

DECLARATION OF CONDOMINIUM

OF

MALIBU NORTH CONDOMINIUM

WHEREAS 11201 N.W. 7th Street, Inc., a Florida corporation, hereinafter referred to as the Developer, owns the fee simple interest in certain real property, hereinafter described, and

WHEREAS the Developer intends to convert the aforesaid real property to the Condominium form of ownership, the Developer makes the following declarations:

1. SUBMISSION TO CONDOMINIUM FORM OF OWNERSHIP. The Developer hereby submits the real property herein described, together with the improvements thereon, to the Condominium form of ownership and use in the manner provided in Chapter 718 of the Florida Statutes, herein referred to as the Condominium Act. The Condominium shall be known as MALIBU NORTH CONDOMINIUM.
2. LEGAL DESCRIPTION. The legal description shall be that of Phase I as set forth in page 4 of Exhibit 1 to this Declaration. In the event that Phases II and/or III are added, the legal description upon such addition shall include that for Phases II and/or III as set forth in page 4 of Exhibits 2 and 3 respectively.
3. APPLICABLE LAW. The validity, application, and construction of any part or parts of these documents shall be governed by the laws of Florida.
4. DEFINITIONS. The terms used herein shall have the meaning stated in the Condominium Act, Chapter 718, Florida Statutes, and as follows unless the context otherwise requires:
 - 4.1 Approval or Consent. Whenever approval or consent is required of any person or entity, that approval or consent shall not be unreasonably withheld.
 - 4.2 Common Elements. "Common elements" shall include the Condominium property not included within the unit boundaries as defined in Section 5.4.
 - 4.3 Common Expenses. "Common expenses" include: (a) expenses of administration and management of the Condominium property; (b) expenses of maintenance, operation, repair or replacement of common elements; (c) expenses declared common expenses by the provisions of this Declaration or the By-Laws; and (d) any valid charge against the Condominium as a whole.
 - 4.4 Common Surplus. "Common surplus" means the excess of all receipts of the Association collected on behalf of a Condominium (including, but not limited to, assessments, rents, profits, and revenues on account of the common elements) over the common expenses.
 - 4.5 Condominium. "Condominium" means all of the Condominium property as a whole where the context so permits, including the land and all improvements thereon, and all easements and rights-of-way appurtenant thereto and intended for use in connection with the Condominium.

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- 4.6 Condominium Association. "The Association" means the Condominium Association described in Section 9 of the Declaration.
- 4.7 Lease. A "lease" shall mean the grant, either oral or in writing, by a Unit owner of a temporary right of use of said owner's Unit for a valuable consideration.
- 4.8 Reasonable Attorney's Fees. "Reasonable attorney's fees" means and includes reasonable fees for the services of attorneys at law whether or not judicial or administrative proceedings are involved, and if judicial or administrative proceedings are involved, then all review of the same by appeal or otherwise.
- 4.9 Singular, Plural Gender. Wherever the context so permits, the use of the singular shall include the plural and the plural the singular, and the use of any gender shall be deemed to include all genders.
- 4.10 Unit. "Unit" means a part of the Condominium property which is subject to exclusive ownership.
5. DEVELOPMENT PLAN. The Condominium is described and established as follows:
- 5.1 Plot Plans, Survey and Floor Plans. Attached hereto as Exhibit 1 are the Plot Plans, Survey, and other graphic descriptions which, together with the provisions of this Declaration, describe and depict Phase I of the Condominium, including the Units and common elements thereof. Exhibits 2 and 3 are the Plot Plans, Survey, and other graphic descriptions for Phases II and III of the Condominium which may be added as hereinafter provided.
- 5.2 Easements. Each of the following easements is reserved through the Condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the termination of the Condominium and the exclusion of any of the lands of the Condominium from the Condominium.
- a) Support. Each Unit shall have an easement of support and necessity and shall be subject to an easement of support and necessity in favor of all other Units and common elements.
- b) Utility Services, Drainage. Easements are reserved under, through and over the Condominium property as may be required for utility services and drainage in order to serve the Condominium; provided, however, such easements running through a Unit shall be only according to the plans and specifications for the building, or as such building is constructed or reconstructed, unless approved in writing by the Unit owner. The Association shall have the power to convey utility easements under, across or through the common elements. A Unit owner shall do nothing within or outside his Unit that interferes with or impairs the utility services using these easements. The Board of

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Directors of the Association and its authorized agents shall have a right of access to each Unit to inspect the common elements, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility service facilities and other common elements contained in the Unit or elsewhere in the Condominium property, and when necessary to prevent damage to the common elements or to another Unit or Units; provided such right of access shall not unreasonably interfere with the owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice.

- c) Encroachments. If (a) any portion of the common elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the common elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the improvements; (ii) settling or shifting of the improvements; (iii) any alteration or repair to the common elements made by or with the consent of the Association; (iv) any repair or restoration of the improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the common elements then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.
- d) Ingress and Egress. A perpetual easement in favor of each Unit owner, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, paths, walks and other portions of the common elements as from time to time may be intended and designated for such purposes and use; and for vehicular and pedestrian traffic over, through and across such portions of the common elements as from time to time may be paved and intended for such purposes.
- e) Sales Activity. For so long as there are any unsold Units, the Developer, its successors, and assigns, shall have the right to use any such Units and portions of the common elements for model apartments and sales offices, to display model apartments and the common elements to prospective purchasers, and to erect signs and other promotional materials upon the Condominium property.
- f) Additional Easements. The Association shall have the right to grant such additional electric, gas, or other utility easements or relocate any existing utility easements in any portion of the Condominium property, and to grant access easements or relocate any existing access easements in any portion of the Condominium property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the improvements, or any portion thereof, or for the general health and welfare of the Unit

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owners, or for the purpose of carrying out any provisions of this Declaration, provided that such easements will not prevent or unreasonably interfere with the use of the Units for their intended purposes. The Association shall also have the authority to enter into an easement agreement with the Condominium Association of Malibu Club, a Condominium, pursuant to which the Unit owners of Malibu North Condominium will have an easement upon the common elements of Malibu Club, a Condominium (including the swimming pool), and the Unit owners of Malibu Club, a Condominium, will have an easement upon the common elements of Malibu North Condominium. The terms of such an easement agreement may include a provision pursuant to which the Association and/or the Unit owners of Malibu North Condominium would become obligated to pay a proportionate part of the costs, including reserves, of operating and maintaining the swimming pool of Malibu Club, a Condominium.

- 5.3 Improvements. Phase I of the Condominium includes one two-story building containing a total of eight Units. Phases II and III, if added to the Condominium, will each include one two-story building containing eight Units. Reference is made to Exhibits 1 through 3 for a more complete description of the Units.
- 5.4 Unit Boundaries. Each Unit shall be bounded as to both horizontal and perimeter boundaries as below defined, whether the same exist now or are created by construction, settlement or movement of the building, or permissible repairs, reconstruction or alterations. The boundaries are intended to be as follows and shall be determined in the following manner:
- a) Horizontal boundaries. The upper and lower boundaries of the Units shall be:
 - 1) Upper boundary. The underside of the finished undecorated ceiling of the Unit, extended to meet the perimeter boundaries.
 - 2) Lower boundary. The upper side of the finished undecorated surface of the floor of the Unit, extended to meet the perimeter boundaries.
 - b) Perimeter boundaries. The perimeter boundaries shall be the interior surfaces of the perimeter walls of the Unit and the interior surfaces of the Unit's windows and doors that abut the exterior of the building or common areas.
 - c) Utilities. The Unit shall not be deemed to include pipes, wires, conduits, or other utility lines running through said respective Units which are utilized for or serve more than one Unit. These items shall be part of the common elements.
- 5.5. Common Elements. The common elements include the land and all the parts of the Condominium not within the Units as defined in Section 5.4.

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6. THE UNITS.

6.1 Identification of Units. The Units in the Condominium are identified by their respective street addresses on N.W. 50th Avenue, as depicted in Exhibits 1 through 3.

6.2 Appurtenances to Each Unit. The owner of each Unit shall own a certain interest in the Condominium property which is appurtenant to that Unit, including but not limited to, the following items:

a) Common Elements. The undivided share in the land and other common elements which is appurtenant to each Unit, as stated in Section 6.3.

b) Limited Common Elements. The terrace and private entry way adjoining each Unit is a limited common element appurtenant to that Unit.

c) Association Membership. Each Unit owner shall hold membership in the Association. Membership of each Unit owner in the Association shall be held pursuant to the provisions of the Articles of Incorporation and By-Laws of the Association.

d) Voting Rights. Each membership shall be entitled to one vote in the conduct of the affairs of the Association, as provided in the Articles of Incorporation and By-Laws of the Association.

6.3 Share of the Common Elements, Common Expenses. The undivided share of ownership of the common elements appurtenant to each Unit is 1/8. In the event that one additional phase is added to the Condominium, the undivided share appurtenant to each Unit (including both original and added Units) will be 1/16. In the event that two additional phases are added, the undivided share appurtenant to each Unit will be 1/24.

7. MAINTENANCE, ALTERATION, AND IMPROVEMENT. Responsibility for the maintenance of the Condominium property and restrictions upon the alteration and improvement thereof shall be as follows:

7.1 Maintenance. The responsibility for the maintenance of a Unit shall be as follows:

a) By the Association. The Association shall maintain, repair, and replace at the Association's expense:

1) Such portions of the Unit as contribute to the support of the building; also, wiring, piping, ductwork and other mechanical or electrical or other installations or equipment serving the common elements or more than one Unit.

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- 2) Provided that if the maintenance, repair and replacement of any of the above shall be made necessary because of the negligence, act or omission of a Unit owner, his lessees, invitees or guests, then the work shall be done by the Association at the expense of the Unit owner.
 - 3) All incidental damage caused to a Unit by work done or ordered by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the Unit as nearly as possible to its condition before the damage.
- b) By the Unit Owner. The responsibility of the Unit owner shall be as follows:
- 1) To maintain, repair and replace at his expense all portions of the Unit except the portions to be maintained, repaired and replaced by the Association. The Unit owner's responsibility specifically includes, without limitation, appliances, fixtures, switches, fan motors, compressors, wiring, piping and ductwork within the Unit and serving only the particular Unit. The Unit owner shall be responsible for cleaning the interior side of windows, doors and walls.
 - 2) A Unit owner shall not paint or otherwise decorate or change the appearance of any portion of the building not within the interior walls of the Unit, unless the written consent of the Association is obtained in advance.
 - 3) A Unit owner shall promptly report to the Association any defect or need for repairs, the responsibility for which is that of the Association.
 - 4) Subject to the other provisions of Section 7.1, which in all cases shall supersede and have priority over the provisions of this paragraph when in conflict therewith, a Unit owner may make such alterations or improvements to his Unit, at his sole and personal cost, as he may desire, provided all work shall be done without disturbing the rights of other Unit owners. A Unit owner shall make no changes or alterations to any wall, screening, exterior doors, windows, structural or load bearing member, electrical service or plumbing service, without first obtaining approval in writing of the Board of Directors of the Association. All alterations and improvements must be in compliance with all existing building codes. Provided, no such alteration or improvement may be made without the written approval of the Board of Directors of the Association if such alteration or improvement may or would

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cause an increase in the cost of the insurance carried by the Association.

- 7.2 The Association shall be responsible for the maintenance and repair of all common elements. A Unit owner shall indemnify the Association for any damages to a common element caused by the act of the Unit owner, his family, guests, invitees, or those leasing his Unit.
- 7.3 A Unit owner may not make any repair, alteration or addition to the common elements without the express written consent of the Board of Directors.
8. **ASSESSMENTS.** The making and collection of assessments against Unit owners for common expenses and for those reserves which may, from time to time, be established by the Association, shall be pursuant to the By-Laws and subject to the following provisions:
- 8.1 **Share of Common Expenses.** Each unit owner shall be liable for a proportionate share of the common expenses, and shall share in the common surplus, in the same proportion as his undivided interest in the common elements, as set forth in Section 6.3. Such right shall not vest or create in any Unit owner the right to withdraw or receive distribution of his share of the common surplus.
- 8.2 **Payments.** Assessments or installments on them paid on or before the day when the same shall become due shall not bear interest, but all sums not so paid on or before the same are due bear interest at the rate of 18 percent per annum until paid. All payments on account shall be first applied to the interest and then to the assessment payment first due. Assessments shall become due, and the Unit owner shall become liable for said assessments on the date set by the Association for payment thereof.
- 8.3 **Lien for Assessments.** The Association shall have a lien on each Unit for any unpaid assessments and for any interest thereon, which lien shall also secure reasonable attorneys' fees incurred by the Association incident to the collection of such assessment or enforcement of such lien. Said lien shall be effective from and after the time of recording in the Public Records of the county, a claim of lien stating the description of the Unit, the name of the record owner, the amount due and the due dates, and the lien shall continue in effect for one 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, in which event the lien will continue as permitted by law. Such claims of lien shall be signed and acknowledged by an officer or agent of the Association. Upon full payment, the party making payment shall be entitled to a satisfaction of lien. Liens for assessment may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property. When the mortgagee of a first mortgage of record or other purchaser of any Unit obtains title to the Unit, by a purchase at the public sale resulting from the first mortgage's foreclosure judgment in a foreclosure suit in which the Association has been properly named as a defendant junior lien-

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holder or when a mortgagee of a first mortgage of record obtains title to the Unit as a result of a conveyance in lieu of foreclosure of the mortgage, such acquirer shall not be liable for the share of the common expenses or assessments attributable to the Unit or chargeable to the former owner of the Unit which became due prior to acquisition of title as a result of the foreclosure or by deed in lieu of foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of common expenses or assessments shall be deemed to be a common expense collectible from all of the Unit owners including such acquirer, its successors and assigns.

- 8.4 Commencement of Assessments. Assessments shall commence on the first day of the month following the recording of this Declaration in the public records.
9. ASSOCIATION. The operation of the Condominium shall be by NALIBU NORTH CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the Laws 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 is attached as Exhibit 5. The Articles may be amended in the manner provided therein. The Articles may contain any provision relating to the governing or operation of the Condominium which is not inconsistent with the Declaration.
 - 9.2 By-Laws. The By-Laws of the Association shall be the By-Laws attached as Exhibit 6. The By-Laws, unless they shall provide otherwise, may be amended by majority vote of the Association members at a special meeting called for that purpose or at an annual meeting. The By-Laws may contain any provision relating to the governing or operation of the Condominium which is not inconsistent with this Declaration or the Articles of Incorporation.
 - 9.3 Delegation of Management. The Association may contract for the management and maintenance of the Condominium and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, and maintenance, repair and replacement of the common elements with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act.
 - 9.4 Working Capital Fund. The Developer shall establish a working capital fund equal to two months' estimated assessments for each Unit. Any amounts paid into this fund shall not constitute the advance payment of regular assessments. Each Unit's share of the working capital fund shall be collected at the time the sale of a Unit is closed and, except as hereinafter provided, shall be transferred to the Association for deposit to a segregated fund. Within 60 days after the closing of the first Unit conveyed, the Developer shall

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pay each unsold Unit's share of the working capital fund to the Association. Thereafter the Developer may retain as reimbursement the amounts collected from purchasers as working capital funds.

10. INSURANCE. Insurance which shall be carried upon the Condominium property shall be covered by the following provisions:

10.1 Authority and Duty to Purchase. Insurance policies covering the Condominium property shall be purchased by the Association for the benefit of the Association, and in the case of insurance covering damage to the Unit owners and their mortgagees as their interests may appear. Provision shall be made for the issuance of certificates or mortgagee endorsements to the mortgagees of Unit owners. It shall not be the responsibility or duty of the Association to obtain insurance coverage for personal liability, personal property, living expenses of any Unit owner, or any other loss for which the Association is not specifically required to obtain coverage hereunder, but the Unit owner may obtain such insurance at his own expense, provided insurance may not be of a nature to affect policies purchased by the Association. The Association shall use generally acceptable insurance carriers when purchasing insurance.

10.2 Coverage.

- a) Hazard Insurance. The Association must maintain a "master" or "blanket" type hazard insurance policy which protects against at least loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar condominiums, including those covered by the standard "all risk" endorsement. The premiums paid shall be a common expense. The policy must cover all of the general and limited common elements that are normally included in coverage, including fixtures, building service equipment, common personal property and supplies belonging to the Association. The policy also must cover fixtures, equipment and other personal property inside individual units, whether or not the property is part of the common elements. The insurance shall be in an amount which shall cover 100% of the current replacement cost of the condominium facilities, including the individual units. Unless a higher maximum amount is required by state law, the maximum deductible amount shall be the lesser of \$10,000 or 1% of the policy face amount. Funds to cover deductible amounts shall be included in the Association's reserve account. Coverage does not need to include land, foundations, excavations or other items that are usually excluded from insurance coverage. The policy shall contain the following provisions:

- 1) Special Endorsements. The policy shall contain: agreed amount and inflation guard endorsement, when it can be obtained; construction code endorsements, if there is a construction code

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provision that requires changes to undamaged portions of the buildings even when only part of the Condominium is destroyed by an insured hazard, including demolition cost endorsements, contingent liability from operation of building laws endorsement, and increased cost of construction endorsement; and if any building has a steam boiler, a steam boiler and machinery coverage endorsement providing that the insurer's minimum liability per accident at least equals the lesser of \$2 million or the insurable value of the building(s) having the boiler or machinery. In addition, the policy shall provide that any insurance trust agreement will be recognized; the right of subrogation against unit owners will be waived; the insurance will not be prejudiced by any acts or omissions of individual unit owners that are not under the control of the Association; and the policy will be primary, even if a unit owner has other insurance that covers the same loss.

- 2) Named Insured. The policy shall show the following as the named insured: Malibu North Condominium Association, Inc., for the use and benefit of the individual owners. The "loss payable" clause shall show the Association or the insurance trustee as a trustee for each unit owner and the holder of each unit's mortgage. The policy must also contain the standard mortgage clause. When a servicer is named as the mortgagee, its name shall be followed by the phrase "its successors and assigns."
- 3) Notices of Changes or Cancellation. The policy shall require the insurer to notify in writing the Association or insurance trustee and each first mortgage holder named in the mortgage clause at least 10 days before it cancels or substantially changes the Condominium's coverage.
- b) Liability Insurance. The Association must maintain a comprehensive general liability insurance policy covering all common areas, public ways and any other areas that are under its supervision as well as any units that may be owned by the Association, even if leased to others. The policy shall provide coverage of at least \$1 million for bodily injury and property damage for any single occurrence. The policy shall provide coverage for bodily injury and property damage that results from the operation, maintenance or use of the Condominium's common areas, and for any legal liability that results from lawsuits related to employment contracts in which the Association is a party. The policy must provide for at least 10 days' written notice to the Association and to each holder of a first mortgage on a unit before the insurer can cancel or substantially modify it. If the policy does not include "sever-

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ability of interest" in its terms, it must include a specific endorsement to preclude the insurer's denial of a unit owner's claim because of negligent acts of the Association or of unit owners.

- c) Flood Insurance. If any part of the Condominium is, or subsequently is determined to be, in a special flood hazard area - as defined by the Federal Emergency Management Agency - the Association must maintain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. Such a policy shall cover the buildings and any other property located within the designated hazard area. The amount of the insurance shall be at least equal to the lesser of 100% of the insurable value of the facilities and contents or the maximum coverage available for the property under the National Flood Insurance Administration Program. Unless a higher maximum amount is required by state law, the maximum deductible amount is the lesser of \$5000 or 1% of the policy face amount. Funds to cover this deductible amount (if flood insurance is required under this provision) shall be included in the Association's reserve account.

- d) Worker's Compensation Policy to meet the requirements of law.

10.3 Premiums. Premiums for insurance required or authorized herein shall be a common expense. Premiums shall be paid by the Association.

10.4 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit owners and their mortgagees as their interests may appear and shall provide that all proceeds covering property losses shall be paid to the Association. The Board of Directors of the Association shall hold all such proceeds in trust for the respective beneficiaries, and shall pay the proceeds in the manner provided herein.

10.5 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Unit owners in the following manner:

- a) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall become a part of the common surplus.
- b) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Unit owners and their mortgagees, if any, remittances to Unit owners and mortgagees being payable jointly to them. This is

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a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagees.

10.6 Association as Agent. The Association is hereby irrevocably appointed Agent for each Unit owner and for each owner of any other interest in the Condominium property, for the purpose of empowering the Association to negotiate and adjust all claims arising under the insurance policies purchased by the Association and to execute and deliver releases on behalf of each Unit owner upon payment of a claim.

10.7 Insurance Trustee. The Association may appoint an insurance trustee and enter into an insurance trust agreement. In such case insurance policies may be issued in the name of the insurance trustee for the use and benefit of the Unit owners.

11. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

11.1 Determination to Reconstruct or Repair. If any part of the Condominium property is damaged by casualty and the responsibility for the repair of any of the damaged property is that of the Association, the Association shall within 10 days obtain reliable and detailed estimates of the cost to rebuild or repair. These estimates shall be available to Unit owners. The damaged property shall be reconstructed or repaired unless (1) the damage exceeds twenty percent of the pre-casualty fair market value of the Condominium real property (including the Units and any real property which may be owned by the Association); (2) within 60 days after the casualty a majority of the Unit owners vote, at a meeting called for that purpose, that the Condominium be terminated; and (3) the eligible mortgage holders (as defined in Section 15.2 herein) representing at least 67% of the votes of mortgaged Units agree to termination.

11.2 Plans and Specifications. Any reconstruction or repairs 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 owners of 90% of the Units (including all of the owners of damaged Units), together with the approval of any mortgagee holding a first mortgage upon a damaged Unit, which approval shall not be unreasonably withheld.

11.3 Responsibility. If the damage is only to those parts of Units for which the responsibility of maintenance and repair is that of Unit owners, then the Unit owners shall be responsible for the timely reconstruction and repair after casualty.

11.4 Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost 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 payment of the costs of reconstruction and repair are insufficient, assessments shall be made against all Unit owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the owner's obligation for common expenses.

c) Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction and repair account for which the fund is established, such balance shall be distributed to the beneficial owners of the fund; except, however, that only those portions of a distribution to the beneficial owners in excess of assessments paid by a Unit owner to the construction fund shall be made payable to any mortgagees.

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- d) Fair Market Value. For purposes of Section 11 the fair market value shall be determined by the Board of Directors using either the most recent appraisal by the property tax appraiser or an appraisal performed by a qualified appraiser within one year of the determination.
12. USE RESTRICTIONS. The use of the Condominium property shall be in accordance with the following provisions as long as the Condominium exists in useful condition upon the land,
- 12.1 Units. Each of the Units shall be used only for residential purposes. No more than four persons may reside in a Unit at any one time.
- 12.2 Common Elements. The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Unit.
- 12.3 Leasing. There shall be no lease, sublease or assignment for a period of less than six months. The lease of a Unit shall not discharge the owner thereof from compliance with any of his obligations and duties as a Unit owner. All of the provisions of this Declaration, the Articles of Incorporation 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 a Unit as a tenant to the same extent as against a Unit owner.
- 12.4 Nuisances. No nuisances shall be allowed to exist upon the Condominium property, nor shall any use or practice which is the source of annoyance to residents, or which interferes with the peaceful possession and proper use of the property by its occupants, be allowed. All parts of the Condominium property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor shall any fire hazard be allowed to exist.
- 12.5 Rules and Regulations. Reasonable Rules and Regulations concerning the use of the Condominium property may be made, amended from time to time and enforced by the Association in the manner provided by its By-Laws. Copies of such Rules and Regulations and amendments thereto shall be furnished by the Association to all Unit owners and residents of the Condominium.
- 12.6 Developer's Use. Until such time as the Developer has sold all of the Units contained within the Condominium property, neither the Unit owners nor the Association, nor their use of the Condominium property shall interfere with the sale of said Units. The Developer may make such use of the unsold Units and the common elements as may facilitate such sale, including, but not limited to, maintenance of a sales office, display of sales signs, leasing said Units and showing the Units for sale to prospective purchaser. No "For Sale" or "Lease" sign may be displayed upon the Condominium property without the consent of the Association, except that no consent will be required for the Developer to display such signs.

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the power to purchase Units, subject to the following provisions:

13.1 Decision. The decision of the Association to purchase a Unit shall be made by the Board of Directors.

14. COMPLIANCE WITH DOCUMENTS. Each Unit owner shall be governed by and shall comply with the terms of this Declaration of Condominium and Rules and Regulations adopted pursuant thereto, as they may be amended from time to time.

14.1 Costs and Attorneys' Fees. If any proceeding arising because of an alleged failure of a Unit owner or the Association to comply with the requirements of the Condominium Act, this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations, and those items as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.

14.2 No Waiver of Rights. The failure of the Developer or the Association, or any Unit owner to enforce any covenant, restriction, or other provision of the Condominium Act, this Declaration, the By-Laws, or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so later.

15. AMENDMENTS. Subject to the other provisions of the Declaration relative to amendment, this Declaration and the Articles of Incorporation of the Association may be amended in the following manner:

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

15.2 Resolution. An amendment may be proposed by either the Board of Directors, or by a majority of the voting members of the Association. A resolution adopting a proposed amendment must bear the approval of at least 67% of the voting members of the Association. Members may express their approval in writing, delivered to the Secretary before such meeting. In addition, if any proposed amendment is material in nature, approval must be obtained from eligible mortgage holders representing at least 51% of the votes of Units that are subject to mortgages held by eligible mortgage holders. An "eligible mortgage holder" is a holder of a first mortgage on a Unit which has requested that the Association notify it of any proposed action that requires the consent of a specified percentage of eligible mortgage holders. An amendment is material in nature if it pertains to any of the following:

- a) voting rights;
- b) assessments, assessment liens, or the priority of assessment liens;

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- c) reserves for maintenance, repair, and replacement of common areas;
 - d) responsibility for maintenance and repairs;
 - e) reallocation of interests in the general or limited common areas, or rights to their use;
 - f) redefinition of any Unit boundaries;
 - g) convertibility of Units into common areas or vice versa;
 - h) expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;
 - i) insurance or fidelity bond;
 - j) leasing of Units;
 - k) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit;
 - l) a decision by the owners' Association to establish self-management when professional management had been required previously by the project's documents or by an eligible mortgage holder;
 - m) restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
 - n) any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
 - o) any provisions that expressly benefit mortgage holders, insurers, or guarantors.
- 15.3 Exception. Notwithstanding any provision herein other than Section 15.3, until such time as unit owners other than the Developer have elected a majority of the Directors as provided in the Articles of Incorporation of the Association, no amendment may be made without the consent of the Board of Directors.
- 15.4 Proviso. Provided, further, that no amendment shall discriminate against any Unit owner nor against any Unit or class or group of Unit owners or Units unless the Unit owners so affected, and their first mortgagees, consent. No amendment shall change any Unit's share in the common elements and other of its appurtenances, nor increase the owner's share of the common expenses, unless the owner of the Unit concerned, and all of such mortgagees as first above recited, join in the execution of the amendment. Neither shall an amendment of this Declaration make any change in Section 8 or 9 unless the record owners of all mortgages upon Units in the Condominium join in the execution of the amendment.

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- 15.5 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Public Records of the county.
16. TERMINATION OF CONDOMINIUM. The Condominium may be terminated in the following manner:
- 16.1 Agreement. The Condominium may be terminated at any time by approval, in writing, of all of the Unit owners and all of the holders of recorded liens affecting any of the Condominium parcels.
- 16.2 Damage. If the Condominium suffers damage to the extent specified in Section 11.1, the Condominium may be terminated in the manner specified therein.
- 16.3 General Provisions. Upon termination, the Unit owners shall be the owners, as tenants in common, of the Condominium property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements. The mortgagee and lienor of a Unit owner shall have a mortgage and lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other properties and rights which he may receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts affecting the termination, which certificate shall become effective upon being recorded in the Public Records of the county.
- 16.4 Amendment. This section concerning terminations may not be amended without consent of all Unit owners and of all record owners of mortgages upon the Units.
17. CONDEMNATION. In the event of the condemnation or threatened condemnation of all or any portion of the condominium property, the Association shall represent the Unit owners in any proceedings, negotiations, settlements or agreements. This provision constitutes the appointment of the Association as an attorney-in-fact of the Unit owners for such purposes. Any settlement or condemnation award shall be payable to the Association for the benefit of the Unit owners and their mortgage holders. Any distribution of funds by the Association shall be made on a reasonable and equitable basis.
18. ASSIGNMENT. All or any portion of the rights, privileges, powers and immunities granted or reserved to the Developer in this Declaration, and in the Articles of Incorporation and By-Laws of the Association, may be assigned by the Developer to any person, or any other entity, without the consent of any Unit owner or any holder of a mortgage secured by any Unit (other than the holder of a mortgage secured by any interest of the Developer in the Condominium), but only if such person or other entity shall agree to assume all of the duties and obligations of the Developer under this Declaration, and the Articles of Incorporation and By-Laws of

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the Association from and after the date of such assignment. In the event of the foreclosure of any mortgage held by the Developer, or conveyance of any Unit or interest in lieu of such foreclosure, the person first acquiring title to such Unit or Units or interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer in and to such Unit or Units or interest, as well as all duties and obligations of the Developer.

19. RIGHTS OF FIRST MORTGAGEES.

19.1 Abandonment or Change of Condominium. Prior written approval of any record holder of a first mortgage lien on a Unit is required:

- a) for the abandonment or termination of the Condominium, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- b) for any amendment to the Declaration which would decrease the percentage interests of the Unit in the ownership of the Condominium.

19.2 Condominium Records; Notice. Upon written request, any record holder of a first mortgage on a Unit in the Condominium will be entitled to:

- a) receive a copy of any audited annual financial statement prepared to comply with law, or at the authorization of the Board of Directors; and
- b) receive written notice of all meetings of the Condominium Association and be permitted to designate a representative to attend all such meetings.

19.3 Required Notices to Mortgage Holders, Insurers and Guarantors. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address of the pertinent Unit, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

- a) Any condemnation or casualty loss that affects either a material portion of the condominium or the Unit securing its mortgage.
- b) Any 60-day delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds the mortgage.
- c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owners' association.
- d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

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19.4 Availability of Condominium Documents and Records.

The Association shall make available to Unit owners and lenders, and to holder, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, other Rules concerning the Condominium and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

20. PHASE CONDOMINIUM. The Condominium is a "phase condominium" within the meaning of that term in Section 718.403, Florida Statutes. The Developer has the right but not the obligation to add Phases II and III to the Condominium by recording an amendment to this Declaration by the Developer describing the phase or phases being added. Phases II and/or III may be added by one amendment or by separate amendments. They need not be added in numerical order. Each phase is depicted and described in Exhibits 1 through 3 to this Declaration. The Developer may make nonmaterial changes in the legal descriptions of Phases II and III. The number of Units in each of Phases II and III shall be eight. The sizes of the Units in Phases II and III shall be those shown in Exhibits 2 and 3. Until such time as an additional phase is added, the fraction of ownership of each Unit in the common elements will be 1/8. Upon the addition of one phase, the fraction shall be 1/16. Upon the addition of two phases, the fraction shall be 1/24. A Unit's share of common expenses, common surplus and voting rights in the Association shall be the same as its fraction of ownership in the common elements. No time-share estates will be created in any phase. No phase may be added more than seven years from the date of recording of this Declaration. The addition of phases will not require the consent of any Unit owner.

21. SEVERABILITY. The invalidity in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provisions of this Declaration, the By-Laws, the Rules and Regulations or the Association, and any Exhibit attached hereto, shall not affect the remaining portions thereof.

IN WITNESS WHEREOF, the undersigned have herunto affixed their signatures on the 9th day of August, 1991.

11201 N.W. 7th STREET, INC.

Jim P. Padon
Witness

By: Harry Fishbein
President

Chas. H. ...
Witness

REPRODUCED FROM
OFFICE OF PUBLIC REGISTRATION
THIS DOCUMENT IS UNCLASSIFIED

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STATE OF FLORIDA
COUNTY OF BROWARD

MEMO: Legibility of writing:
typing or printing unsatisfactory in
this document: when microfilmed.

The foregoing instrument was acknowledged before me
this 04 day of August, 1991, by Harry
Fishbein, president, on behalf of 11201 N.W. 7th Street,
Inc., a Florida corporation.

(seal)

John P. Padron
Notary Public
My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. SEPT. 24, 1994
BONDED THRU GENERAL INS. 115, 1160.

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ARTICLES OF INCORPORATION

OF

MALIBU NORTH CONDOMINIUM ASSOCIATION, INC.

The undersigned, by these Articles associate themselves for the purpose of forming a corporation not for profit under Chapter 718, Florida Statutes, and certify as follows:

ARTICLE I - NAME

The name of the corporation shall be MALIBU NORTH CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as "the Association."

ARTICLE II - PURPOSE

The purpose for which the Association is organized is the operation of MALIBU NORTH CONDOMINIUM, which Condominium is created or to be created pursuant to Chapter 718 of the Florida Statutes, and is located in Broward County, Florida.

ARTICLE III - POWERS

The powers of the Association shall include and be governed by the following provisions:

- 3.1 The Association shall have all the common law and statutory powers of a corporation not for profit which are not in conflict with the terms of these Articles.
- 3.2 The Association shall have all powers and duties set forth in the Condominium Act and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration of Condominium as presently drafted and as it may be amended from time to time, including but not limited to the following:
 - a) Assess. To make and collect assessments against members as Unit owners to defray the costs, expenses, and losses of the Condominium.
 - b) Disburse. To use the proceeds of assessments in the exercise of its powers and duties.
 - c) Maintain. To maintain, repair, replace and operate the Condominium property.
 - d) Insure. To purchase insurance upon the Condominium property and insurance for the protection of the Association and its members as Unit owners, as well as liability insurance for the protection of Directors of the Association.
 - e) Reconstruct. To reconstruct improvements after casualty and further improve the Condominium property.

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Exhibit 5

ARTICLE IV - MEMBERS

- 4.1 The members of the Association shall consist of all the record owners of the Condominium Units; and in the event of termination of the Condominium, shall consist of those who are members at the time of such termination and their successors and assigns. If a Unit is owned by a corporation, partnership or more than one individual (in whatever capacity) the voting member shall be determined in the manner specified by the By-laws.
- 4.2 After the transfer of the ownership of a Unit, change of membership in the Association shall occur upon recording in the Public Records of the county in which the Condominium is situated, a deed or other instrument transferring record legal title to a Unit in the Condominium. The transferee(s) designated by such instrument thus automatically become(s) a member of the Association and the membership of the transferor is terminated.

ARTICLE V - DIRECTORS

- 5.1 The affairs of the Association shall be managed by a Board of Directors consisting of three Directors. The number of Directors may be increased by majority vote of those present at an annual meeting after the Developer no longer has the right to appoint any Director.
- 5.2 All of the duties and powers of the Association existing under the Condominium Act, Declaration of Condominium, these Articles and By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit owners when that is specifically required.
- 5.3 Subject to the Developer's right to appoint Directors, members of the Board of Directors shall be elected at the annual meeting of the Association members in the manner specified in the By-Laws. Such Directors may be removed and vacancies on the Board shall be filled in the manner provided in the By-Laws.
- 5.4 The initial Directors named herein shall serve at the pleasure of the Developer. They and any Director appointed by the Developer as a replacement may be removed by the Developer with or without cause. The Developer shall have the right to appoint all Directors which the membership is not entitled to elect. The membership shall not be entitled to elect a Director or Directors except as hereinafter provided.
- 5.5 Within 60 days after the Unit owners other than the Developer are entitled to elect a member or members of the Board of Directors, the Association shall call, and give not less than 30 nor more than 40 days notice of a meeting of the Unit owners to elect the Director(s). The meeting may be called and the notice given by any Unit owner if the Association fails to do so. Unit owners other than the Developer shall be entitled to elect a Director or Directors as follows:

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- a) When Unit owners other than the Developer own 15% or more of the Units, the Unit owners other than the Developer shall be entitled to elect one third of the Directors.
 - b) Unit owners other than the Developer are entitled to elect a majority of the Directors on the first to occur of the following:
 - 1) Three years after the Developer has conveyed 50% of the Units in the Condominium; or
 - 2) Three months after the Developer has conveyed 90% of the Units in the Condominium; or
 - 3) When all of the Units in the Condominium have been completed and some of the Units have been sold, and none of the others are being offered for sale by the Developer in the ordinary course of business;
 - 4) When some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business.
 - 5) Four months after 75% of the Units have been conveyed to Unit purchasers.
 - 6) Three years after the first Unit is conveyed.
 - c) Unit owners other than the Developer are entitled to elect all of the Directors at such time as the Developer no longer holds for sale in the ordinary course of business at least 5% of the Units in the Condominium.
- 5.6 Upon the election of a Director or Directors by Unit owners other than the Developer, the Developer shall by letter designate the Developer-appointed Director who is to be replaced. Until such time as the letter is received by the Board, the Director(s) elected by Unit owners other than the Developer shall have the power to designate an appropriate number of Developer-appointed Directors who shall not be entitled to vote at meetings of the Board.
- 5.7 The names and addresses of the members of the first Board of Directors, who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

<u>Name</u>	<u>Address</u>
Edward Stauber	3135 Royal Palm Avenue Miami Beach, FL 33140
Harry Fishbein	3758 Prairie Avenue Miami Beach, FL 33140
Sheldon B. Stauber	19952 N.E. 5th Court Miami, Florida

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5.8 If the Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

- a) Assessment of the Developer as a Unit owner for capital improvements.
- b) Any action by the Association that would be detrimental to the sale of Units by the Developer. However, an increase in assessments for common expenses without discrimination against the Developer shall not be deemed detrimental to the sale of Units.

ARTICLE VI - OFFICERS

The affairs of the Association shall be administered by the officers designated in the By-Laws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board of Directors. The offices of secretary and treasurer may be held by one person. The president and the secretary may not be residents of the same Unit. The names of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

President: Harry Fishbein
Secretary/Treasurer: Edward Stauber

ARTICLE VII - REGISTERED OFFICE AND AGENT

The street address of the initial registered office of the Corporation shall be:

3135 Royal Palm Avenue
Miami Beach, Florida 33140

The name of the Corporation's initial registered agent at such address shall be:

Edward Stauber

ARTICLE VIII - INDEMNIFICATION

Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed on him in connection with any proceeding or settlement of any proceeding in which he may be a party or in which he may become involved by reason of his being or having been a director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except with regard to expenses and liabilities incurred for breach of a fiduciary duty to the Association or any of its members.

The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

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ARTICLE IX - BY-LAWS

The first By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided by the By-Laws.

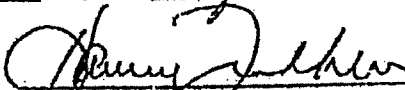
ARTICLE X - AMENDMENTS

Amendments to the Articles of Incorporation may be adopted by a majority of the members except that until such time as Unit owners other than the Developer acquire control of the Association, amendments may be made only by the Board of Directors.

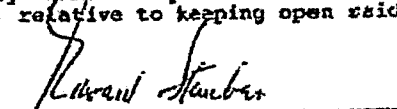
ARTICLE XI - TERM

The term of the Association shall be perpetual.

IN WITNESS WHEREOF, these Articles of Incorporation have been executed this 9th day of August, 1991.

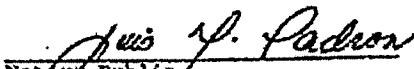

Harry Fishbein

Having been named to accept service of process for the above named corporation, at the place designated in these Articles of Incorporation, I hereby accept to act in this capacity, and agree to comply with the provisions of the laws of the State of Florida, relative to keeping open said office.


Edward Stauber
Registered Agent

STATE OF FLORIDA)
COUNTY OF DADE)

THE FOREGOING INSTRUMENT was acknowledged before me by Harry Fishbein, as a Subscriber of the above and foregoing Articles of Incorporation of MALIBU NORTH CONDOMINIUM ASSOCIATION, INC., this 9th day of August, 1991.


Notary Public

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. SEPT. 24, 1994
BONDED THIS GENERAL INS. UND.

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BY-LAWS
OF
MALIBU NORTH CONDOMINIUM ASSOCIATION, INC.

A FLORIDA CORPORATION NOT FOR PROFIT

SECTION I - IDENTITY

These are the By-Laws of MALIBU NORTH CONDOMINIUM ASSOCIATION, INC. ("the Association"), a Florida corporation not for profit organized pursuant to Chapters 617 and 718 of the Florida Statutes, for the purpose of administering MALIBU NORTH CONDOMINIUM, located in Broward County, Florida.

- 1.1 Office. The office of the Association shall be at 202 N.W. 60th Avenue, Margate, Florida 33063, or at such other place as the Board of Directors may from time to time determine, provided that if the office is outside of the county in which the Condominium is situated, it shall be within 50 miles of the Condominium.
- 1.2 Fiscal Year. The fiscal year of the Association shall be the calendar year, unless changed as provided herein.
- 1.3 Seal. The seal of the Association shall bear its name, the word "Florida," the words "Corporation not for profit" and the year of incorporation.
- 1.4 Definitions. All words used herein shall have their ordinary, commonly understood meaning, and where applicable, the meaning given in Section 4 of the Declaration of Condominium. The following additional definitions are provided:
 - a) "Member" shall refer to any record owner of a Unit. When a Unit is owned by a corporation, there shall be only one member from that Unit, as provided in Section 2.1, herein.
 - b) "Voting Member" shall refer to that one individual who is a member, who is empowered under Section 2.5 herein, to cast the one vote allocated to each Unit, where a vote of the Unit owners is required.

SECTION II - MEMBERSHIP AND VOTING PROVISIONS

- 2.1 Membership. Membership in the Association and the transfer thereof shall be determined in the manner provided in the Articles of Incorporation.
- 2.2 Voting Rights.
 - a) The owner(s) of each Condominium Unit shall have the voting rights to one (1) vote. If a Condominium Unit owner owns more than one (1) Unit, he shall be entitled to one (1) vote for each Unit owned. The vote of a Condominium Unit shall not be divisible.

EXHIBIT 6

- b) A majority of the Units owners' total votes shall decide any question, unless the Declaration of Condominium, By-Laws or Articles of Incorporation of the Association provide otherwise.
- 2.3 Quorum. The presence in person or by proxy of a majority of the Unit owner's total votes at a meeting of the membership shall constitute a quorum. In the event that a properly noticed membership meeting has failed to produce a quorum, the Board, by unanimous vote of all the Directors, may establish a quorum of a lesser number of Unit owners, but not less than one-third of the Unit owners' total votes, for the next meeting if that meeting is to be a special meeting. The notice of the next meeting shall state that such action has been taken by the Board.
- 2.4 Proxies. Votes may be cast in person or by proxy. All proxies shall be in writing and signed by the voting member (as set forth below). Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife, where a third person is designated. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. Every proxy shall be revocable at any time at the pleasure of the Unit owner executing it.
- 2.5 Designation of Voting Member. If a Condominium Unit is owned by one person, his right to vote shall be established by the recorded title to the Unit. If a Condominium is owned by a corporation, the officer or employee thereof entitled to cast the vote of the Unit for the corporation shall be designated in a certificate for this purpose, signed by the President and attested to by the Secretary of the corporation, and filed with the Secretary of the Association. The person designated in such certificate to cast the vote for a Unit shall be known as the "voting member." If such a certificate is not on file with the Secretary of the Association for a Unit owned by a corporation, the vote of the Unit concerned shall not be considered in determining the presence of a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Unit. Such certificates shall be valid until revoked or until superseded by the Unit concerned. If a Unit is owned jointly by two or more persons (or by a partnership), that Unit's vote may be cast by any record owner (or partner) present at the meeting at which such vote is taken. If more than one such owner (or partner) is present, and they are unable to agree as to how to cast their Unit's one vote, that vote shall not be considered for any purpose requiring the approval of a person entitled to cast the vote of the Unit; but it shall be considered for purposes of determining the presence of a quorum. If only one such owner (or partner) is present, such person shall be entitled to cast the Unit's votes.

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SECTION III - MEETINGS OF THE MEMBERSHIP

- 3.1 Place. All meetings of the Association membership shall be held at such reasonable place and time as shall be designated by the Board of Directors of the Association and stated in the Notice of Meeting, and shall be open to all Unit owners.
- 3.2 Notices. It shall be the duty of the Secretary to mail or deliver a notice of each annual or special meeting, stating the time and place thereof, to each Unit owner of record at least 14, but no more than 30, days prior to such meeting, except as provided in Article 5.5 of the Articles of Incorporation. All notices shall be mailed to or served at the address of the Unit owner as it appears on the books of the Association. Notices also shall be posted in a conspicuous place on the condominium property at least 14 days prior to the meeting.
- 3.3 Annual Members' Meeting. The annual members' meeting shall be held during the month of November each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the members. The date of this meeting shall be set by the Board of Directors.
- 3.4 Special Meeting. Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, and shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors, or (except as provided in Sections 4.4 and 7.2) at the request, in writing, of voting members representing 25% of the members' total votes, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meeting shall be confined to the objects stated in the notice thereof.
- 3.5 Adjourned Meeting. If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.
- 3.6 Order of Business. The order of business at annual members' meetings, and as far as practical at all other members' meetings, shall be:
- a) Calling of the role and certifying of proxies.
 - b) Proof of notice of meeting or waiver of notice.
 - c) Reading and disposal of any unapproved minutes.
 - d) Reports of Officers.
 - e) Reports of Committees.
 - f) Reports of Directors.
 - g) Unfinished business.

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- h) New business.
 - i) Adjournment.
- 3.7 Minutes of Meetings. The Association shall maintain minutes of each meeting in a businesslike manner and provide each member with access thereto. The Association shall retain the minutes for the period of at least seven years.

SECTION IV - BOARD OF DIRECTORS

- 4.1 Number, Term and Qualifications. The affairs of the Association shall be governed by a Board of Directors. All Directors, except those designated by the Developer, shall be members of the Association. Any officer of a corporate Unit owner shall be deemed to be a member of the Association so as to qualify to be a Director. Except for Directors appointed by the Developer, the term of each Director's service shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 4.4 below.
- 4.2 Organizational Meetings. The organizational meeting of a newly elected Board of Directors of the Association shall be held within 10 days of their election, at such place and time as shall be fixed by the President, and no further notice of the organizational meeting shall be necessary, provided a quorum shall be present.
- 4.3 Election of Directors. Except as to Directors who the Developer is entitled to appoint, members of the Board of Directors shall be elected by a majority of the votes cast at the annual meeting of the members of the Association.
- 4.4 Removal of Directors. At any time after the first annual meeting of the membership at any duly convened regular or special meeting, any one or more of the Directors other than those appointed by the Developer may be recalled and removed from office with or without cause by the vote or agreement in writing of a majority of all voting interests. A special meeting of the Unit owners to recall a member or members of the Board may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of Unit owners.
- 4.5 Vacancies. If the office of any Director or Directors other than those appointed by the Developer becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, shall choose a successor or successors, who shall hold office for the balance of the unexpired term in respect to which such vacancy occurred. The election held for the purpose of fulfilling said vacancy may be held at any regular or special meeting of the Board of Directors. In the event that the Board is comprised both of director(s) appointed by the developer and director(s) elected by Unit owners other than the developer, vacancies in developer-

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appointed seats shall be filled by the developer and vacancies in seats elected by Unit owners other than the developer shall be filled by election of a meeting of the members of which only Unit owners other than the developer may vote, in person or by proxy, and at which a quorum for purposes of that vote shall consist of a majority of Unit owners other than the developer.

- 4.6 Disqualifications and Resignation of Directors. Any Director may resign at any time by sending a written notice of such resignation to the office of the Association, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. The transfer of title of his Unit by a Director (except for a Director appointed by the Developer) shall automatically constitute a resignation.
- 4.7 Regular Meetings, Notice. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, and shall be open to all Unit owners. Notice of regular meetings shall be given or delivered to each Director, personally or by mail, telephone or telegraph, at least 3 days prior to the day named for such meeting. Except in emergency, notice of such meetings shall be posted conspicuously on the Condominium property 48 hours in advance for the attention of Unit owners.
- 4.8 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.
- 4.9 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the act of the Board of Directors, except where approval by a greater number of Directors is required by the Declaration of Condominium, the Articles of Incorporation of the Association or these By-Laws.
- 4.10 Adjourned Meetings. If at any meetings of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted. Notice of adjourned meetings shall be provided in the same manner as specified in Section 4.7 above.
- 4.11 Compensation. The Directors' fees, if any, shall be determined by the voting members of the Association.
- 4.12 Developer's Selection of Directors. So long as the Developer has the right to have its Directors on the Board of Directors, the Developer may designate as Directors persons who are not owners of Units in the Condominium. Said Directors may not be removed by members of the Association, as elsewhere provided herein; and when a vacancy occurs

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for any reason whatsoever, the vacancy shall be filled by a person designated by the Developer.

- 4.13 Presiding Officer. The presiding officer of Directors' meetings shall be the Chairman, who shall be elected by majority vote of the Directors at the organizational meeting. A Vice-Chairman also may be so elected.

SECTION V - LIMITATION OF LIABILITY

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium property, the Association shall not be liable for injury or damage, 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.

SECTION VI - OFFICERS

- 6.1 Officers and Election. The executive officers of the Association shall be a President, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors. The election shall take place at the first Board meeting following the annual meeting of the members.
- 6.2 Appointive Officers. The Board may appoint such other officers as the Board of Directors deems necessary.
- 6.3 Term. The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors, provided, however, that no officer shall be removed except by affirmative vote for removal by a majority of the whole Board of Directors. If any office becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.
- 6.4 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the President of an Association, including, but not limited to, the power to appoint committees from among the members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.
- 6.5 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an Association and as may be required by the Directors or the President.

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6.6 Treasurer. The Treasurer shall have the following duties:

- a) He shall have the custody of the Association's funds and securities, except the funds payable to any Management Firm, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all moneys and other valuable effects in the name of and to the credit of the Association, in such depositories as may be designated from time to time by the Board of Directors. The books shall reflect an account for each Unit in the manner required by Condominium Act.
- b) He shall disburse funds of the Association as may be ordered by the Board of Directors in accordance with these By-Laws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors, whenever they may require it, an account of all his transactions as the Treasurer and of the financial condition of the Association.
- c) He shall collect the assessments and maintenance fees and shall promptly report the status of collections and of all delinquencies to the Board of Directors.
- d) The duties of the Treasurer may be fulfilled by a Management Firm employed by the Association, and said Management Firm shall fulfill the duties of the Treasurer, and shall have custody of such books of the Association as it determines, in its sole discretion and the foregoing shall include any books required to be kept by the Secretary of the Association.

6.7 Compensation. The compensation, if any, of all officers shall be fixed by the members at their annual meeting.

SECTION VII - FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following provisions:

7.1 Accounts. The receipt and expenditures of the Association shall be credited and charged to accounts under the following classifications or others as shall be appropriate, when authorized and approved by the Board of Directors.

- a) Common Expenses. Common expenses shall include all receipts and expenditures to be made within the year for which the receipts are budgeted and may include a reasonable allowance for contingencies and working funds. The balance in this fund at the end of each year shall be applied to reduce the assessments for common expense for the succeeding year or to fund reserves.

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- b) Reserves for Deferred Maintenance. Reserve for deferred maintenance shall include funds for maintenance items which occur less frequently than annually.
- c) Reserves for Replacement. Reserve for replacement shall include funds for repair or replacement required because of damage, depreciation or obsolescence.
- d) Betterments. Reserves to be used for capital expenditures for additional improvements or additional personal property that will be part of the common elements.

7.2 Budget. The Board of Directors shall adopt a budget for each fiscal year, which shall include the estimated funds required to defray the current expenses and funds for necessary reserves. A copy of a proposed annual budget of common expenses shall be mailed to the Unit owners not less than 14 days prior to the meeting at which the budget will be considered, together with a notice of that meeting. The Unit owners shall be given written notice of the time and place at which such meeting of the Board of Directors to consider the budget shall be held, and such meeting shall be open to the Unit owners. If a budget is adopted by the Board of Directors which requires assessment against the Unit owners in any fiscal year exceeding 115% of such assessments for the preceding year, the Board, upon written application of 10 percent of the voting interests to the Board, shall call a special meeting of the Unit owners within 30 days, upon not less than 10 days' written notice to each Unit owner. At the special meeting, Unit owners shall consider and enact a budget. The adoption of the budget shall require a vote of not less than a majority vote of all the voting interests. The Board may propose a budget to the Unit owners at a meeting of members or in writing, and if the budget or proposed budget is approved by the Unit owners at the meeting or by a majority of all Unit owners in writing, the budget shall be adopted. If a meeting of the Unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the Unit owners, the budget adopted by the Board of Directors shall go into effect as scheduled. In determining whether assessments exceed 115 percent of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Condominium property, anticipated expenses by the Condominium Association which are not anticipated to be incurred on a regular or annual basis, or assessments for betterments to the condominium property shall be excluded from the computation. However, as long as the Developer is in control of the Board, the Board shall not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of a majority of all Unit owners. 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 Section 718.504(20), Florida Statutes, as it may be from time to time amended. In addition to annual operating expenses, the budget shall

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include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement costs of each reserve item.

- 7.3 Assessments. Assessments shall be payable in monthly installments, and shall be due on the same day of each month as specified by the Board of Directors.
- 7.4 Depository. The depository of the Association shall be such bank(s) as shall be designated from time to time by the Board of Directors. Withdrawal of moneys from such accounts shall be only by check signed by such persons as authorized by the Board of Directors.
- 7.5 Audit. An audit of the accounts by the Association, if required by law, by vote of a majority of the voting members, or by vote of the Board of Directors, shall be made annually by certified public accountant, and a copy of the audit report shall be available to any member not later than April 1 of the year following the year for which the audit is made.
- 7.6 Fidelity Bonds. The Association shall maintain blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The premiums on such bonds shall be paid by the Association and shall be a common expense. A management agent that handles funds for the Association shall also be covered by its own fidelity bond, which shall provide the same coverage required of the Association. All fidelity bonds shall name the Association as an obligee. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force, and shall not be less than the sum of 3 months' assessments on all Units in the Condominium, plus the Association's reserve funds. The bonds must include a provision that calls for not less than 10 days' written notice to the Association and to each servicer that services a FNMA-owned mortgage in the Condominium before the bond can be cancelled or substantially modified for any reason.
- 7.7 Application of Payments and Commingling of Funds. All sums collected by the Association from assessments and maintenance fees may be commingled in a single fund or divided into more than one fund, as determined by the Board of Directors. All assessment payments and maintenance fees by a Unit owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, expenses and advances as provided herein and in the Declaration of Condominium, as to general or special assessments, in such manner and amounts as the Board of Directors determines in its sole discretion.

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- 7.8 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each year; provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year at such time as it deems advisable upon obtaining any necessary consents of governmental authorities.

SECTION VIII - PARLIAMENTARY RULES

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

SECTION IX - AMENDMENT

The By-Laws may be amended in the manner set forth in the Declaration.

SECTION X - COMPLIANCE AND DEFAULT; REMEDIES

- 10.1 Violations. In the event of a violation (other than the nonpayment of an assessment) by a Unit owner of any of the provisions of the Declaration of Condominium, Articles of Incorporation of the Association, these By-Laws, or of the applicable portions of the Condominium Act, the Association, by direction of its Board of Directors, may notify the Unit owner by written notice of such breach, transmitted by mail, and if such violation shall continue for a period of 15 days from date of notice, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional, inexcusable and material breach of the Declaration, Articles of Incorporation, By-Laws, or Condominium Act, and the Association may then, at its option, have the following remedies:

- a) An action at law to recover for its damage, on behalf of the Association or on behalf of the other Unit owners;
- b) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief; or
- c) Any other remedy provided herein (other than by lien upon a Unit), or by law.

Any violations which are deemed by the Board of Directors to be a hazard to public health may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Unit owner. If after written demand by a Unit owner the Association fails to take action against a violation, a Unit owner may take appropriate legal action to enforce the provision violated.

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- 10.2 Negligence or Carelessness of Unit Owner. Each unit owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of his or her guests, invitees, employees, agents or lessees. Nothing herein contained, however, shall be construed so as to modify any waiver by any insurance company of its rights to subrogation.
- 10.3 Costs and Attorneys' Fees. In any legal proceedings arising because of an alleged default by a Unit owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.
- 10.4 No Waiver of Rights. The failure of the Association or of a Unit owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit owner to enforce such right, provision, covenant or condition in the future.
- 10.5 Election of Remedies. All rights, remedies and privileges granted to the Association or Unit owners, pursuant to any terms, provisions, covenants or conditions of the Condominium documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such other party by Condominium documents, or at law or in equity.

SECTION XI - LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

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

SECTION XII - RULES AND REGULATIONS

- 12.1 Adoption and Changes. The Board of Directors may from time to time adopt, amend or repeal provisions adopted by the Rules and Regulations governing the details of the operation, use, maintenance, management and control of the Condominium Units, the common elements and limited common elements of the Condominium and any facilities or services available to the Unit owners. A copy of the Rules and Regulations adopted from time to time as herein provided shall from time to time be posted in a conspicuous place and copies of same shall be furnished each Unit owner. The Initial Rules and Regulations attached herewith as Exhibit 7 shall be deemed to be adopted by the Board upon adoption of these By-Laws. Any subsequent adoption, amendment or repeal of a Rule or Regulation,

EXHIBIT 7

however, shall not be considered to be an amendment of these By-Laws, and shall require only the majority vote of the Board. The rules shall apply to tenants as well as to Unit owners.

- 12.2 Vicarious Responsibility of Unit Owners. Any violation of the Rules and Regulations by any occupant of a Unit, or by a guest or agent of an occupant or of the Unit owner, shall be considered to be a violation by the Unit owner.

SECTION XIII - FINES

- 13.1 Authority to Impose Fines. The Board of Directors may levy reasonable fines against an occupied Unit for failure of the owner of the Unit or its occupant, licensee or invitee to comply with any provision of the Declaration, the By-Laws, or the Rules and Regulations. No fine shall exceed \$50.00 per violation nor shall any fine be levied except after giving reasonable notice and opportunity for a hearing to the Unit owner and, if applicable, its licensee or invitee. For any violation occurring on or after January 1, 1992, the maximum fine shall be \$100.00 per violation.
- 13.2 Procedure. If the Board of Directors has reason to believe that a violation (or violations) as described in Section 13.1 has occurred, it shall provide the person(s) believed by them to have committed the violation(s) at least fourteen days' notice of a hearing thereon. The notice shall state the nature of the alleged violation, the approximate date of its occurrence and the time, date and place of the hearing. The notice shall be sent by certified mail or be hand delivered. At the hearing the Board shall present evidence of the alleged violation(s) and shall grant the person(s) believed to have committed the violation(s) with a reasonable opportunity to present contrary evidence and to provide any explanation. Evidentiary rules shall not apply. The Board's decision shall be based upon a preponderance of the evidence. If the Board determines that a violation has occurred, it may, in its sole discretion, suspend the fine on the condition that no further violations be committed by the offending party. The Board may adopt rules and regulations concerning the procedure for hearings and notice thereof which are not inconsistent with this Section.

SECTION XIV - ARBITRATION

In the event of a dispute arising from the operation of the Condominium among the Developer, Unit owners, the Association, and their agents and assigns, if the parties involved agree in writing, the dispute shall be resolved by binding arbitration. If the two parties agree upon one arbitrator, then that arbitrator shall resolve the dispute. If they do not agree upon an arbitrator, each party shall designate one arbitrator and the two arbitrators so chosen shall select a third. The arbitration shall be governed by the Florida Arbitration Code.

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MALIBU NORTH CONDOMINIUM

INITIAL RULES AND REGULATIONS

The Rules and Regulations hereinafter enumerated as to the Association properties, Condominium-property, the common elements, and the Units, shall be deemed in effect until amended by the Board of Directors of the Association, and shall apply to and be binding upon all those persons or entities as are enumerated in the By-Laws. Said Initial Rules and Regulations are as follows:

1. VIOLATIONS OF RULES AND REGULATIONS.

Violations should be reported to the President of the Association in writing, not to the Board of Directors or to the other officers of the Association. Violations will be called to the attention of the violating owner by the President of the Association and he will also notify the appropriate committee of the Board of Directors. Disagreements concerning violations will be presented to and judged by the Board of Directors who will take appropriate action.

2. OBSTRUCTIONS.

Sidewalks, stairways, entrances, driveways and passages must be kept open and shall not be obstructed in any manner. No sign, notice or advertisement shall be inscribed or exposed on or at any window or other part of the Condominium, except such as shall have been approved in writing by the Association; nor shall anything be projected out of any window in the Condominium without similar approval. No radio or television aerial or antenna shall be attached to or hung from the exterior of the Condominium or the roof thereon without the express approval of the Association.

3. EXTERIOR APPEARANCE.

The exterior of the Condominium and all other areas appurtenant to the Condominium shall not be painted, decorated or modified by any owner in any manner without prior consent of the Association, which consent may be withheld on purely aesthetic grounds within the sole discretion of the Association. No awnings, window guards, light reflective materials, hurricane or storm shutters, ventilators, fans or air conditioning devices shall be used in or about the Condominium except as shall have been approved by the Association, which approval may be withheld on purely aesthetic grounds within the sole discretion of the Association.

4. CLEANLINESS.

All garbage and refuse from the Condominium shall be deposited with care in garbage containers intended for such purposes only at such times and in such manner as the Association will direct. All disposals shall be used in accordance with instruction given to the owner by the Association.

EXHIBIT 7

The Board of Directors and its authorized agents shall have the authority to enter any Unit in the case of an emergency originating in or threatening the Condominium Unit. For purposes of the foregoing, an "emergency" shall mean an event in the nature of a fire, explosion, leak or natural disaster.

There shall be no solicitation by any person anywhere on the premises for any cause, charity or any purpose whatsoever, unless specifically authorized by the Board of Directors. This does not apply to solicitation within a commercial Unit by the owner or tenant thereof.

No repairs or maintenance of vehicles may be performed on the Condominium property except emergency repairs. Vehicles may not be washed on the Condominium property.

No pets other than cats and dogs weighing less than 25 lbs. may be kept on the Condominium property.

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9. **Parking Spots:** Each Unit Owner shall have the right, at no charge, to the exclusive use of one (1) automobile parking space, the exact location of which shall be assigned at the discretion of the Association. Subject to a "first come first served" basis, there may be a second parking space available for owners, the exact locations of which shall be assigned at the discretion of the Association. There shall also be guest parking, the exact location of which and number of spaces, each owner may only be entitled to park two (2) vehicles within the Association with any second vehicle on a "first come first served" basis in a second parking space if available. In order to facilitate parking assignments, the Board of Directors may assign a system of "decals" to identify vehicles allowed to park in the condominium. The Board may charge a reasonable fee to Unit Owners that reflect the actual cost associated with the system of providing decals. Vehicles, other than that of guest vehicles without identifying "decals" shall be deemed unauthorized and subject to towing as provided in Article 12.7 of the Declaration.

AMENDMENT TO THE
CORRECTED DECLARATION OF CONDOMINIUM
FOR MALIBU NORTH CONDOMINIUM

(Additions indicated by underlining, deletions by ~~striketthrough~~)

Amendment to Article 8 as follows:

8. ASSESSMENTS. The making and collection of assessments against Unit owners for common expenses and for those reserves which may, from time to time, be established by the Association, shall be pursuant to the By-Laws and subject to the following provisions:
- 8.1 Share of Common Expenses. Each unit owner shall be liable for a proportionate share of the common expenses, and shall share in the common surplus, in the same proportion as his undivided interest in the common elements, as set forth in Section 6.3. Such right shall not vest or create in any Unit owner the right to withdraw or receive distribution of his share of the common surplus.
- 8.2 Payments. Assessments or installments on ~~them~~ paid on or before the day when the same shall become due shall not bear interest, but all sums not so paid on or before the same are due bear interest at the rate of 18 percent per annum until paid and late charges at the maximum rate allowable by law. All payments on account shall be first applied to the interest and then to the assessment payment first due. Assessments shall become due, and the Unit owner shall become liable for said assessments on the date set by the Association for payment thereof.
- 8.3 Lien for Assessments. The association shall have a lien on each Unit for any unpaid assessments and for any interest and late charges at the maximum rate allowable by law thereon, which lien shall also secure reasonable attorneys' fees incurred by the Association incident to the collection of such assessment or enforcement of such lien. Said lien shall be effective from and after the time of recording in the Public Records of the county, a claim of lien stating the description of the Unit, the name of the record owner, the amount due and the due dates, and the lien shall continue in effect for one 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, in which event the lien will continue as permitted by law. Such claims of lien shall be signed and acknowledged by an officer or agent of the Association. Upon full payment, the party making payment shall be entitled to a satisfaction of lien. Liens for assessment may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property. When the mortgagee of a first mortgage of record or other purchaser of any Unit obtains title to the Unit, by a purchase at the public sale resulting from the first mortgagee's foreclosure judgment in a foreclosure suit in which the Association has been properly named as a defendant junior lienholder or when a mortgage of a first mortgage of record obtains title to the Unit as a result of a conveyance in lieu of foreclosure of the mortgage, such acquirer shall not be liable for the share of the common expenses or assessments attributable to the Unit or chargeable to the former owner of the Unit which became due prior to acquisition of title as a result of the foreclosure, or by deed in lieu of foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of common expenses or assessments shall be deemed to be a common expense collectible from all of the Unit owners including such acquirer, its successors and assigns.

- 8.4 Commencement of Assessments. Assessments shall commence on the first day of the month following the recording of this Declaration in the public records.

Amendment to Article 12.1 as follows:

- 12.1 Units. Each of the Units shall be used only for residential purposes and as single family private dwelling for himself and the adult members of his family and social guests, and for no other purposes. No more than four persons may reside in a Unit at any one time. A single family is defined as two (2) or more persons related by blood, marriage or legal adoption or no more than two (2) unrelated persons living in a single housekeeping unit, and subject to any other restrictions set forth in the Declaration or By-Laws. In the absence of the owner or lessee/renter of a Unit, each owner or lessee/renter shall register any guest or guests with the Association and provide the Association with such information, as it may require, prior to permitting a guest or guests to reside therein. The presence of an unregistered occupant in a Unit from which the owner or lessee/renter is absent shall be conclusive evidence as to the existence of an unauthorized, unapproved lease of a Unit. At any time after the original approval, any person or persons, regardless of their relationship to the Unit owner or other permanent occupant(s) of the Unit, seek occupancy for more than twenty-one (21) days, they must be screened and approved by the Board of Directors in advance of the occupancy.

Amendment to Article 12.3 as follows:

- 12.3 Leasing. The leasing restrictions as stated hereinafter have been consented to by the owners of the Units attached as Exhibit "A" to this amendment. Pursuant to Florida Statute 718.110(13), those Units owners as attached as Exhibit "A" and those Unit owners who have purchased subsequent to the effective date of the amendment shall be bound by this amendment. There shall be no lease, sublease, or assignment for a period of less than six months. The lease of a unit shall not discharge the owner thereof from compliance with any of his obligations and duties as a Unit owner. All of the provisions of this Declaration, the Articles of incorporation 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 a Unit as a tenant to the same extent as against a Unit owner.

(A) Subleases and Assignments of Lease are prohibited. The Board of Directors shall have the right to require a substantially uniform form of lease be used or in the alternative, the Board's approval of the lease form to be used shall be required. After approval, units may be leased, provided the occupancy is only by the Lessee, his family and social guests in accordance with Article 12.1 of this Declaration.

(B) Ten Percent (10 %) Cap on Leases: Notwithstanding anything contained herein to the contrary, once the number of Units leased equals ten percent (10 %) of the total number of Units within the Condominium, the Board may, in its absolute and sole discretion, prohibit the further leasing of Units for those Unit owners who have consented to the leasing restrictions and for those owners who have purchased their Units after the effective date of this amendment until such number of leased Units again equals ten percent (10%) or less of the total number of Units within the Condominium.

(c) Procedure for Sale or Lease. The phrase "sell or lease", in addition to its general definition, shall be defined as including the transferring of a unit owner's interest by gifts

or devise. Should a unit owner wish to sell, lease, or rent his or her Unit, the Unit owner shall, before accepting any offer to purchase, sell, lease or rent his or her Unit, deliver to the Board of Directors of the Association a written notice containing the terms of the offer that has been received or which he or she wishes to accept, the name and address of the person(s) to whom the proposed sale or lease or transfer is to be made, two bank references and three individual references (local, if possible), and such other information that the Board of Directors deems necessary in its sole discretion, (to be requested within ten (10) days from receipt of such notice) as may be required by The Board Directors of the Association. The Board of Directors of the Association is authorized to waive any or all of the references aforementioned. In addition, simultaneously with the giving of a notice to sell, lease or rent his or her Unit, the Association may require the payment of a preset screening fee of \$100.00, or the maximum amount allowable by law. No fee shall be collected in connection with an application to renew a previously approved lease. The Association may further require a background investigation as to the proposed purchaser's or lessee's finances, credit history, criminal history, residential history or otherwise. It shall be the duty of the Association to notify the owner of approval or disapproval of such proposed lease or sale within thirty (30) days after receipt of the application, complete with all required information, and the personal interview of the proposed lessee, whichever date last occurs. Failure of the Association to respond in writing within thirty (30) days shall be deemed to constitute approval.

(D) Disapproval of Leasing. If the Association disapproves a proposed lease or renewal, the owner shall receive a statement indicating same and the lease shall not be made or renewed. Any rental of a Unit made in violation of this Declaration shall be voidable and the Association may invoke any remedies provided by law, including but not limited to the initiation of immediate eviction proceedings to evict the unauthorized persons in possession. The Association shall neither have a duty to provide an alternate tenant nor shall it assume any responsibility for the denial of a lease application.

(E) Approval of Leasing. All leases shall be subject to prior approval of the Association. Approval shall not be unreasonably withheld. Within a reasonable time, not less than thirty (30) days prior to the commencement of the proposed lease term, an owner or his agent shall apply to the Association, in accordance with the procedures set forth in Article 12.02 above, for approval of such lease; if desired, the Board or its managing agent may prescribe the application form. The Association may waive the application requirement if the tenant/tenants has/have resided in the unit pursuant to an approved lease or other occupancy prior to the effective date of the instant lease. However, this shall not be construed as to allow leasing, renting, or occupancy by persons other than permitted guests without the advance written approval of the Board. The Board may require the use of a uniform lease or require the addition of an addendum, protecting the Association's interests. The owner or the intended lessee shall furnish such information as the Association may reasonably require, including a copy of the proposed lease, and the prospective lessee shall make himself or herself available for a personal interview, if desired by the Board, prior to the approval of such lease. The Association may require a background investigation as to the proposed lessee's finances, credit history, criminal history, residential history or otherwise. The interview may be conducted over the telephone if it would be inconvenient for the applicant to appear for a personal interview. It shall be the owner's obligation to furnish the lessee with a copy of the Declaration and applicable Rules and Regulations. Each lease, or addenda attached thereto, shall contain an agreement of the lessee to comply with the Declaration and applicable Rules and Regulations; shall provide or be deemed to provide that any violations of the aforementioned documents shall constitute a material breach of the lease; shall contain a provision appointing the

Association as agent for the owner so the Association may act on behalf of the owner to enforce the lease, evict the lessee, or otherwise. The owner shall not be relieved of any liability or responsibility hereunder by virtue of the existence of said lease or any of the foregoing provisions. The owner shall have a duty to bring his or her tenant/tenants conduct and actions into compliance with the Declaration and applicable Rules and Regulations by whatever action is necessary, including without limitation the institution of eviction proceedings, without notice to cure, where legally permissible. If the owner fails to bring the conduct of the tenant into compliance with the Declaration and applicable Rules and Regulations, the Association shall then have the authority to act as agent of the owner to undertake whatever action is necessary to abate the tenant/tenants non-compliance with the aforementioned documents, including without limitation the right to institute an action for eviction against the tenant/tenants in the name of the Association. The Association shall have a right to recover any costs or fees, including attorney's fees, from the owner which shall be secured by assessment and lien in the same manner as common expense charges.

(F) Disapproval of Lease or Sale. Approval of the Association shall be withheld only if a majority of the entire Board so votes. The Board may consider the following factors and may confer with counsel in reaching its decision. The following may be deemed to constitute good cause for disapproval:

(i) The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval intends to conduct himself or herself inconsistently with the Declaration or applicable Rules and Regulations Documents or the occupancy is inconsistent with the aforementioned documents.

(ii) The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons or property, or demonstrating dishonesty or moral turpitude.

(iii) The person seeking approval has a record of financial irresponsibility, including without limitation, bankruptcies, foreclosures or bad debts.

(iv) The owner allows a prospective lessee to take possession of the premises prior to approval by the Association as provided for herein.

(v) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other social organizations, communities or associations.

(vi) The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner.

(vii) All assessments, fines and other charges against the Unit have not been paid in full, provided however, the Association may grant approval subject to payment in full as a condition of the approval.

(G) Responsibility of owner for Lessees. The owner shall be responsible for the negligence, conduct, acts, or omissions of the owners's Guests, Lessees and Invitees. The owner

shall be responsible for any damage caused to the Association's common areas by the owner's Guests, Lessees and Invitees. In the event of non-payment by the owner of any damage to the common areas, such amounts will be considered assessments and collectable in the manner as provided in Article 8 of the Declaration.

(H) Right of Approval. All sales of Units shall be subject to prior approval of the Association. Approval shall not be unreasonably withheld. The Association shall be entitled to collect a screening fee as provided under Article 12.3 © of this Declaration. Each prospective owner is required to contact the Association and must complete an application for approval in accordance with Article 12.3 (c) of this Declaration. In addition, each prospective purchaser must be available for a personal interview if so required by the Association.

(I) Disapproval of Sale. If the Association disapproves a proposed sale, the owner shall receive a statement indicating same and the sale shall not be closed. Any sale or closing on a Unit made in violation of this Declaration shall be voidable and the Association may invoke any remedies provided by law, including but not limited to the initiation of immediate eviction proceedings to evict the unauthorized persons in possession. The Association shall neither have a duty to provide an alternate purchaser nor shall it assume any responsibility for the denial of a prospective purchaser. Approval of the Association shall be withheld only if a majority of the entire Board of Directors so votes. The Board of Directors may consider the factors as set forth under Article 12.3 (F) of this Declaration, and may confer with counsel in reaching its decision.

(J) Transfer of Association Documents. If a proposed sale of a Unit has been approved by the Association, the current owner shall be responsible for providing a complete set of the Association's governing documents, including any Rules and Regulations, to the prospective owner at the time of closing. If the current owner does not possess a complete set of the Association's governing documents, the current owner shall purchase a complete set of the Association's governing documents for the benefit of the prospective owner. In addition, the prospective owner shall be required to sign an agreement stating that he or she covenants and agrees to comply with the terms of the Declaration and applicable Rules and Regulations.

(K) Transfer to Family Member. The foregoing provisions of this Article 12 shall not apply to transfers by a unit owner to any member of his immediate family (viz., spouse, children or parents).

(L) Transfer by Devise or Inheritance. In the event a Unit owner dies and his Unit is conveyed or bequeathed to some person other than his spouse, children or parents, or if some other person is designated by the decedent's legal representative to receive the ownership of the Unit, or if under the laws of decedents and distribution of the State of Florida, the Unit descends to some person or persons other than the decedent's spouse, children or parents, the Board of Directors of the Association or, within thirty (30) days of proper evidence or rightful designation served upon the the Association, or within thirty (30) days from the date the Association is placed on actual notice of the said devisee or descendant, express its refusal or acceptance of the individual or individuals so designated as the owner of the Unit. If the Board of Directors of the Association shall consent, ownership of the Unit may be transferred to the person or persons so designated, who shall thereupon become the owner(s) of the Unit subject to the provisions of this Declaration. If, however, the Board of Directors of the Association

Association as agent for the owner so the Association may act on behalf of the owner to enforce the lease, evict the lessee, or otherwise. The owner shall not be relieved of any liability or responsibility hereunder by virtue of the existence of said lease or any of the foregoing provisions. The owner shall have a duty to bring his or her tenant/tenants conduct and actions into compliance with the Declaration and applicable Rules and Regulations by whatever action is necessary, including without limitation the institution of eviction proceedings, without notice to cure, where legally permissible. If the owner fails to bring the conduct of the tenant into compliance with the Declaration and applicable Rules and Regulations, the Association shall then have the authority to act as agent of the owner to undertake whatever action is necessary to abate the tenant/tenants non-compliance with the aforementioned documents, including without limitation the right to institute an action for eviction against the tenant/tenants in the name of the Association. The Association shall have a right to recover any costs or fees, including attorney's fees, from the owner which shall be secured by assessment and lien in the same manner as common expense charges.

(F) Disapproval of Lease or Sale. Approval of the Association shall be withheld only if a majority of the entire Board so votes. The Board may consider the following factors and may confer with counsel in reaching its decision. The following may be deemed to constitute good cause for disapproval:

(i) The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval intends to conduct himself or herself inconsistently with the Declaration or applicable Rules and Regulations Documents or the occupancy is inconsistent with the aforementioned documents.

(ii) The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons or property, or demonstrating dishonesty or moral turpitude.

(iii) The person seeking approval has a record of financial irresponsibility, including without limitation, bankruptcies, foreclosures or bad debts.

(iv) The owner allows a prospective lessee to take possession of the premises prior to approval by the Association as provided for herein.

(v) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other social organizations, communities or associations.

(vi) The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner.

(vii) All assessments, fines and other charges against the Unit have not been paid in full, provided however, the Association may grant approval subject to payment in full as a condition of the approval.

(G) Responsibility of owner for Lessees. The owner shall be responsible for the negligence, conduct, acts, or omissions of the owners's Guests, Lessees and Invitees. The owner

shall refuse to consent based on the criteria as discussed in Article 12.3 (F) of this Declaration then the legal representative of the deceased owner shall sell the said Unit and such sale shall be subject in all other respects to the provisions of the Declaration.

New Article 12.7 as follows:

Commercial Trucks, Trailers, Campers and Boats. No Boats or commercial vehicles, or campers, or trucks, mobile homes, motorhomes, house trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on the Condominium. For purposes of this Section, "commercial vehicles" shall mean those which are not designed and used for customary, personal/ family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The prohibitions on parking contained in this Section shall not apply to temporary parking of trucks and commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services, nor to passenger-type vans with windows for personal use which are in acceptable condition in the sole opinion of the Board (which favorable opinion may be changed at any time). For the purpose of this section, "trucks" shall include, but shall not be limited to, flat bed trucks, "dually" trucks, utility trucks, panel trucks or those trucks larger than a Ford F-250 and with an unloaded (curb) weight in excess of 6800 pounds (lbs). For the purpose of this section "trucks" shall not include private pick-up trucks or those vehicles commonly referred to as Sport Utility Vehicles which are used for customary, personal/family purposes. In addition, for the purpose of this section "trucks" shall not include private passenger vans of the size of a Ford E250 or smaller. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations now or hereafter adopted may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of 24 hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

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