



***Errol by the sea***

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## **Errol by the Sea Condominium Association Inc. Compiled Declaration of Condominium**

This document is a compilation of the original Declaration of Condominium, Recorded June 7, 1974 in Book 1728, Pages 1304-1330 of the official public record of Volusia County, Florida along with all recorded amendments. The purpose of this compiled document is to make the Declaration of Condominium easier to read and understand. The documents used to compile this document are:

1. The original Declaration of Condominium recorded in Volusia County Public Records Book 1728, Pages 1304-1330 June 7, 1974.
2. Declaration of Condominium amendment recorded in Volusia County Records Book 1739, Pages 1256-1257 August 7, 1974 (Article 13.4, 13.11, and 17.3).
3. Declaration of Condominium amendment recorded in Volusia County Records Book 1924, Pages 0272-0284 September 19, 1977 (Article 2, 3.3, 4, 5, 7.1(c), 7.1(d), 8, 13.1(b), 13.2(a)(2), 13.2(c), 13.2(d), 13.5, 13.10, 13.11, 15, 16, 17.1, 17.2(c), 17.2(d), 17.2(e), 17.3, 20, 21, 22, 23).

Only the currently existing language was used in the compilation. Signatures of association officers, witnesses, and notaries that signed original documents are not presented in the compilation but can be viewed on the originally recorded documents.

Every effort was made for accuracy. If there are questions, please see the original documents listed above.

## Declaration of Condominium of Errol by the Sea Condominium Association, Inc.

MADE by the undersigned Developer, for itself, its successors, grantees and assigns.

The undersigned Developer, ERROL BY THE SEA LTD., a Florida Limited Partnership, being the owner of fee simple title of record to those certain lands located and situate in Volusia County, Florida, being more particularly described in an Exhibit A attached hereto, does hereby submit the said lands and improvements thereon to condominium ownership pursuant to provisions of Chapter 711 of Florida Statutes, hereinafter called the "Condominium Act".

1. The name by which this condominium is to be identified is ERROL BY THE SEA CONDOMINIUM
2. Definitions. The terms used in this Declaration and in its exhibits, including the Articles of Incorporation and By-Laws of ERROL BY THE SEA CONDOMINIUM ASSOCIATION, INC., shall be defined in accordance with the provisions of Section 718.103 of the Condominium Act and as follows unless the context otherwise requires:
  - 2.1. Assessment shall mean a share of the funds required for the payment of common expenses which from time to time are assessed against any unit owner.
  - 2.2. Association shall mean ERROL BY THE SEA CONDOMINIUM ASSOCIATION, INC., a corporation not for profit organized under the laws of the State of Florida, and its successors.
  - 2.3. Articles and By-Laws shall mean the Articles of Incorporation and the By-Laws of the Association as they exist from time to time.
  - 2.4. Board of Directors shall mean Board of Administration as defined in the Condominium Act and shall constitute the representative body responsible for administration of the Association.
  - 2.5. Common elements shall mean the portions of the Condominium property not included in the units. Common elements shall include within its meaning without limitation the following:
    - a) Easements through units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to units and the common elements.
    - b) An easement of support in every portion of a unit which contributes to the support of a building.
    - c) The property and installations required for the furnishings of utilities and other services to more than one unit or to the common elements.
  - 2.6. Common expenses shall mean all expenses and assessments properly incurred by the Association for the Condominium. Common expenses shall include in its meaning the expenses of the operation, maintenance, repair or replacement of the common elements, costs of carrying out the powers and duties of the Association and any other expense designated as common expense by the Condominium Act, this Declaration, the Articles of Incorporation or the By-Laws.
  - 2.7. Common surplus shall mean the excess of all receipts of the Association, including but not limited to assessments, rents, profits, and revenue on account of the common elements, over the amount of common expenses.
  - 2.8. Condominium means that form of ownership of real property as to ERROL BY THE SEA CONDOMINIUM, which is created pursuant to the provisions of the Condominium Act and which is comprised of units that may be owned by one or more persons, and there is appurtenant to each unit an undivided share in common elements. This term shall mean and include the definition "residential Condominium" as defined in the Condominium Act.
  - 2.9. Condominium building or building means the structure which is that part of the Condominium property within which units are located.
  - 2.10. Condominium parcel shall mean a unit together with the undivided share in the common elements which is appurtenant to the unit.

- 2.11. Condominium property shall mean and include the lands and personal property that are subjected to Condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.
  - 2.12. Declaration or Declaration of Condominium shall mean this instrument as it may from time to time be amended.
  - 2.13. Developer shall mean a person or entity, such as ERROL BY THE SEA LTD., a Florida Limited Partnership, and its successors and assigns, who creates this Condominium or offers a Condominium parcel owned by said person or entity for sale or lease in the ordinary course of business, but this term shall not include an owner or lessee of a unit in this Condominium who has acquired his unit for his own occupancy.
  - 2.14. Limited common elements means those common elements which are reserved for the use of a certain Condominium unit or units to the exclusion of other units as specified in this Declaration of Condominium.
  - 2.15. Operation or operation of the Condominium includes the administration and management of the Condominium property.
  - 2.16. Unit or apartment or Condominium unit shall mean a part of the Condominium property in the form of improvements which is to be subject to exclusive ownership, as specified in this Declaration.
  - 2.17. Unit owner or owner or apartment owner or Condominium unit owner shall mean the owner of a Condominium Parcel.
  - 2.18. Utility services shall include, but not be limited to, electric power, gas, water, air conditioning, and garbage and sewerage disposal.
3. The Condominium is described as follows:
- 3.1. A survey of the land and a graphic description of the improvements in which units are located which identifies each unit by letter, name or number, so that no unit bears the same designation as any other unit, and a plot plan thereof, all in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions appear in Exhibit C, recorded in Map Book 33, page 75, 76, 77.
  - 3.2. Amendment of Plans. Developer reserves the right to change the interior design and arrangement of all units so long as the Developer owns the units so changed and altered, provided such change shall be reflected by an amendment of this Declaration, and provided, further, that an amendment for such purpose need be signed and acknowledged only by the Developer and need not be approved by the Association or apartment owners or by the Condominium, whether or not elsewhere required for an amendment.
    - a) Alteration of boundaries and apartment dimensions. Developer reserves the right to alter the boundaries between units, so long as Developer owns the units so altered; to increase or decrease the number of apartments and to alter the boundaries of the common elements, so long as the Developer owns the apartments abutting the common elements where the boundaries are being altered, provided no such change shall be made without amendment of this Declaration, and provided, further, that an amendment for such purpose need be signed and acknowledged only by the Developer and approved by the institutional mortgagee of apartments affected, where the said apartments are encumbered by individual mortgages, or where they are included in an overall construction mortgage on the Condominium building, and such amendment shall not require the approval of apartment owners, the Lessor, or of the Association.
  - 3.3. Easements. The Association and each owner and occupant of a unit in the Condominium, and their respective guests and invitees, shall be benefited by and burdened with the easements provided and reserved as follows:
    - a) Owner. Each owner of a unit shall have and enjoy a perpetual nonexclusive easement for pedestrian ingress and egress from and to his unit over, through and across all walks, sidewalks, lanes, stairways, passageways, hallways, elevators and other portions of the common elements as may from time to time be intended and designated for such

purpose and use, and for vehicular and pedestrian ingress and egress over, through and across such portions of the common elements as may from time to time be paved and intended for such purposes provided, however, that the creation or reservation of such easements shall not give or create in any unit owner the right to park upon any portion of the Condominium property not designated as a parking area or which may be assigned to another unit by the Association as a limited common element for parking purposes. In addition, each unit owner shall have and enjoy a perpetual nonexclusive right or easement in common with all other unit owners for the use and enjoyment of all of the common elements, except limited common elements, and appurtenant facilities, as they now or may hereafter exist.

- b) Association. The Condominium property shall be subject to a perpetual easement in gross granted to the Association and its successors for ingress and egress for the purpose of having its employees and agents perform all obligations and duties of the Association herein set forth free of interference from unit owners, their families, guests and tenants.
  - c) Utilities. The common elements shall be subject to such easements as are necessary for the construction, maintenance and repair of utility and other services needed to serve adequately the Condominium as a whole and the respective individual units, and such easements shall inure to the benefit of the owners of the respective individual units, the Developer, the Association, and their respective grantees, successors and assigns and to any public or private utility now or hereafter providing utility services to the Condominium; provided, however, that easements through a unit, if any, shall only be according to the plans and specifications for the building within which such unit is contained or as the building is actually constructed, unless approved by the unit owner in writing.
  - d) Encroachments. In the event that any apartment shall encroach upon any of the common elements or upon any other apartment for any reason other than the intentional or negligent act of the apartment owner, or in the event any common element shall encroach upon any apartment, then an easement shall exist to the extent of such an encroachment so long as the same shall exist.
  - e) Other Easements. Such other easements are reserved as may be elsewhere provided in this Declaration.
- 3.4. Apartment Boundaries. Each apartment shall include that part of the building containing the apartment that lies within the boundaries of the apartment, which boundaries are as follows:
- a) The upper and lower boundaries of the apartment shall be the following boundaries extended to an intersection with the perimetrical boundaries:
    - 1) Upper Boundaries – The horizontal plane of the undecorated finished ceiling.
    - 2) Lower Boundaries – The horizontal plane of the undecorated finished floor.
  - b) The perimetrical boundaries of the apartment shall be the vertical planes of the center of the undecorated walls bounding the apartment extending to intersections with each other and with the upper and lower boundaries, and when there is attached to the building a balcony, loggia, terrace or canopy, the perimetrical boundaries shall be extended to include the same. The “center” of a wall shall be deemed to be a point lying midway between the undecorated finished interior of the wall and the undecorated finished exterior thereof, or, if the wall bounds another apartment, then a point midway between the undecorated finished interior of one apartment and the undecorated finished interior of the adjoining apartment.
- 3.5. Apartments. There are one hundred thirty (130) apartments in the apartment building, each apartment being identified by the use of a number, the first numeral of which shall designate the floor upon which the apartment is located and the last two numerals of which shall identify the location of the apartment on the floor, as geographically described in Exhibit C, recorded in Map Book 33, page 75, 76, 77.

4. Appurtenances to Apartments. There shall pass with each unit as appurtenances thereto:

- a) An undivided share in the common elements and common surplus.
- b) The exclusive right to use the portion of the common elements as may be provided by this Declaration.
- c) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- d) Other appurtenances as may be provided in this Declaration.

A unit owner is entitled to the exclusive possession of his unit subject to the Association's right to access for maintenance, repair or replacement of any common element or for making emergency repairs as set forth elsewhere herein. Each unit owner shall be entitled to use the common elements in accordance with the purposes for which they are intended but no use may hinder or encroach upon the lawful rights of other unit owners. The undivided share in and of the common elements, the common expenses and the common surplus pertinent to each unit, each such share being as designated and set for in Exhibit "B" attached hereto. The undivided share in the common elements which is appurtenant to a unit shall not be separated from it and shall pass with the title to the unit whether or not separately described. The share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit and such shares are undivided and no action for partition thereof shall lie.

- 5. Liability for Common Expenses. Each unit owner shall be liable for his undivided share of the common expenses. No unit owner may be excused from the payment of this share of the common expenses unless all unit owners are likewise proportionately excused from payment except as provided elsewhere herein or pursuant to the Condominium Act. Liability of a unit owner for common expenses is limited to the amount for which he is assessed for common expenses from time to time in accordance with the Condominium Act, this Declaration and the By-Laws. A unit owner may be personally liable for the acts or omissions of the Association in relation to the use of the common elements but only to the extent of its pro-rata share of that liability in the same percentage as his interest in the common elements. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting the Association and the unit owners, the Association shall give notice of the exposure within a reasonable time to all unit owners who shall have the right to intervene and defend.
- 6. Membership in Association. Membership of each apartment owner in the Association shall be acquired pursuant to the provisions of the Articles of Incorporation and By-Laws of the Association. The interest of each apartment unit owner in the funds and assets of the Condominium held by the Association shall be in the same proportion as the liability of each such owner and for common expenses.
- 7. Maintenance, Alteration and Improvement. Responsibility for the maintenance of the Condominium property, and restrictions upon its alteration and improvement shall be as follows:
  - 7.1. Apartments.
    - a) By the Association. The Association shall maintain, repair and replace at the Association's expense:
      - 1) All common elements and limited common elements.
      - 2) All portions of an apartment, except interior surfaces, contributing to support of the apartment building, which portions shall include but not be limited to load-bearing columns and load bearing walls.
      - 3) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services contained in the portions of an apartment that service part or parts of the Condominium other the apartment within which contained.
      - 4) All incidental damage caused to an apartment by reason of maintenance, repair and replacement accomplished pursuant to the provisions of 7.1 a), 1), 2), and 3) above.
    - b) By the Apartment Owner. The responsibility of the apartment owner for maintenance, repair and replacement, shall be as follows:

- 1) To maintain, repair and replace at his expense all portions of his apartment except the portions to be maintained, repaired and replaced by the Association. Included within the responsibility of the apartment owner shall be windows, screens and doors opening into or onto his apartment. All such maintenance, repairs and replacement shall be done without disturbing the rights of other apartment owners.
  - 2) An apartment owner shall not paint or otherwise decorate or change the appearance of any portion of the exterior of the apartment building without the prior approval, in writing, of the owners of record of fifty-one (51%) percent of the apartment units, and the approval of the Association.
  - 3) To promptly report to the Association any defect or need for repairs for which the Association is responsible.
- c) Association's Right to Access. To facilitate and carry out the obligations of the Association for maintenance, repair and replacement, the Association shall have the irrevocable right to access to each unit during reasonable hours when necessary for the maintenance, repair or replacement of any common elements, or for making emergency repairs necessary to prevent damage to the common elements or to another unit or units. Verbal notice will be given to the owner, if practicable, before entering his unit except under those circumstances classified as emergencies by the Association.
- d) Owner-Caused Damages. In the event that the maintenance, repair or replacement of a portion of the Condominium property for which the Association has maintenance responsibility is caused by or through, or is the result of, the willful or negligent act of the owner of an individual unit, his family, servants, guests or invitees, the cost of such maintenance, repair or replacement shall be the responsibility of such unit owner and shall be paid for by such unit owner upon demand of the Association to the extent that such cost is not defrayed by the proceeds of any applicable insurance carried by the Association. Each unit owner shall pay to the Association the amount of any increase in insurance premiums charged to the Association which are occasioned by the use, misuse, occupancy or abandonment of his unit or its appurtenances, or of the common elements of any property in which the Association owns an interest, by said owner or any resident of the unit. In the event any of such payments are not made by the unit owner after demand by the Association, such cost shall be added to, and become part of, the assessment for which the unit of said owner is subject and may be collected and enforced in the same manner as any other assessment.
8. Assessments. In order that the Association shall have the financial resources with which to perform and carry out its duties and obligations, the Association shall have the power to levy and enforce the collection of such assessments as are necessary to perform these duties and obligations as are in this Declaration and elsewhere expressly or impliedly imposed upon it, and each owner of any individual unit within the Condominium by acceptance of a conveyance, gift, devise or other transfer therefor, whether or not it shall be so expressed in any document by which such ownership interest is conferred, shall be deemed to covenant and agree to pay to the Association such regular assessments, and such special assessments for capital improvements as may from time to time be required, it being expressly intended that each unit owner shall be liable for a proportionate share of the common expenses and shall share in the common surplus, such shares being equal to those shares designated in Exhibit "C" attached hereto. The establishment, collection and enforceability of such assessments shall be pursuant to the By-Laws and subject to the following provisions:
- 8.1. Liability of Unit Owner. A unit owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the unit owner. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of conveyance, without prejudice to any right the grantee may have to recover from the grantor the amount paid by the grantee.

- 8.2. Non-Waiver. The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by abandonment of the unit for which the assessments are made.
- 8.3. Interest. Assessments and installments on such assessment not paid within ten (10) days after the due date established by the Board of Directors shall bear interest from said due date until paid at a rate of ten percent (10%) per annum, or such other lawful rate as may be established by the Board of Directors, with all payments on account being first applied to costs of collection, if any, including reasonable attorney's fees regardless whether suit is instituted (including fees incurred in trial and appellate proceedings), then to interest, and the to the delinquent assessment payment first due.
- 8.4. Lien for Assessments. 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 incident to the collection of the assessment or enforcement of the lien. The lien shall be effective from and after recording a claim of lien in the public records of Volusia County, Florida stating the description of the Condominium parcel, the name of the record owner, the amount due and the due dates. The lien shall be in effect until all sums secured by it have been fully paid or until barred by law. The claim of lien shall include only assessments which are due when the claim is recorded. 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 lien. A unit owner or his agent or attorney may require the Association to enforce a recorded claim of lien against the unit owner's Condominium parcel by recording a Notice of Contest of Lien as provided by law and after service of same upon the Association by the Clerk of the Circuit Court, the Association shall have ninety (90) days in which to file an action to enforce the lien, and if the action is not filed within the ninety (90) day period, the lien shall be void.
- 8.5. Enforcement of Lien: The Association may bring an action in the name of the Association to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the unit owner of its intention to foreclosure said lien to collect the unpaid assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified mail, return receipt requested, addressed to the unit owner. If after diligent search and inquiry, the Association cannot find the unit owner or a mailing address at which the unit owner will receive the notice, the Association shall be entitled to attorney's fees and costs as permitted by law. The notice requirements of this sub-paragraph shall be deemed satisfied if the unit owner records the above-mentioned Notice of Contest of Lien. If the unit owner remains in possession of the unit and the claim of lien is foreclosed, the unit owner shall be obligated to pay a reasonable rental for the unit and the Association shall be entitled to the appointment of a receiver to collect said rent. The Association shall have the power to purchase Condominium parcels at the foreclosure sale and to hold, lease, mortgage and convey any such Condominium parcels subject to the provisions set forth in this Declaration, the Articles of Incorporation and the By-Laws.
- 8.6. Mortgagees and Purchasers. When a mortgagee of record, or other purchaser, of a Condominium unit obtains title to a Condominium parcel as a result of foreclosure of the mortgage or as a result of a transfer in lieu of foreclosure, such acquirer of title and his successors and assigns shall not be liable for the share of common expenses or assessments by the Association pertaining to the Condominium parcel or chargeable to the former unit owner of the parcel which became due prior to said acquisition of title, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the

foreclosed mortgage. The unpaid share of common expenses or assessments are common expenses collectible from all of the unit owners including such acquirer, his successors and assigns. A mortgagee or purchaser acquiring title to a Condominium parcel, as a result of foreclosure or a transfer in lieu of foreclosure, may not during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

8.7. Certificate of Unpaid Assessments. Each unit owner shall have the right to require from the Association a certificate showing the amount of unpaid assessments against said unit owner with respect to his Condominium parcel. Holders of mortgages or other liens of record shall have the same right as to any Condominium parcel upon which liens are held.

9. Association. The operation of the Condominium shall be by ERROL BY THE SEA CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, which shall fulfill its functions pursuant to the following provisions:

9.1. Articles of Incorporation. A copy of the Articles of Incorporation of the Association, which sets forth its powers and duties, is attached as an Exhibit D.

9.2. By-Laws. A copy of the By-Laws of the Association is attached as an Exhibit E.

9.3. Limitation upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair portions of the Condominium property, the Association shall not be liable to apartment owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

9.4. Restraint upon assignment of shares and assets. The share of a member in the funds and assets of the Association cannot and shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his apartment unit.

9.5. Approval or disapproval of matters. Whenever the decision of an apartment owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

10. The insurance other than title insurance that shall be carried upon the Condominium property and the property of the apartment owners shall be governed by the following provisions:

10.1. Authority to purchase; named insured. All insurance policies upon the Condominium property shall be purchased by the Association. The named insured shall be the Association individually and as agent for the apartment unit owners, without naming them, and as agent for their mortgagees. Provisions shall be made for the issuance of the mortgagee endorsements and memoranda of insurance to the mortgagees of apartment owners. Such policies shall provide that payments by the insurer for losses shall be made to the insurance trustee designated below, and all policies and their endorsements shall be deposited with the insurance trustee. Unit owners may obtain coverage at their own expense upon their personal property and for their personal liability and living expense.

10.2. Coverage.

a) Casualty. All buildings and improvements upon the Condominium property shall be insured in an amount equal to the insurable replacement value, excluding foundation and excavation costs, and all personal property included in the common elements shall be insured for its value, all as shall be determined annually by the Board of Directors of the Association. All such coverage, including the amount thereof and the insurance company issuing same, shall be subject to the approval of the institutional mortgagee holding the greatest dollar amount of first mortgages against apartments in the Condominium. Coverage shall afford protection against:

1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and



- 2) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.
  - b) Public liability in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including but not limited to hired automobile and non-owned automobile coverage, and with cross liability endorsements to cover liabilities of the apartment owners as a group to an apartment owner.
  - c) Workmen's compensation insurance to meet the requirements of law.
  - d) Such other insurance that the Board of Directors of the Association shall determine from time to time to be desirable.
- 10.3. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense attributable to the Condominium
- 10.4. Insurance Trustee; Share of proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the apartment owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to ATLANTIC NATIONAL BANK OF ORLANDO, FLORIDA, as Trustee, or to such other bank in Florida with trust powers as may be designated as Insurance Trustee from time to time by the Board of Directors of the Association, the trustee being referred to herein as the Insurance Trustee, provided, however, that the selection of the Insurance Trustee is subject to the approval of the institutional mortgagee holding the greatest dollar amount of first mortgages against the apartment unit in the Condominium. The Insurance Trustee shall not be liable for payment of premiums nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes elsewhere stated in this instrument and for the benefit of the apartment owners and their mortgagees in the following shares, provided, however such shares need not be set forth on the records of the Insurance Trustee:
- a) Proceeds on account of damage to the common elements and limited common elements. An undivided share for each apartment owner, such share being the same as the undivided share in the common elements and limited common elements appurtenant to his apartment.
  - b) Apartments. Proceeds on account of damage to apartment units shall be held in the following undivided shares:
    - 1) When the building is to be restored: For the owners of damaged apartments in proportion to the cost of repairing the damage suffered by each apartment owner, said cost to be determined by the Association.
    - 2) When the building is not to be restored: An undivided share for each apartment unit owner, such share being the same as the undivided share in the common elements appurtenant to his apartment unit.
  - c) Mortgages. In the event a mortgagee endorsement has been issued as to an apartment unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear; provided, however, that no mortgagee shall have the right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions of such proceeds made to the apartment owner and mortgagee pursuant to the provisions of this Declaration. Notwithstanding the foregoing the mortgagee shall have the right to apply or have applied to the reduction of its mortgage debt any or all sums of insurance proceeds applicable to its mortgaged unit in any of the following events:
    - 1) Its mortgage is not in good standing and is in default.
    - 2) Insurance proceeds are insufficient to restore or repair the building to the condition existing prior to the loss and additional monies are not available for such purpose.

- 10.5. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:
- a) All expenses of the Insurance Trustee shall be paid first or provisions made for such payment.
  - b) If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, remittance to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of, and may be enforced by, any mortgagee of an apartment.
  - c) If it is determined in the manner elsewhere provided that the damage for which proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of, and may be enforced by, the mortgagee of an apartment.
  - d) In making distribution to apartment owners and their mortgagees, the Insurance Trustee may rely upon a Certificate of the Association made by its President and Secretary as to the names of the apartment owners and their respective shares of the distribution.
- 10.6. Association as Agent. The Association is hereby irrevocably appointed Agent for each apartment owner and for each owner of any other interest in the Condominium property to adjust all claims arising under the insurance policies purchased by the Association and to execute and deliver releases upon the payment of a claim.

**11. Reconstruction or repair after casualty.**

- 11.1. Determination to reconstruct or repair. If any part of the Condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:
- a) Common element. If the damaged improvement is a common element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.
  - b)
    - 1) Lesser damage. If the damaged improvement is the apartment building, and if apartments to which fifty (50%) percent of the common elements are appurtenant are found by the Board of Directors of the Association to be tenatable, the damaged property shall be reconstructed or repaired, unless within sixty (60) days after the casualty, it is determined by agreement in the manner elsewhere provided that the Condominium shall be terminated.
    - 2) Major damage. If the damaged improvement is the apartment building, and if apartments to which more than fifty (50%) percent of the common elements are appurtenant are found by the Board of Directors to be non-tenatable, then the damaged property will not be reconstructed or repaired, and the Condominium will be terminated without agreement as elsewhere provided, unless within sixty (60) days after the casualty, the owners of eighty (80%) percent of the common elements agree in writing to such reconstruction or repair.
  - c) Certificate. The Insurance Trustee may rely upon a certificate of the Association made by its President and attested by its Secretary as to whether or not the damaged property is to be reconstructed or repaired.
- 11.2. Plans and specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, or, in lieu thereof, according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is to the apartment building, by the owners of not less than eighty (80%) percent of the common elements, including the owners of all damaged apartments, together with the approval of the institutional mortgagees holding first mortgages upon all damaged apartments, which approval shall not be unreasonably withheld.

- 11.3. **Responsibility.** If the damage is only to those parts of one apartment for which the responsibility of maintenance and repair is that of the apartment owner, then the said owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the association.
- 11.4. **Estimates of costs.** Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.
- 11.5. **Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the apartment owners who own the damaged apartments, and against all apartment owners in the case of damage to common elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against apartment owners for damage to apartments shall be in proportion to the cost of reconstruction and repair of their respective units. Such assessments on account of damage to common elements shall be in proportion to the owner's obligation for common expenses.
- 11.6. **Construction funds.** The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against apartment owners, shall be disbursed in payment of such costs in the following manner:
  - a) **Association.** If the total of the assessments made by the Association in order to provide funds for the payment of costs of reconstruction and repair that is the responsibility of the Association is more than \$10,000.00, then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee. In all other cases the Association shall hold the sums paid upon such assessments and disburse them in payment of the costs of reconstruction and repair.
  - b) **Insurance Trustee.** The proceeds of insurance collected on account of casualty, and the sums deposited with the Insurance Trustee by the Association from collections of assessments against apartment owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
    - 1) **Association – Lesser damage.** If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than \$10,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.
    - 2) **Association – Major damage.** If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is more than \$10,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association.
    - 3) **Apartment owner.** The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an apartment owner shall be paid to the said owner, or if there is a mortgagee endorsement as to the apartment, then to the owner thereof and the mortgagee jointly, who may use such proceeds as they may be advised.
    - 4) **Surplus.** It shall be presumed that the first monies distributed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial

owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner that is not in excess of assessments paid by such owner to the construction fund shall not be made payable to any mortgagee.

- 5) Certificate. Notwithstanding the provisions of this instrument, the Insurance Trustee shall not be required to determine whether or not sums paid by the apartment owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon 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. Instead, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided, that when a mortgagee is required in this instrument to be named as payee, the Insurance Trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a unit owner; and, further, provided, that when the Association, or a mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association prior to disbursements in payment of costs of reconstruction and repair.

**12. Use Restrictions.** The use of the Condominium property shall be in accordance with the following provisions as long as the Condominium exists and the apartment building in useful condition exists upon the land:

- 12.1. Apartments. Each of the apartment units shall be occupied only as a single family private dwelling by the owner, and members of his family. Except as reserved to Developer, no apartment unit may be divided or subdivided into a smaller unit.
- 12.2. Common elements and limited common elements. The common elements and limited common elements shall be used only for the purpose for which they are intended in the furnishings of services and facilities for the enjoyment of the apartments.
- 12.3. Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept in any unit, the limited common elements or the common elements, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. Dogs or cats must be leashed at all times when outside any unit upon the property of the Condominium.
- 12.4. Nuisances. No nuisances shall be allowed upon the Condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No apartment owner shall permit any use of his apartment or make any use of the common elements that will increase the cost of insurance upon the Condominium Property.
- 12.5. Lawful use. No immoral, improper, offensive, or unlawful use shall be made of the Condominium property nor any part of it; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.
- 12.6. Leasing of Apartments. After approval by the Association as elsewhere required, entire apartments may be rented provided the occupancy is only by the lessee, his family and guests. No rooms may be rented and no transient tenants shall be accommodated in any apartment, nor shall any lease of an apartment release or discharge the owner thereof of compliance with any of his obligations and duties as an apartment owner. All of the provisions of this Declaration, the Charter and By-Laws, and the Rules and Regulations of

the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying an apartment unit as a tenant to the same extent as against an apartment owner, and a covenant upon the part of each such tenant to abide by the rules and regulations of the Association, and the terms and provisions of the Declaration of Condominium, Charter and By-Laws, and designating the Association as the apartment owner's agent for the purpose of and with the authority to terminate any such lease agreement in the event of violations by the tenant of such covenant shall be an essential element of any such lease or tenancy agreement, whether oral or written, and whether specifically expressed in such agreement or not.

- 12.7. Signs. No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the common elements, limited common elements or apartments, excepting that the right is specifically reserved in the Developer to place "For Sale" or "For Rent" signs in connection with any unsold or unoccupied apartment it may from time to time own, and the same right is reserved to any institutional first mortgagee which may become the owner of an apartment, and to the Association as to any apartment which it may own.
- 12.8. Parking spaces. No truck or other commercial vehicle shall be parked in any parking space except with the written consent of the Board of Directors, except such temporary parking in spaces provided for the purpose as may be necessary to effectuate deliveries to the Condominium, the Association, or Unit Owners and residents.
- 12.9. Interior hallways. All doors between apartments and interior hallways shall be kept closed at all times when not being used for ingress or egress. Screen or screen doors on entrances between apartment units and interior corridors are prohibited unless specifically authorized by the Association.
- 12.10. Exterior appearance. No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out or exposed from any unit, limited common element, or common element. The common elements and limited common elements shall be kept free and clear of rubbish, debris and other unsightly material. Nothing shall be hung or displayed on the outside walls of any unit and no awning, canopy, shade, window guard, ventilator, fan, air conditioning device, radio or television antenna may be affixed to or placed upon the exterior walls or the roof of any part thereof without the prior consent of the Association and the Developer.
- 12.11. Regulations. Reasonable regulations concerning the use of condominium property including specifically the swimming pools may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-Laws. Copies of such regulations and amendments shall be furnished by the Association to all apartment owners and residents of the Condominium upon request.
- 12.12. Proviso. Provided, however, that until the Developer has completed all of the contemplated improvements and closed the sale of all the apartments of the Condominium, neither the apartment owners nor the Association, nor the use of the Condominium property shall interfere with the completion of the contemplated improvements and the sale of the apartments. 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, showing of the property, and the display of signs.

**13. Maintenance of community interests.** In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the units, the transfer of units by any owner other than the Developer shall be subject to the following provisions as long as the Condominium exists and the unit building in useful condition exist upon the land:

**13.1. Transfers subject to approval.**

- a) Sale. No unit owner may dispose of a unit or any interest in a unit by sale without approval of the Association.
- b) Lease. No unit owner may lease a unit for a term exceeding six months without approval of the Association, except with the express written consent of the Board of Directors of the Association, and such consent when once given and relied upon in connection with

the purchase or lease and acquisition of a Condominium unit may not thereafter be revoked or terminated without the consent of the unit owners.

- c) Gift. If any unit owner shall acquire title by gift, the continuance of his ownership of his unit shall be subject to the approval of the Association.
- d) Devise or inheritance. If any unit owner shall acquire his title by devise or inheritance, the continuance of his ownership of his unit shall be subject to the approval of the Association.
- e) Other transfers. If any unit owner shall acquire his title by any manner not considered in the foregoing sub-sections, the continuance of his ownership of his unit shall be subject to the approval of the Association.

13.2. Approval by Association. The approval of the Association that is required for the transfer of ownership of units shall be obtained in the following manner:

a) Notice to Association.

- 1) Sale. A unit owner intending to make a bona fide sale of his unit or any interest in it shall give to the Association notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. Such notice at the unit owner's option may include a demand by the unit owner that the Association furnish a purchaser of the units if the proposed purchaser is not approved; and if such demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell.
- 2) Lease. A unit owner intending to make a bona fide lease of his unit or any interest in it for a term exceeding six months shall give to the Association notice of such intention, together with the name and address of the intended leasee, such other information concerning the intended leasee as the Association may reasonably require and an executed copy of the proposed lease.
- 3) Gift, devise or inheritance; other transfers. A unit owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Association notice of the acquiring of his title, together with such information concerning the unit owner as the Association may reasonably require, and a certified copy of the instrument evidencing the owner's title.
- 4) Failure to give notice. If the above, required notice to the Association is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a unit, the Association at its election and without notice may approve or disapprove the transaction of ownership. If the Association disapproves the transactions or ownership, the Association shall proceed as if it had received the required notice on the date of such disapproval.

b) Certificate of approval.

- 1) Sale. If the proposed transaction is a sale then within thirty (30) days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by any officer of the Association, in recordable form.
- 2) Lease. If the proposed transaction is a lease, for a term exceeding six months, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by any officer of the Association, in non-recordable form.
- 3) Gift, devise or inheritance; other transfers. If the unit owner giving notice has acquired his title by gift, devise or inheritance or in any other manner, then within thirty (30) days after receipt of such notice and information the Association must either approve or disapprove the continuance of the unit owner's ownership of his unit. If approved, the approval shall be stated in a certificate executed by any officer of the Association in recordable form.

- c) Screening Fees. There shall be deposited and delivered to the Association a reasonable screening fee simultaneously with the giving of notice of intention to sell or lease for a term exceeding six months, or of transfer, gift, devise or inheritance, for the purpose of defraying the Association's expense and providing for the time involved in determining whether to approve or disapprove the transaction or continued ownership by a transferee. Screening fees shall be established by the Board of Directors. No fee shall be charged to the unit owner by the Association in connection with a transfer or approval in excess of the expenditures reasonably required and this expense shall not exceed FIFTY DOLLARS (\$50.00). No charge shall be made in connection with an extension or renewal of a lease. The provisions of this section shall not apply to, and there shall be no screening fee payable in connection with, the lease or sale of a Condominium unit by the Developer, nor the lease or sale of a Condominium unit by an institutional lender which has acquired such unit by foreclosure or by a transfer in lieu of foreclosure proceedings.
- d) Failure to give notice. If notice to the Association as hereinabove required is not given, then at any time after receiving knowledge of a transaction or event transferring ownership of a unit, the Association, at its election and without notice, may approve or disapprove the transaction. If the Association disapproves the transaction, the Association shall proceed as if it had received the required notice on the date of such disapproval. Any sale, mortgage or lease which is not authorized pursuant to the terms and provisions of this Declaration shall be void unless subsequently approved in writing by the Association.
- 13.3. Disapproval by Association. If the Association shall disapprove a transfer of ownership of a unit, the matter shall be disposed in the following manner:
- a) Sale. If the proposed transaction is a sale and if the notice of sale given by the unit owner shall so demand, then within thirty (30) days after receipt of such notice and information the Association shall deliver or mail by registered mail to the unit owner an agreement to purchase the unit signed by a purchaser approved by the Association, or an agreement to purchase signed in behalf of the Association by its President and attested by its Secretary, in which event the unit owner shall sell the unit to the named purchaser at the price and upon the terms stated in the disapproved contract to sell, excepting that at the option of the named purchaser the purchase price may be paid in cash at closing.
- 1) The sale shall be closed within thirty (30) days after delivery or mailing of the agreement to purchase, or upon the date designated in the disapproved contract, whichever date shall be later.
  - 2) A certificate of the Association executed by any of its officers in recordable form shall be delivered to the purchaser.
  - 3) If the Association shall fail to purchase or provide a purchaser upon demand of the unit owner in the manner provided, or if the purchaser furnished by the Association shall default in his agreement to purchase, the proposed transaction shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, in recordable form.
- b) Lease. If the proposed transaction is a lease, the unit owner shall be advised of the disapproval in writing, and the lease shall not be made.
- c) Gift, devise, or inheritance; other transfers. If the unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt from the unit owner of the notice and information required to be furnished, the Association shall deliver or mail by registered mail to the unit owner an agreement to purchase the unit concerned by a purchaser approved by the Association who will purchase and to whom the unit owner must sell the unit upon the following terms:
- 1) The sale price shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price 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 a judgment of specific performance of the sale upon the 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. In any such action for specific performance the prevailing party shall be entitled to recover his reasonable attorney's fees and court costs incurred.

- 2) The purchase price shall be paid in cash.
  - 3) The sale shall be closed within thirty (30) days following determination of the sale price.
  - 4) A certificate of the Association executed by any of its officers in recordable form shall be delivered to the purchaser.
  - 5) If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval such ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, in recordable form, to the unit owners.
- 13.4. **Mortgage.** No unit owner may mortgage his unit nor any interest in it without approval of the Association, except to a bank, life insurance company, savings and loan association, mortgage banker, or to a seller to secure a portion or all of the purchase price. The approval of any other mortgage may be arbitrarily withheld.
- 13.5. **Exceptions.** The foregoing provisions of this paragraph 13 shall not apply to a transfer to or purchase by a bank, life insurance company, savings and loan association or other institution that acquires its title as the result of owning a mortgage upon the unit concerned, whether the title is acquired by transfer from the mortgagor, his successors, or assigns, or through foreclosure proceedings; nor shall such provision apply to a transfer, sale or lease by a bank, life insurance company, savings and loan association or other institution that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale. Neither shall such provisions regarding obtaining approval of the Association or paying any screening fees apply to the Developer, as defined herein, so as to interfere with the Developer's right to freely sell, lease, transfer or otherwise deal with the title and possession of a unit in the ordinary course of business.
- 13.6. **Unauthorized transactions.** Any sale, mortgage or lease not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.
- 13.7. **Recording approval.** Whenever in this section an approval in recordable form is required of the Association in connection with the sale, transfer or pledging of a unit, it is understood and agreed that the said approval shall not be recorded except at the same time and simultaneously with the recording of the deed or mortgage, as appropriate.
- 13.8. **Notice of lien or suit.**
- a) A unit owner shall give notice, in writing, to the Association of every lien upon his unit other than for authorized mortgages, taxes and special assessments within five (5) days after the attaching of the lien.
  - b) **Notice of suit.** A unit owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his unit, such notice to be given within five (5) days after the unit owner shall receive knowledge or notice thereof.
  - c) **Failure to comply.** Failure to comply with this sub-section concerning liens will not affect the validity of any judicial sale.
- 13.9. Whenever in this section an approval is required of the Association in connection with the sale, transferring, leasing, or pledging of any unit, and such approval shall not have been obtained pursuant to the provisions hereof, failure upon the part of the Association to



object in writing to such sale, transfer, pledging or leasing within ninety (90) days after the date thereof, or within thirty (30) days of the date upon which the purchaser, transferee or leasee shall take possession of the premises, whichever date shall be later, shall constitute waiver by the Association of the written consent otherwise required by this section.

13.10. It shall be the responsibility of the Association to provide written notice to record mortgage holders of mortgages on units of this condominium in the event of default by the mortgagors of such units in the performance of the mortgagors obligations under this condominium declaration or the exhibits thereto, which default is not cured within thirty (30) days.

**14. Purchase of apartments by Association.** The Association shall have the power to purchase apartments subject to the following provisions:

14.1. Decision. The decision of the Association to purchase an apartment shall be made by its Directors, without the necessity of approval by its membership, except as is hereinafter expressly provided for.

14.2. Limitation. If at any time the Association shall be the owner or agreed purchaser of three (3) or more apartments in the Condominium, it may not purchase any additional apartments therein without the prior written approval of seventy-five (75%) percent of the members eligible to vote. A member whose apartment is the subject matter of the proposed purchase shall be ineligible to vote thereon, provided, however, that the limitations hereof shall not apply to apartments to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent assessments where the bid of the Association does not exceed the aggregate of the amounts due by virtue of any and all senior or superior liens against the apartment plus the amount due the Association, nor shall the limitation of this paragraph apply to apartments to be acquired by the Association in lieu of foreclosure of such liens if the consideration therefore does not exceed the cancellation of such lien.

**15. Liens.**

15.1. Subsequent Liens. Without the unanimous consent of the unit owners, no liens of any nature may be created subsequent to the recording of this Amendment to Declaration against the entire condominium property, as distinguished from individual units.

15.2. Labor and Material Liens. Unless a unit owner has expressly requested or consented to work being performed or materials being furnished to his unit, such work or materials shall not be the basis for the filing of a lien pursuant to the Mechanics Lien Law against the unit or Condominium parcel of any unit owner. No work performed or material furnished to the common elements shall be the basis for a lien thereon; provided, however, work or materials furnished to the common elements may be the basis for the filing of a lien against all Condominium parcels in the proportions for which the owners thereof are liable for common expenses, if and only if said work or materials are properly authorized by the Association.

15.3. Lien on Parcels. In the event a lien for work or materials against two or more Condominium parcels becomes effective, each owner thereof may relieve his Condominium parcel of the lien by paying the proportionate amount attributable to his Condominium parcel, or by exercising any of the rights of a property owner under the Mechanics' Lien Law.

**16. Compliance and default.** Each unit owner and the Association shall be governed by and shall comply with the terms of the Condominium Act, this Declaration of Condominium, Articles of Incorporation and By-Laws and any and all rules and regulations adopted pursuant to those documents, and all of such as they may be amended from time to time. Failure of a unit owner or the Association to comply with such documents and regulations shall entitle the appropriate party to the following remedies:

- 16.1. Enforcement. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the Association or by a unit owner against:
- a) The Association.
  - b) A unit owner.

c) Any director who willfully and knowingly fails to comply with these provisions. The prevailing party shall be entitled to recover reasonable attorney's fees. This relief does not exclude other remedies provided by law.

16.2. No Waiver of Rights. No provisions of the Condominium Act may be waived if the waiver would adversely affect the rights of a unit owner or the purpose of said provision, except that unit owners or members of the Board of Directors may waive notice of specific meetings in writing as provided in the By-Laws. The failure of the Association or any apartment owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation, the By-Laws or the Regulations shall not constitute a waiver of the right to do so thereafter.

**17. Amendments.** Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

17.1. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the members of the Association at which a proposed amendment is to be considered. There shall be at least fourteen (14) days written notice to each unit owner in advance of the meeting and the posting at a conspicuous place on the Condominium property a notice of the meeting at least fourteen (14) days prior to said meeting. Written notice shall be given as stated in paragraph 20 hereof. The foregoing requirements as to meetings are not to be construed, however, to prevent unit owners from waiving notice of meetings or from acting by written agreement without meetings.

17.2. A Resolution for the adoption of a proposed amendment may be proposed by the Board of Directors of the Association or by those members of the Association owning apartments in the Condominium. Owners may propose such an amendment by instrument in writing directed to the President or Secretary of the Board signed by persons owning not less than ten (10%) percent of the apartment in the Condominium. Amendments may be proposed by the Board of Directors by action of a majority of the Board at any regularly constituted meeting thereof. Upon an amendment being proposed as herein provided the President or, in the event of his refusal or failure to act, then the Board of Directors, shall call a meeting of those members of the Association owning apartments in the Condominium to be not sooner than fifteen (15) days not later than sixty (60) days thereafter for the purpose of considering said amendment. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

- a) Not less than sixty-six and two-thirds percent (66-2/3%) of the entire membership of the Board of Directors and not less than fifty-one percent (51%) of the apartment owners; or
- b) Not less than sixty-six and two-thirds percent (66-2/3%) of the votes of all of the apartment owners in the Condominium; or
- c) Not less than fifty-one percent (51%) of the unit owners constituting a quorum at a meeting of the entire membership of the Association whenever it shall appear that there is an omission or error in this Declaration or in other documents required by law to create the Condominium, provided that this procedure shall not be used if such an amendment would materially adversely affect property rights of unit owners unless the affected unit owners consent in writing; or
- d) If it shall appear through scrivener's error that a unit has not been designated as owning an appropriate undivided share of the common elements or does not bear an appropriate share of the common expenses or that all of the common expenses or interest in the common surplus or all of the common elements in the Condominium have not been distributed in this Declaration, so that the sum total of the shares of the common elements which have been distributed or the sum total of the common expenses or ownership of the common surplus fails to equal one hundred percent (100%) or if it shall appear that more than one hundred percent (100%) of the common elements or

common expenses or ownership of the common surplus have been distributed, such error may be corrected by the filing of an amendment to this Declaration approved by the Board of Directors or a majority of the unit owners. To be effective, the amendment must be executed by the Association and the owners of the units and the owners of mortgages thereon affected by the modifications being made in the share of the common elements, common expenses or common surplus. No other unit owner shall be required to join in or execute such an amendment; or

- e) In the alternative, an amendment may be made by an agreement signed and acknowledged by all Condominium unit owners in the manner required for the execution of a deed.
- 17.3. Provisio. No amendment shall discriminate against any unit owner or against any unit or class or group of units, unless the unit owners so affected shall consent; and no amendment shall change any unit nor the share in the common elements appurtenant to it nor increase the owner's share of the common expenses, unless the record owner of the unit concerned and all record owners of mortgages on such unit shall join in the execution of the amendment. Neither shall an amendment make any change in the paragraph entitled "Insurance" nor in the paragraph entitled "Reconstruction or Repair after Casualty" unless the record owners of all mortgages upon each of the Condominium parcels shall join in the execution of such amendment. Nor shall any amendment make any change which would have any effect on any of the rights, privileges, powers, and/or options herein provided in favor of or reserved to the Developer, as defined herein, so long as the Developer shall be selling, conveying, leasing, or transferring units in the ordinary course of business, unless the Developer shall join in the execution of such amendment, nor shall there be any amendment to make changes which would in any way affect any of the rights, privileges, powers and/or options herein provided in favor of or reserved to all record owners of mortgages of units of this Condominium, unless said mortgagees shall join in the execution of such amendment. Said record owners of mortgages shall be provided with written notification by the Association thirty (30) days prior to the effective date of any amendment to this Declaration of Condominium or any exhibits thereto.
- 17.4. Execution and recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, and the said certificate shall be executed by the President of the Association and attested to by the Secretary with the formalities of a deed, and shall be effective upon recordation thereof in the Public Records of Volusia County, Florida.
- 18. Termination. The Condominium may be terminated in the following manner, in addition to the manner provided by the Condominium Act:
  - 18.1. Destruction. If it is determined as elsewhere provided that the apartment building shall not be reconstructed because of major damage, the Condominium plan of ownership will be terminated without agreement.
  - 18.2. Agreement. The Condominium may be terminated at any time by the approval in writing of all record owners of apartments and all record owners of mortgages on apartments. Notice of a meeting at which the proposed termination is to be considered shall be given not less than thirty (30) days prior to the date of such meeting. Provided that the approval of owners of not less than seventy-five (75%) percent of the common elements, and the approval of all record owners of mortgages upon the apartments, are obtained at the meeting or within thirty (30) days thereafter, then the approving owners shall have an option to buy all of the apartments of the owners not approving of termination, said option to continue for a period of sixty (60) days from the date of such meeting. Approval by an owner of an apartment unit, or of a mortgagee encumbering an apartment unit, shall be irrevocable until expiration of the aforesaid option to purchase the apartment of owners not so approving, and if the option to purchase such apartment is exercised, then such approval shall be irrevocable. The option to purchase the apartments of owners not approving of termination shall be exercised upon the following terms:

- a) Exercise of option. The option shall be exercised by delivery or mailing by registered mail to each of the record owners of the apartments to be purchased an agreement to purchase signed by the record owners of apartments who will participate in the purchase. Such agreement shall indicate which apartments will be purchased by each participating owner and shall require the purchase of all apartments owned by owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.
  - b) Price. The sales price for each apartment shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by 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 apartment; and a judgment of specific performance of the sale upon the 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. In any such action for specific performance the prevailing party shall also be entitled to his reasonable attorneys' fees and costs incurred in connection therewith.
  - c) Payment. The purchase price shall be paid in cash, provided, in the event there shall be a pre-existing first mortgage on the condominium unit , and the mortgagee thereof shall be agreeable, then the purchaser shall have the option of assuming the remaining principal obligation thereof, and that portion of the purchase price which is in excess of such mortgage shall be payable in cash at closing.
  - d) Closing. The sale shall be closed within thirty (30) days following determination of the sale price.
- 18.3. Certificate. Termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its President and Secretary certifying to the facts effecting the termination, said certificate to become effective upon being recorded in the Public Records of Volusia County, Florida.
- 18.4. Shares of owners after termination. After termination of the Condominium the apartment owners shall own the Condominium property and all assets of the Association attributable to the Condominium as tenants in common in undivided shares in the common elements appurtenant to the owners' apartments prior to the termination.
- 18.5. Amendment. This section concerning termination cannot be amended without consent of all apartment owners and of all record owners or mortgages upon the apartments.
19. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, sub-section, sentence, clause, phrase or work, or other provision of this Declaration of Condominium and the Articles of Incorporation, By-Law, and Regulations of the Association shall not affect the validity of the remaining portions.
20. Notice. Whenever notice is required under the terms of this Declaration such notice shall be given in writing to the Secretary of the Association or to the unit owner, as the case may be, by personal delivery to the Secretary or unit owner or by sending such notice by U.S. mail addressed to the Association or to a unit owner as follows:

Association: Errol By The Sea Condominium Association, Inc.  
Errol By The Sea Condominium  
4501 S. Atlantic Avenue  
New Smyrna Beach, FL 32069

Unit Owner: As the unit owner's address appears on the books of the Association.

Mortgagee: As the address of the mortgagee appears on the books of the Association.

Notice served on the Secretary in the aforesaid manner shall constitute notice to the Association. In the event of a dispute as to whether the required notice was mailed, proof of such mailing shall be given by affidavit of the person giving notice and such proof shall be conclusive evidence of its mailing.


**21. Condemnation.** In the event that the Condominium property or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of such condemnation shall be payable to the unit owners or mortgagees as their interests apply, and as between the unit owners, all compensation and damages shall be payable as determined by the court having jurisdiction over such condemnation.

**22. The Condominium Act.** The Condominium Act is incorporated herein by reference, and all provisions thereof shall apply to this Condominium. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium in accordance with the laws of the State of Florida.

**23.** All exhibits, identified herein and attached hereto, as may be amended from time to time, are incorporated herein by reference and made a part hereof.

The Management Agreement consisting of ten pages records in O.R. Book 1728, Pages 1356 through 1364 inclusive, the Projected Operating Budget recorded in O.R. Book 1728, Page 1365 and the Monthly Budget Per Unit recorded in O.R. Book 1728, Pages 1366 and 1367, all of the Public Records of Volusia County, Florida, which documents and paper were recorded simultaneously with the Declaration of Condominium of ERROL BY THE SEA CONDOMINIUM, did not then and do not now constitute exhibits to the Declaration of Condominium and were recorded for informational purposes only and in consideration of each of those documents and papers no longer being in effect they are hereby repealed and rescinded and shall have no continuing affect whatsoever on ERROL BY THE SEA CONDOMINIUM or ERROL BY THE SEA CONDOMINIUM ASSOCIATION, INC.<sup>1</sup>

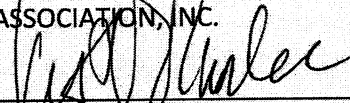
ATTEST:

  
\_\_\_\_\_  
Dale Fage, Secretary

Witness

  
\_\_\_\_\_

ERROL BY THE SEA CONDOMINIUM  
ASSOCIATION, INC.

  
\_\_\_\_\_  
Kenneth Rhodes, President

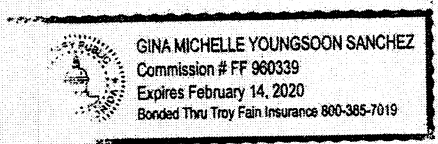
Witness

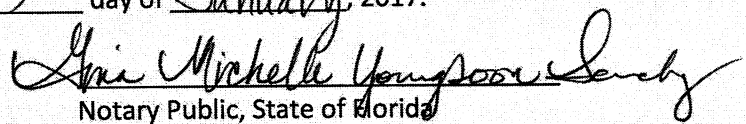
  
\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

BEFORE ME, the undersigned authority, appeared Kenneth Rhodes and Dale Fage, personally known to me or who produced \_\_\_\_\_ as identification, in their capacities as President and Secretary of ERROL BY THE SEA CONDOMINIUM ASSOCIATION, INC. who did/did not take oaths.

SWORN TO AND SUBSCRIBED before me this 5 day of January, 2017.



  
\_\_\_\_\_  
Notary Public, State of Florida

My Commission expires:

<sup>1</sup> The language in this paragraph comes from the amended Declaration of Condominium, Book 1924, Page 0281.