposited with the Insurance Trustee not later than thirty (30) days from the day on which the Insurance Trustee receives the insurance proceeds.

#### XIV Reconstruction or Repair after Casualty.

Whether, and the manner in which, any or all of the Condominium Property damaged or destroyed by casualty shall be repaired, reconstructed or replaced, shall be determined as follows:

A. Residential Buildings: If one or more residential buildings shall be damaged or destroyed, repair or reconstruction thereof or termination of the condominium shall be in accordance with the following:

1. Total Destruction of all Buildings: If all of the residential buildings of the Condominium are totally destroyed or are so damaged that no unit therein is habitable, none of the buildings and none of the improvements comprising common elements shall be reconstructed and the condominium shall be terminated unless the owners of units to which seventy five per cent of the common elements are appurtenant agree in writing within sixty days after the date of such destruction to reconstruct the same and unless the then applicable zoning and other regulatory laws and ordinances shall allow the same to be reconstructed

19961PG2267

or unless a policy or policies of casualty insurance covering the same shall require reconstruction thereof as a condition precedent to the payment of proceeds thereunder.

2. **Damage to and Destruction of Some Buildings:** If some, but not all, of the residential buildings are damaged and/or destroyed and one or more of the units in one or more of the buildings remain habitable, the damaged or destroyed common elements and/or units shall be repaired or reconstructed so that each building and/or units shall be restored to substantially the same condition as existed prior to such damage or destruction unless within sixty days after the casualty it is determined by agreement in the manner elsewhere herein provided that the condominium shall be terminated.

B. **Common Elements:** Damage or destroyed improvements constituting part of the common elements shall be repaired, reconstructed and/or replaced unless in the event of total destruction of the units or by agreement after partial destruction, the condominium shall be terminated.

C. **Certificate:** The Insurance Trustee may rely upon a certificate executed by the President and Secretary of the Association to determine whether or not damage or destroyed Condominium Property shall be repaired or reconstructed.

D. **Plans and Specifications:** Repairs or reconstruction of Condominium Property shall be substantially completed in accordance with the plans and specifications pursuant to which the same was originally constructed; provided, however, that the Board of Administration of the Association may authorize reasonable variations from the original plans and specifications as may appear to them to be necessary or desirable.

E. **Responsibility:** If the damaged or destruction shall be limited only to one or more units for which the responsibility of maintenance and repair is that of the affected unit owners, then such unit owners shall be responsible for carrying out the repairs or reconstruction thereof. In all other instance of damages or reconstruction, the Association shall be responsible for carrying out the repair and reconstruction thereof.

F. **Construction Funds:** All funds for the payment of repair and reconstruction costs, consisting of insurance proceeds and/or funds collected by the Association from unit owners, shall be disbursed toward payment of such costs in the following manner:

1. **Association:** If the total funds assessed against and collected from unit owners by the Association for payment of repair and reconstruction is more than Fifteen Thousand Dollars then all such sum shall be deposited by the Association with and disbursed by the Insurance Trustee. In all other cases the Association shall hold such sums so assessed and collected and shall disburse the same in payment of the cost or reconstruction and repair.

2. **Insurance Trustee:** The proceeds of insurance collected on account of a casualty and the sum assessed against and collected from unit owners by the Association and deposited with the Insurance Trustee shall constitute a construction fund which shall be disbursed in payment of the cost of repair and reconstruction in the following manner:

a. **Unit Owner:** The portion of insurance proceeds representing damage for which the responsibility of repair and reconstruction is upon one or more but less, than all unit owners shall be paid by the Insurance Trustee to the affected unit owners and if any of such units are mortgaged, to the affected and their mortgagees jointly.

b. **Association-Lesser Damage:** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than Fifteen Thousand Dollars, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however that upon request 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 hereinafter provided for the reconstruction and repair of a major damage.

c. Association-Major Damage: If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than Fifteen Thousand Dollars then the construction fund shall be disbursed in Payment of such costs in the manner require by the Board of Administration of the Association and upon approval of an architect registered to practice in Florida and employed by the Association to supervise the work.

d. Surplus: It shall be presumed that the first monies disbursed in payment of the costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in the construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners 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 disbursement from the construction funds 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 the payee nor the amount to be paid nor to determine whether surplus funds to be distributed are less than the assessment 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 the sums to be paid are due and properly payable and stating the names of the payees 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 payee; 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.

XV. Use Restrictions.

Use of the Condominium Property shall be in accordance with the following provisions so long as the Condominium exists and these restrictions shall be for the benefit of and enforceable by the Association.

A. Units: Each of the units shall be occupied only by a family, its servants and guests, as a residence and not for other purposes. No unit may be divided or subdivided into a smaller unit, nor any portion thereof sold or otherwise transferred.

B. Common Elements: The common elements and Limited Common Elements shall be used only for the purposes for which there were intended in the furnishing of services and facilities for the enjoyment of units.

C. Nuisances: No nuisances shall be allowed upon the Condominium Property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Condominium Property by residents. All parts of the Condominium Property shall be kept in clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist No use shall

be made of any unit or of the common elements or limited common elements which would increase the rate of insurance upon the Condominium Property.

D. Lawful Use: No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or any part thereof, all valid laws, zoning ordinances and restrictions and limitations of records shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Condominium Property shall be the same as is elsewhere herein specified.

E. Pets: Pets shall never be allowed to run freely upon any of the Condominium Property except within a unit, or any Limited Common Elements adjacent and appurtenant to it, and when outside of a unit shall be leashed and in the company of an individual willing and able to fully control it. All pets shall be walked only in that part of the common elements designated by the Association for that purpose. Any owner maintaining a pet upon the Condominium Property, or whose guests, lessees or invites bring any animal upon the Condominium Property shall be fully responsible for and shall bear the expense of any damage to persons or property resulting therefrom. Any such damage shall be determined by the Board of Administration and collected by the Association. If the Board of Administration determines, in its sole judgment, that any particular pet is a nuisance, it shall have the power to compel the owner thereof to remove said pet from the Condominium Property.

F. Regulations: Reasonable regulations concerning the use of the Condominium Property may be made and amended from time to time by the Board of Administration provided, however, that all such restrictions and amendments thereto shall be approved by not less than a majority of the members of the Association before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished by the Association to all unit owners and residents of the Condominium upon request.

G. Proviso: Provided, however, that until Developer has completed and sold all of the units, neither unit owners or the Association nor the use of the Condominium Property shall interfere with the completion of the proposed improvements and the sale of the units Developer may make such use of the unsold units and common elements as may facilitate such completion and sale, including but not limited to, maintenance of a sales office, the showing of the Condominium Property and the display of signs.

#### XVI. Compliance and Default.

Each unit owner shall be governed by and shall comply with the terms of the Declaration of Condominium, the Articles of Incorporation and Bylaws of the Association and any and all regulations adopted pursuant thereto, as they may be amended from time to time. Failure of the unit owner to comply therewith shall entitle the Association or other unit owner to the following relief in addition to the remedies provided by the Condominium Act:

A. Negligence: A unit owner 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, lessees or other invites.

B. Costs and Attorney's Fees: In any proceeding arising because of an alleged failure of a unit owner to comply with the terms of the Declaration, the Articles of Incorporation and the Bylaws of the Association, any and all regulations adopted pursuant thereto, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

C. No Waiver of Rights: The failure of the Association or any unit owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration of Condominium the Articles of Incorporation and Bylaws of the Association or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

#### XVII. Assessments: Liability, Lien and Enforcement.

To provide the funds necessary for proper operation and management of the Condominium the Association has been granted the right to make, levy and collect assessments against the owners of all units and said units. The following provisions shall govern the making,

19961PG2270

levying and collection of such assessment and the payment of the costs and expenses of operating and managing the Condominium by the Association.

A. **Determination of Assessments:** Assessments by the Association, against each owner of a unit and his unit shall be a fractional share of the total assessment to be made against all owners of unit and their units as is set forth in the Schedule annexed thereto and made a part hereof as Exhibit 7. Should the Association become the owner of any units the assessment which would otherwise be due and payable to the Association by the owner of such unit reduced by an amount of income which may be derived from the leasing of such unit by the Association, shall be apportioned and the assessment therefore levied ratably among the owners of all units which are not owned by the Association, based upon their proportionate interests in the common elements exclusive of the interest therein appurtenant to any unit or units owned by the Association.

B. **Developer's Duty to Pay Assessments:** The Developer will be excused from the payment of his share of the common expenses which would have been assessed against those unit owners during the first year from the date of recording the Declaration of Condominium in the Public Records of Miami-Dade County, Florida, of the existence of the Condominium. Pursuant to Florida Statute 718.116, the Developer guarantees to the unit owners in the Condominium that the assessment for the common expenses incurred during the first year shall not increase over \$163.663 a month and the Developer is obligated to pay any amount of the common expense incurred during this period of time and not produced by the assessment at the guaranteed level receivable from other unit owners. The One year period shall run from the date of recording of Condominium documents. Developer has an option to renew this guarantee for an additional year. Attached hereto as Exhibit "10" to the Declaration of Condominium is the initial operating budget of the Condominium.

C. **Time for Payment:** The assessment levied against the owner of each unit and his unit shall be made not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred.

D. **Annual Budget:** The Board shall, in accordance with the Bylaws of the Association, establish an Annual Budget in advance for each fiscal year, which shall correspond to the calendar year, which shall estimate all expenses for the forthcoming year required for the proper operation, management and maintenance of the Condominium including a reasonable allowance for contingencies and reserves and shall estimate all income to be collected during the year. The allowance for contingencies and reserves may be waived pursuant to Section 718.112(2)(F), Florida Statutes. Upon adoption of each annual budget by the Board, copies thereof shall be delivered to each unit owner and the assessment for the year shall be based upon such Budget. Failure to receive a copy of the budget to a unit owner shall however not affect the liability of such owner for such assessment. Should the Board at any time and from time to time determine in the sole discretion of the Board, that the Assessment levied are or may prove to be insufficient to pay the cost of operation and management of the Condominium or in the event of emergency, the board shall have the authority to levy such additional assessment as it shall deem to be necessary.

The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 718.504(21). All Limited Common Elements shall be maintained by the unit owner the Limited Common Element serves, who shall bear the cost of said maintenance.

The board of administration shall hand deliver to each unit owner, or mail to each unit owner at the address last furnished to the association, a meeting notice and copies of the proposed annual budget of common expenses not less than 14 days prior to the meeting of the unit owners or the board of administration at which the budget will be considered. Evidence of compliance with this 14-day notice must be made by an affidavit executed by an officer of the association or the manager or other person providing notice of the meeting and filed among the official records of the association.

Unless waived by the unit owners, in addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by means of a formula which is based upon the

estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to budgets in which the members of an association may determine for a fiscal year to provide no reserves or reserves less adequate than required, when the members have by a majority vote at a duly called meeting of the association have agreed to do so. However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote to waive the reserves for the first two years of the operation of the association, after which time reserves may only be waived or reduced upon the vote of a majority of non-developer voting interests present at a duly called meeting of the association. If a meeting of the unit owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

E. General Operating Surplus: The Board, when establishing each annual budget, may when deemed necessary or desirable, include therein a sum to be collected and maintained as a general operating surplus to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payments of assessment by owners of units, as a result of emergencies or for other reasons placing financial stress upon the Association.

F. Use of Association Funds: All monies collected by the association shall be treated as the separate property of the Association and such monies may be applied by the Association to the payment of any expense of managing the condominium or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and Bylaws and as monies for annual assessments are paid to the Association by any unit owner, the same may be commingled with monies paid to the Association by the other owners of units, but separate ledgers must be maintained for each account. Although all funds and other assets of the Association and any increments thereto or profits derived therefrom, or from the leasing or use of common elements including without limitation Common Surplus, shall be held for the benefit of members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his unit.

Reserve and operating funds of the association shall not be commingled, unless combined for investment purposes. If the association collects operating and reserve assessments as a single payment, it shall not be considered to have been commingled the funds provided the reserve portion of the payment is transferred to a separate account/accounts, within thirty (30) calendar days from the date such funds were deposited.

G Delinquency or Default: The payment of any assessment or installment hereof due to the Association shall be in default if not paid to the Association on or before the due date thereof and shall accrue interest at the rate of 12% per annum. This rate may not exceed the rate allowed by law. Also, as provided by the bylaws so provide, the association may charge an administrative late fee in addition to such interest, in the amount of \$25 per each delinquent installment. Any payment received by an association shall be applied first to any interest accrued by the association received by an association shall be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee shall not be subject to the provisions in chapter 687 or s. 718.303(3).

H. Personal Liability of Unit Owner: The owner of each unit shall be personally liable, jointly and severally, as the case may be, to the Association for the payment of all assessment or installments, late charges thereof as above provided and for all costs of collecting the assessments and interest thereon, including attorney's fees, whether suit be brought or not, levied or otherwise coming due while such person or entity owns a unit.

I Liability not Subject to Waiver: No owner of a unit may except himself from liability

for any assessment levied against such owner and his unit by waiver of the use or enjoyment or any of the common elements or by abandonment of the unit or in any other manner.

J. Lien for Assessment: A unit owner, regardless of how his title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. A first mortgagee who acquires title to the unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed. However, the mortgagee's liability is limited to a period not exceeding six months, but in no event does the first mortgagee's liability exceed one percent (1) of the original mortgage debt, whichever amount is less.

Assessments and installments on them which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. This rate may not exceed the rate allowed by law. Also, as provided herein, if the declaration or bylaws so provide, the association may charge an administrative late fee in addition to such interest, in an amount not to exceed the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late.

The association has a lien on each condominium parcel for any unpaid assessments with interest and for reasonable attorney's fees incurred by the association which are incident to the collection of the assessments or enforcement of lien. Except as set forth below, the lien is effective from and shall relate back to April 1, 1992, or the recording of the original declaration of condominium, whichever shall last occur. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be recorded in the public records in the county in which the condominium parcel is located which states the description of the condominium parcel, the name and address of the association, the name of the record owner, the amount due, and the due dates. No such lien shall continue for a longer period than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure all unpaid assessments, interest, costs, and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgement of foreclosure. A claim of lien must be signed and acknowledged by an officer or agent of the association. Upon payment, the person making the payment is entitled to a satisfaction of the lien.

The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgement for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgement for unpaid assessments.

No foreclosure judgements may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose a lien to collect the unpaid assessments. If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those due after the claim of lien is recorded, are paid before the entry of a final judgement of foreclosure, the association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his last known address; and, upon such mailing, the notice shall be deemed to have given, and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. If after diligent search and inquiry, the association cannot find the unit owner or a mailing address, at which the unit owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs, as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a Notice of Contest of Lien as provided in subsection (5c), F.S. 718.116. The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

19961PG2273

If the unit owner remains in possession of the unit after a foreclosure judgement has been entered, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit. If the unit is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party that does not prevail in the foreclosure action.

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

A mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of ownership of such parcel, whether or not such parcel is unoccupied be excused from payment of some or all of the common expenses coming due during the period of such ownership.

Within 15 days after a request therefor by unit owner or unit mortgagee, the association shall provide a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the condominium parcel. Any person other than the owner who relies upon such certificate shall be protected thereby.

No unit owner may be excused from the payment of his share of common expenses of a condominium unless all unit owners are likewise proportionately excused from payment, except:

The developer who owns condominium units is excused from the payment of his share of the common expense which would have been assessed against those units during the period of time that he has guaranteed to each purchaser in the purchase contract, declaration, prospectus, or by agreement between the developer and a majority of the unit owners other than the developer, that the assessment for common expense of the condominium imposed upon the unit owners would not increase over a stated dollar amount and has obligated himself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners and other income as provided herein. The guarantee is for one year from the date of recording of the declaration of condominium in the public records of Miami-Dade County, Florida, and the developer has an option or options to extend the guarantee for one more year from the recording of the Declaration of Condominium.

No Funds from purchasers or owners and payable to the association or collected by the developer on behalf of the association, other than regular periodic assessments for common expenses as provided in the declaration and disclosed in the estimated operating budget pursuant to S.718.503(1)(b)6, shall be used for payment of common expenses prior to the expiration of the period during which the developer or the other person is so excused. The restriction applies to funds including, but not limited to, capital contributions and startup funds collected from unit purchasers at closing.

The specific purpose or purposes of any special assessment approved in accordance with the condominium documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.

**Effect of Voluntary Transfer.** When the owner of any unit proposes to lease, sell or mortgage the same in compliance with other provisions of this Declaration, the Association upon written request of the owner of such unit, shall furnish to the proposed lessee, purchaser or mortgagee a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the owner of such unit. Such statement shall be executed by any officer of the Association and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction and the Association shall be bound by such statement.

In any voluntary conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessment against the grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts

paid by the grantee therefore.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt collection of any sum then remaining owing to it.

#### XVIII. Registry of Owners and Mortgagees

The Association shall at all times maintain a Register of the name of the owners and mortgagees of all units. Upon the transfer of title to any unit, the transferee shall notify the Association in writing of his interest in such unit together with recording information identifying the instrument by which such transferee acquire his interest in the unit. The owner of each unit encumbered by a mortgage shall notify the Association of the name and address of the mortgagee, the amount of such mortgage or mortgages and the recording information identifying the same. The holder of any mortgage encumbering a unit may notify the Association of any such mortgages and upon receipt of such notice the Association shall register in its records all pertinent information pertaining to the same.

#### XIX. Alterations of and Improvements to Units and Common Elements.

A. Unless the unit owner shall first submit plans for such work to the Board, and the Board by resolution unanimously adopted by the affirmative vote of all member thereof, shall approve and consent thereto, no alteration or improvement or addition to a unit or to any limited common element to which the owner has an exclusive right of use, shall be made, constructed, erected or installed, which shall: (a) remove in whole or in part, replace, reroute or otherwise affect any column, bearing, wall or partition, pipe, duct, wire or conduit or obstruct any easement herein provided for, or (b) remove, or change the style, pattern material, texture or outside color of any door, window, screen, fixture, equipment, enclosure or appliance in or an exterior unit or building wall, or (c) remove, from the inside or outside, the glass of other transparent and/or translucent material in any exterior door or window with or apply or affix thereto, any materials or substances which shall render the same opaque or change the exterior color therefore, except interior draperies, curtains, shades or shutters which are lined, backed, covered or painted on the side visible from the exterior with a neutral color, material or (d) affix to or cover any exterior door or window or otherwise install on the exterior of any unit or building any storm or hurricane shutter or awning or any protective or decorative panel, trim, enclosure, fixture or appliance, or (e) otherwise change, modify, or alter the exterior of any unit or building so that it thereby differs in appearance from any other units or buildings of the same type. There shall be no material alterations or substantial improvements or additions to the common elements except in the following manner: subject to the foregoing restrictions against changing the exterior appearance of units and/or buildings, the Association shall have the right to make or cause to be made alterations, improvements and additions to the common elements, except the acquisition of additional real property, which have been approved by the owners of units to which seventy-five percent of the common elements are appurtenant. The cost of such alterations, improvements and/or additions shall be assessed against and collected from the owners of all units as Common Expenses.

B. Notwithstanding any provision hereinabove set forth to the contrary, the Board of Administration of the Association may adopt a basic approved plan for screening balconies and ground level rear area patios.

If such plan is adopted, owner of the units of each building in the condominium may screen said balconies of ground level rear area patios attached to their unit in accordance with said approved basic plan without specific consent from then Board of Administration, provided that such screening conforms in all respects to the approved basic plans therefore.

#### XX Termination.

The Condominium may be terminated in the following manner in addition to the manner provided by the Condominium Act:

A Destruction: In the event it is determined in the manner elsewhere herein provided

19961PG2275

that the improvements shall not be reconstructed because the total destruction or major damage, the condominium plan of ownership will be thereby "terminated without agreement."

B. Agreement: The condominium may be terminated at any time by the approval in writing of all the owners of units in the condominium and by all record owners of mortgages upon units therein owned by institutional lenders and other mortgages approved by institutional lenders and other mortgages approved by the Association. If the proposed termination is submitted to a meeting of the members of the Association, the notice of which meeting of the members of the Association, the notice of which meeting gives notice to the proposed termination, and if the approval of the owners of units in the condominium to which not less than sixty-seven percent of the common elements are appurtenant and of the record owners of all mortgages upon units in the condominium owned by institutional lenders and other mortgages approved by the Association are obtained not later than thirty days from the date of such meeting, the approving owners shall have an option to buy all of the units of the other member of the Association for the period ending the sixtieth (60th) day from the date of such meeting. Such option shall be upon the following terms:

1. Exercise of Option: The option shall be exercised by delivery or mailing by certified mail to each of the record owners of the units to be purchased of any agreement to purchase signed by the record owners of units who will participate in the purchase. Such agreement shall indicate which units will be purchased by each particular owner and shall agree to purchase of the unit owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.

2. Price: The sale price for each unit shall be the fair market value determined by agreement between the seller and purchaser within thirty days from the delivery or mailing of such agreement and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit; and judgment of specific performance of the sale upon award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

3. Payment: The purchase price shall be paid in cash.

4. Closing: The sale shall be closed within thirty days following the determination of the sale price.

C. Certificate: The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its President and Secretary, Gratiifying as to the facts effecting the termination which certificate shall become effective upon being recorded in the Public Records of Miami-Dade County, Florida.

D. Shares of Owners After Termination: After termination of the condominium the unit owners shall own the condominium property and all assets of the Association as tenants in common in undivided shares and their respective mortgagees and lienors shall have mortgages and liens upon the respective undivided-shares of the unit owners. Such undivided shares of the unit owners shall be the same as the undivided shares in the common elements appurtenant to the unit owner's prior to the termination as set forth in Exhibit 7 hereto.

E. Amendment: This article shall not be amended without consent of four-fifths of the voting interest.

XXI. Rights of Developer to Sell or Lease Units and Amend this Declaration.

So long as Developer, or any mortgages succeeding Developer in title, shall own any unit, it shall have the absolute right to lease, or sell any such unit to any person, firm or corporation upon any terms and conditions as it shall deem to be in its own best interest and as to the lease or sale of such unit, the right of first-refusal and any right of redemption herein granted to the Association shall not be operative or effective in any manner.

The Developer reserves the right to amend this Declaration in order to change the size and/or type of units and/or buildings before recording this Declaration in the Public Records of Miami-Dade County, Florida.

XXII. Grant of Easements; Covenant Running with the Land and Conveyance to Trustee.

The Developer hereby grants a non-exclusive easement to be used and enjoyed in common by the owners, lessees, tenants and occupants of residential units to be constructed in the GRACE IN THE GROVE CONDOMINIUM for the following purposes:

A. The furnishings and maintenance of public utility services, over, across, in and through the entire parcel known as GRACE IN THE GROVE CONDOMINIUM.

B. Vehicular and pedestrian access over, across, upon, in and through the drives, entries, gates, walks, grounds and other portions as they are intended and/or provided for pedestrians and vehicular traffic through the entire parcel known as GRACE IN THE GROVE CONDOMINIUM.

C. Recreational purposes, pedestrian access, over, across, upon, in and through the drives, entries, gates, walks, grounds, and other portions in the paved surface, green and open areas and lakes as shown in the proposed Plot Plan of GRACE IN THE GROVE CONDOMINIUM attached as exhibit to this declaration of condominium or any other plan adopted thereafter.

D. Support: An easement of support and of necessity is reserved for the benefit of each Unit and the Common Elements and each Unit shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

E. Encroachments: An easement is created for the existence and maintenance of any encroachment (i) by any portion of the Common Elements upon any Unit, (ii) by any Unit (or Limited Common Element appurtenant thereto) upon any other Unit or upon any portion of the Common Elements, or (iii) occurring as a result of (A) construction of the Improvements, (B) settling or shifting of the Improvements, (C) any alteration or repair to the Common Elements made by or with the consent of the Association, or (D) any repair or restoration to the Improvements or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings. Such easements shall continue for so long as the Improvements shall stand.

F. Construction; Maintenance: Developer (including its designees, contractors, successors and assigns) shall have the right, in its sole discretion, from time to time, to enter the Condominium Property and take all necessary action to construct, rebuild and restore the units by virtue of fire and casualty.

XXIII. Additional Mortgagee Provisions.

Additional Rights of Institutional Mortgagees: In addition to all other rights set forth in this Declaration, Institutional Mortgagees shall have the right, upon written notice to the Association, to:

- A. Examine the Association's books and records during normal business hours;
- B. Receive current copies of the Declaration, By-Laws and other rules governing the condominium, and other books, records and financial statements;
- C. Receive a statement of income and expenses of the Association within 90 days after the end of its fiscal year, and conduct an audit of the Association at its own cost;
- D. Receive notice of Association meetings and attend such meetings;
- E. Receive notice of an alleged default by an Owner upon whose Unit such Institutional Mortgagee holds a mortgage, which is not cured within 60 days after notice of default to such Owner;

19961PG2277

F. Receive notice of any substantial damage or loss to any portion of the Condominium Property and any Condemnation loss;

G. Receive notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

H. Receive notice of any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

I. Receive notice of any proposed termination of the condominium regime;

J. Receive notice of any proposed amendment of the condominium instruments effecting a change in:

1. The Boundaries of any unit or the exclusive easement rights appertaining thereto;

2. The interests in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto;

3. The number of votes in the owners association appertaining to any unit;

or

4. The purposes to which any unit or common elements are restricted.

K. Receive notice of any delinquency in the payment of assessments or charges owed by an owner of a unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days.

Any Institutional Mortgagee giving notice pursuant to this Article shall serve its notice upon the Association, by registered or certified mail, return receipt requested, which notice shall: (1) identify the Unit(s) upon which each such Institutional Mortgagee holds any mortgage(s); and (2) designate the place to which notice are to be given by the Association to such Institutional Mortgagee.

Subject to any provisions of this Declaration, no amendment may change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless all the record owners of all other units approve the amendments. The acquisition of property by the Association, and material alterations or substantial additions to such property or the common elements by the association in accordance with s. 718.111(7) or s.718.113 shall not be deemed to constitute a material alteration or modification of the appurtenances to the units. In any case where the consent of an Institutional Mortgagee is requested, in writing, to a proposed amendment of this Declaration, then such consent shall be deemed given if the Institutional Mortgagee fails to submit a response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

Notwithstanding any provision to the contrary contained in this section, after April 1, 1992, a declaration may not require the consent or joinder of some or all mortgagees of units to or in amendments to the Declaration, unless the requirement is limited to amendments materially affecting the right or interest of the mortgagees, or as otherwise required by the FNMA and FHA, and unless the requirement requires that such consent may not be unreasonable withheld.

The following provision do not apply to amendments to the constituent documents or termination of the condominium regime made as a result of destruction, damage or condemnation pursuant to the Declaration, or to reallocation of interest in the common elements which might occur pursuant to any plan of expansion or phased development, previously approved by the agencies and corporation to the extend such approval was required under the applicable condominium program of the agencies and corporation.

The condominium may be terminated at any time by the approval in writing of all the owners of units in the condominium and by all record owners of mortgages upon units therein.

The consent of owners of units to which at least 67% of the votes in the owners association are allocated shall be required to amend any provisions of the declaration, by-laws, or equivalent documents of the condominium, or to add an provision thereto, which establish provide for, govern or regulate of any of the following:

- (1) Voting;
- (2) Assessments, Assessment liens or subordinate of the common elements;
- (3) Reserves for maintenances, repair and replacement of the common elements;
- (4) Insurance or Fidelity Bonds;
- (5) Rights to use of the common elements;
- (6) Responsibility for maintenance and repair of the several portion of the condominium;
- (7) Expansion or contraction of the condominium regime or the additions annexation or withdrawal of property to or from the regime;
- (8) Boundaries of any units;
- (9) The interest in the general or limited common elements;
- (10) Convertibility of units into common elements or common elements into units;
- (11) Leasing of units;
- (12) Impositions of any right of first refusal or similar restriction on the right of a unit owners to sell, transfer, or otherwise convey his or her unit in the condominium;
- (13) Establish of self management by the condominium association where professional management has been required by any of the agencies or corporation.

#### XXIV. Sales Activity and Developer's Rights.

Until the Developer has completed and sold all the Units of the Condominium and the Developer and/or any third party developer or developers have completed and marketed all other dwellings to be constructed, neither the Unit Owners nor the Association nor their use of the Condominium shall interfere with the completion of the contemplated improvements and the sale of Units. The Developer (or its duly authorized agents or assigns) may make such use of the unsold Units and the common elements as may facilitate such completion and sale, including, but not limited to, the maintenance of sales offices for the showing of the property and display of signs, billboards, placards, and visual promotional materials. The Developer may use unsold Units as model units and/or as sales offices for display purposes to prospective condominium purchasers. The Developer shall have the right to use unassigned parking spaces upon the lands for the Condominium or the Complex itself for prospective purchasers and such other parties as Developer determines. The sales office personal property, model furnishings, signs and all items pertaining to sale shall not be considered common elements and shall remain the property of the Developer.

#### XXV. Warranties

The developer does not warrant to the Association or the Unit Owners the construction of,

or any part of, the condominium property, common elements or Units, save and except any express written warranties delivered by the Developer in writing to the Unit Owners and/or warranties provided for under the Condominium Act. Seller hereby grants to Purchasers warranties for the Unit expressly set forth in the Condominium Act under Section 718.203, Florida Statutes. To the maximum extent allowed by law, Developer disclaims any and all implied warranties of merchantability and fitness as to the unit, building and such appurtenances upon the condominium property other than such warranties expressly set forth in the Condominium Act but only to the extent that the same extend to the Condominium property.

As to any implied warranty which cannot be disclaimed entirely, as a result of federal or state law, all secondary incidental and consequential damages are specifically excluded and disclaimed (claim of secondary, incidental and consequential damages being clearly unavailable in the case of implied warranties which are disclaimed entirely above.)

The foregoing disclaimer does not, however, extend to and is not a limitation upon any implied warranties otherwise conferred as to personally or appliances supplied by Developer constituting consumer products that are within the purview of the status granting the same.

In the event a competent court of law decides any disclaimer hereunder to be ineffective the parties agree that any action brought under warranty must be brought within the time prescribed by Section 718.203, Florida Statutes.

#### XXVI. Condemnation.

A. Deposit of Awards with Insurance Trustee: For purposes of this Declaration, the taking of portions of the condominium property by the exercise of the power of eminent domain or purchase in lieu thereof ("Taking") shall be treated as a casualty. The awards for a Taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee even if the awards may be payable to Unit Owners. If any unit Owner fails to deposit the award with the Insurance Trustee, the Board of Directors, in its discretion, may set off against the sums hereafter made payable to that owner the amount of that award.

B. Determination Whether to Continue Condominium: The determination whether or not to continue the Condominium will be made in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty.

C. Disbursement of Funds: If the Condominium is terminated after a Taking, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds as if the Condominium is terminated after a casualty. If the Condominium is not terminated after a Taking, the size of the Condominium will be reduced and the property damaged by the Taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds after a casualty by the Insurance Trustee unless elsewhere provided in this Article.

D. Unit Reduced but Habitable: If the Taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Board of Directors of the Association), the award for the Taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

1. Distribution of Surplus: The balance of the award for the Unit, if any, shall be distributed to the Owner and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.

2. Adjustment of Shares in Common Elements: If the floor area of the Unit is reduced by the Taking, the percentage representing the share in the Common Elements, the Common Expenses and Common Surplus attributable to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the Taking and the denominator of which shall be the area in square feet of the Unit before the Taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be

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restated as follows:

- i. add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentages Balance"); and
- ii. divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

E. Unit Uninhabitable: If the Taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Board of Directors of the Association), then the award for the Taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

1. Payment of Award: The award for the Taking shall be paid to the extent available: first, to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions for a specific Unit exceed the market value of such Unit immediately prior to the Taking. The balance, if any shall be applied to repairing and replacing the Common Elements.

2. Addition to Common Elements: The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible for use by all of the Unit Owners in the manner approved by the Board of Directors. If the cost of such work shall exceed the balance remaining of the fund from the award for the Taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

3. Adjustment of Shares: The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares among the reduced number of Unit Owners (and among reduced Units) as follows:

- i. add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Section D(3) (the "Percentage Balance"); and
- ii. divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Section D(3), by the Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

4. Assessments: If the balance of the award for the Taking (after payments to the Unit Owner and such Owner's mortgagees as above provided) is not sufficient to alter the remaining portion of the Unit for use as part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners after the changes in the Condominium effected by the Taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected by reason of the Taking.

5. Arbitration: If the market value of a Unit prior to the Taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A

judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue after the Taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustment to such shares affected by reason of the Taking.

6. Taking of Common Elements: Awards for the Taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors. If the cost of such work shall exceed the balance of the funds from the awards for the Taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements, if any shall be distributed to the unit Owners in proportion to the shares in which they own the Common Elements after adjustments to these shares by reason of the Taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

7. Amendment of Declaration: The changes in Units, the Common Elements and in the ownership of the Common Elements and the adjustment to the shares in the Common Expenses and Common Surplus that are effected by the Taking shall be evidenced by an amendment to this Declaration approved by, and executed at the direction of, a majority of the Board.

#### XXVII. Developers Tenants.

It is understood and agreed by all parties hereto and all unit owners that certain units may be occupied by tenants of the Developer under lease agreements heretofore or hereinafter consummated and agreed upon. Accordingly, Developer reserves the right to initiate a leasing program, or lease with option to purchase program, or any combination thereof with respect to condominium parcels owned by it. Any such tenants of Developer shall have the full right and authority to continue to occupy said premises in accordance with their lease agreements and to use and enjoy on a non-exclusive basis all common elements of the Condominium.

#### XXVIII. Miscellaneous.

A. Severability: The invalidity in whole or in part of any covenant or restriction or any Article, sub-article, sentence, clause, phrase or word, or other provisions of this declaration, the articles of incorporation and bylaws of the Association and the rules and regulations set forth by the Association shall not affect the validity of the remaining portions thereof.

B. Applicability of Declaration of Condominium: All present or future owners, tenants or any other persons who might use the facilities of the condominium in any manner, are subject to the provisions of this declaration and the mere acquisition or rental of any unit, nor the mere act of occupancy of any unit shall signify that the provisions of this Declaration of Condominium are accepted and ratified in all respects.

C. Construction: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. In the event of any conflict between the provisions of the Declaration and the Condominium Act, the provisions of Florida Statute Chapter 718 shall prevail.

D. Parties Bound: The restrictions and burdens imposed by this Declaration are intended to and shall constitute covenants running with the land and shall constitute an equitable servitude upon each unit and its appurtenant undivided interest in common elements and this Declaration shall be binding upon developer, its successors and assigns and upon all parties who may subsequently become owners of units in the condominium and their respective heirs, legal representatives, successors and assigns.

E. Right of access to units: The Association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the Association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit or units.

F. Board of Administrative Membership: The first Board of Administration shall consist of three persons who shall be the subscribers to the Articles of Incorporation. Succeeding Board of Administration members shall consist of three persons. At least the majority of each succeeding Board of Administration shall be members of the Association or shall be authorized representatives, officers, or employees of a corporate member of the association.

IN WITNESS WHEREOF, Developer has caused the foregoing Declaration of Condominium to be executed and its seal affixed by its undersigned duly authorized officers on the date set forth above.

RANGO CONST. CORP., a Florida corporation

By: [Signature]  
Eduardo S. Arango, President

STATE OF FLORIDA     )  
                                  ) S.S.  
COUNTY OF MIAMI-DADE)

SWORN TO AND SUBSCRIBED before me on this 16<sup>th</sup> day of March, 2001, by EDUARDO S. ARANGO, as President of RANGO CONST. CORP., a Florida corporation, and on behalf of the corporation, who is personally known to me and did not take an oath.

[Signature]  
NOTARY PUBLIC



Marco De La Cal  
MY COMMISSION # CC835622 EXPIRES  
July 1, 2005  
BONDED THROUGH TROY FARM INSURANCE, INC.