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 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

Prepared by:
 Dania S. Fernandez, Esq.
 Dania S. Fernandez & Assoc., P.A.
 10205 South Dixie Highway, Ste. 204
 Pinecrest, FL 33156
 Telephone 305-254-4492
 dania@dsfpa.com

**CERTIFICATE OF THIS NOTICE OF ELECTION FOR THE PROPOSED
 AMENDMENT TO THE DECLARATION OF THE CONDOMINIUM FOR
 BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.
 ("ASSOCIATION")**

THIS CERTIFICATE OF AMENDMENT is executed this 1st day of December, 2015, by Joseph R. Gallaher, as President, Andrea Spivak, as Vice President/Secretary and Pierre Schmidt, as Treasurer of Banyan Gardens Condominium Owners Association, Inc., a Florida non-for-profit (hereinafter referred to as the "Association").

RECITALS

WHEREAS, the Association has been established for the operation of Banyan Gardens Condominium in accordance with the Declaration of Condominium for Banyan Gardens Condominium Owners Association, Inc. and related documents which were recorded on June 30, 1989, in Official Records Book 14165, Page 1392, of the Public Records of Miami-Dade County, Florida.

WHEREAS, pursuant to Article XXII, Section B(i) of the Declaration, the following amendment was approved by not less than 67% of the entire membership of the Board of Directors and by not less than 67% of the votes of the entire membership of the Association.

WHEREAS, pursuant to Article XXII, Section B(iv) of the Declaration, the following amendment was approved by 51% of eligible holders of first mortgages.

WHEREAS, there are 24 units within Banyan Gardens Condominium and 16 units were in favor of the adoption of the amendment herein provided.

WHEREAS, the Amendments was adopted on December 1, 2015 at 6:40pm at a duly held and noticed meeting, with the required quorum and affirmative votes needed as per the Declaration.

NOW THEREFORE, the Association does hereby state as follows:

1. New language is indicated by underlined type.
Deleted language is indicated by ~~struck through type~~.
2. Article XII, Section A (vii) of the Declaration of Condominium, is hereby amended as follows:

vii. Any UNIT owned by a corporation may be occupied only by persons approved by the ASSOCIATION, in writing, and such approval shall be granted to carry out the use of the UNIT for residential purposes only and not for temporary or transient tenancy. Corporately owned UNITS shall be used as residences and not as vacation or hotel accommodations.

Each UNIT shall be occupied by UNIT OWNER for a minimum of twenty-four (24) months before Leasing and/or Sub-leasing of his/her UNIT. All Leasing and Subleasing shall subject to Article XIII of the DECLARATION, as amended.

3. Article XIII, Section A (ii, iii, v, & vii), of the Amendment to Declaration recorded on August 3, 1990, recorded in Official Records Book 14652, in Page 1109 of the Public Records of Miami Dade County, Florida, Maintenance of Community Interests of the Declaration is hereby amended as follows:

ii. Any lease of a Unit shall be in writing and shall be subject to this DECLARATION and to the ARTICLES, BY-LAWS and rules and regulations. Leasing of Units or portions thereof shall be subject to the prior written approval of the Association. The Sub-leasing or sub-renting of a Unit Owner's interest is not permitted, unless approved by the BOARD OF DIRECTORS. The BOARD OF DIRECTORS shall have the power, but shall not be obligated, to terminate any lease and/or to bring summary proceedings in the name of the Lessor thereunder to evict the Lessee in the event of (1) a default by the Lessee in the performance of its obligations under such lease to the extent such default affects the ASSOCIATION in the sole opinion of the BOARD OF DIRECTORS or (2) a foreclosure of the lien granted under the CONDOMINIUM ACT.

iii. Except as hereinbefore set forth, the form of any lease shall contain such other provisions as may be required, in writing, by provisions as may be required, in writing, by the BOARD OF DIRECTORS. Any lease executed by the ASSOCIATION as Lessee shall provide that the ASSOCIATION may enter into a sublease of the premises without the consent of the Lessor. No lease shall be executed for an initial term of less than ~~six~~ twelve months, except those units owned by the ASSOCIATION.

v. ~~The foregoing restrictions shall not apply to UNITS owned by or leased to the DEVELOPER or owned by any Institutional First Mortgagee acquiring title by foreclosure or by a deed in lieu of foreclosure. Intentionally Deleted.~~

vii. A certificate executed and acknowledged by an officer of the ASSOCIATION stating that the provisions of the Article XIII have been satisfied by a UNIT OWNER shall be conclusive with respect to all persons who rely upon such certificate in good faith. The BOARD of DIRECTORS shall furnish such certificate upon request to any UNIT OWNER who has complied with the provisions of this Article XIII. No A one-hundred (\$100.00) administrative fee shall be charged by the ASSOCIATION in connection with the furnishing of such certificate, in excess of the charges reasonably required for same, such fee is subject to change at Board's discretion, and such charges shall not exceed the maximum amount allowed under the CONDOMINIUM ACT, as amended from time to time. No charge shall be made in connection with consideration of the approval of an extension or renewal of a previously approved lease.

4. All other provisions of these Sections and the governing documents shall remain the same.

IN WITNESS WHEREOF, the undersigned have executed the Certificate of Amendment this 1st day of December, 2015.

Signed in the presence of:

Banyan Gardens Condominium Owners Association, Inc.

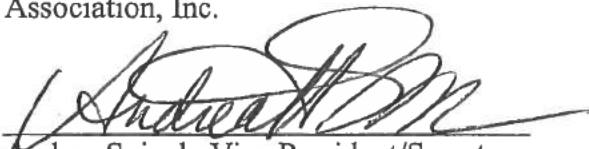
Donielle Perez
Kelly Scott


Joseph R. Gallaher, President

Signed in the presence of:

Banyan Gardens Condominium Owners Association, Inc.

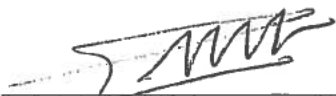
Donielle Perez
Kelly Scott


Andrea Spivak, Vice President/Secretary

Signed in the presence of:

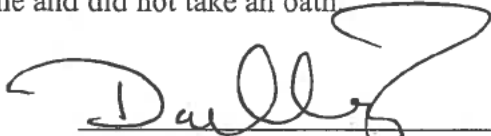
Banyan Gardens Condominium Owners Association, Inc.

Donielle Perez
Kelly Scott


Pierre Schmidt, Treasurer

State of Florida)
County of Miami-Dade)

The foregoing instrument was acknowledged before me this 15th day of December, 2015, by Joseph R. Gallaher, as President, Andrea Spivak, as Vice-President/Secretary, and Pierre Schmidt, as Treasurer of Banyan Gardens Condominium Owners Association, Inc., a Florida not for Profit Corporation, on behalf of the corporation. Who are personally known to me and did not take an oath.


Notary Public-State of Florida
Printed Name: Danielle Perez
My Commission Expires:





LAND CAP
PROPERTY SERVICES INC.

13800 SW 144 Ave Road
Miami, FL 33186
(305) 251-2234 Fax: (305) 252-6165
www.LandCapOffice.com
1983 - 2007 * Our 25th Anniversary

Banyan Gardens

A Condominium Association

Document

- Declaration of Covenants, Conditions and Restrictions
- Articles of Incorporation
- By- Laws
- Rules and Regulations

Keep in your files and refer to this document with any questions you may have about the Association.

Please transfer this document to the new owner if you sell your property.

BANYAN GARDENS, A CONDOMINIUM

INDEX

1. Condominium Filing Statement.
2. Filing Checklist.
3. Copy of check payable to Department of Business Regulation.
4. Receipt for Condominium Documents.
5. Escrow Agreement on Contract for Purchase and Sale.
6. Reservation Receipt.
7. Escrow Agreement on Reservation Receipt.
8. Sales Brochure.
9. Prospectus.
10. Index of Exhibits to Declaration of Covenants and Restrictions.
11. Declaration of Covenants and Restrictions.

OBR345

STATE OF FLORIDA
 DEPARTMENT OF BUSINESS REGULATION
 DIVISION OF FLORIDA LAND SALES AND CONDOMINIUMS
 725 SOUTH BRONOUGH STREET - JOHNS BUILDING
 TALLAHASSEE, FLORIDA 32399-1033
 TELEPHONE (904) 488-0744

The filing fee of \$15.00 for each residential unit to be sold by the developer as provided by ss. 718.502(3), F.S., must accompany this statement. If the offering is a phase condominium, pursuant to s. 718.403, F.S., the fee shall be paid as each phase is filed with the Division. A developer may submit more than one phase with this initial filing statement by identifying those additional phases after the name of the condominium.

NOTE: If the Declaration of Condominium is not yet recorded, Rule 70-17.01(4), Florida Administrative Code, requires that the developer must submit the recording information to the Division within 30 days of its recordation.

FOR STAFF USE ONLY

Prospectus _____ Plot Plan _____ I.D. No. _____
 Declaration _____ Floor Plan _____ Fee Rec'd \$ _____
 Articles _____ Budget _____ Form Review _____
 By-Laws _____ Receipt Form _____ Recommended _____
 Contract _____ Reviewed By _____

(1) Name of Condominium Banyan Gardens, A Condominium
 Street Address 16200-16246 S.W. 92nd Avenue
 City Miami County Dade State FL Zip Code 33157

(2) Name of Developer/Owner APD, Inc.
 Address 3001 Ponce de Leon Blvd.
 City Coral Gables County Dade State FL Zip Code 33134
 Telephone (305) 460-7000

(3) Developer's Attorney/Agent Mishan, Sloto, Hoffman & Greenberg, P.A.
 Address 200 South Biscayne Blvd. City Miami
 County Dade State FL Zip Code 33131 Telephone 305 379-1792

(4) Name of Condominium Association Banyan Gardens Condominium Owners Association, Inc.
 Address 3001 Ponce de Leon Blvd.
 City Coral Gables County Dade State FL Zip Code 33134

UNIT INFORMATION

- (5) What is the total number of units in the condominium, as described in the Declaration of Condominium (if a phase condominium filing pursuant to s. 718.403, F.S., what is the total number of units in all phases described in the declaration?) 24
- (6) If a phase condominium pursuant to s. 718.403, F.S., what is the total number of units in the phase(s) being filed? N/A
- (7) Have residential units been offered for sale in this condominium by another developer? Yes ___ No X
- (8) In order to determine the fees now payable pursuant to Rule 70-16.01, what is the number of units to be sold by the developer submitting this statement? (If a phase condominium, pursuant to 718.403, F.S., what is the number of units in phases being filed with this statement?) 24

CONDOMINIUM INFORMATION

(9) Is this condominium in a development that contains more than one condominium? (Multi Condominium) Yes ___ No X

If yes, please answer a, b, and c below.

- (a) Does each separate condominium have its own association? Yes ___ No ___
- (b) Is there only one association that operates all the condominiums? Yes ___ No ___
- (c) Are there both a separate association for each condominium and a master/umbrella association? Yes ___ No ___

(10) Will this condominium initially contain time-sharing plans or interval ownership units? Yes ___ No X

(a) If "yes", please answer the following:

- 1. What is the length of the time-share period? _____
- 2. How many time-share periods are set aside for maintenance? _____
- 3. How many time-share periods are described in this filing? _____
- 4. Will the time-share project participate in an exchange project? Yes ___ No ___

If "yes", please name the network _____

(b) Has the developer reserved the right to create time-sharing estates in this condominium at some future date? Yes ___ No X

(NOTE: A complete time-sharing filing pursuant to Chapter 721, Florida Statutes, must be submitted to the Division prior to offering if the developer exercises this right.

(11) Is this condominium a conversion of existing, previously occupied improvements? (Conversion Condominium) Yes ___ No X

(12) Is this a phase condominium pursuant to the requirements of s. 718.40, F.S.? (Phase Condominium) Yes ___ No X

(13) Are there units in this condominium that are unimproved parcels of land? (Land Condominium) Yes ___ No X

(14) Is this condominium in a development that contains, presently includes, or will include other types of home ownership such as single family detached homes or townhouses? (Planned Unit Development) Yes ___ No X

(15) What other legal condominium type not specified in questions 9 through 14 might characterize this condominium? (Leasehold, for example) N/A

RECORDING INFORMATION

(16) Is the Declaration of Condominium Recorded? Yes ___ No X

If yes, please provide the following information:

Date Recorded _____ Book _____ Page _____
County Where Recorded _____

CONSTRUCTION INFORMATION

(17) If the construction or remodeling, landscaping, and furnishing of the condominium property are not substantially complete in accordance with s. 718.202, F.S., what is the anticipated completion date?

June 1989

SHARED FACIL

- (18) Does or will this condominium share recreational or other facilities with other condominiums for which unit owners are assessed? Yes ___ No X
- (19) If the answer to question no. 18 is yes, is the total number of units in all condominiums that will share facilities greater than 20? Yes ___ No ___
- (20) Does the association operating this condominium employ professional management? Yes ___ No X
- If yes, please answer a, b, c, and d below.
- (a) Is there a written management contract? Yes ___ No ___
- (b) Is the management provided by a company? Yes ___ No ___
- (c) Is the developer of this condominium affiliated with the professional management? Yes ___ No ___
- (d) Is there a resident manager? Yes ___ No ___

LEASE INFORMATION

- (21) Are any units within this condominium subject to a recreational facilities lease? Yes ___ No X
- If yes, please answer a below.
- If no, please answer b below.
- (a) Does the lease have an escalation clause tied to a nationally recognized price index? Yes ___ No ___
- (b) If units in this condominium are not presently subject to a lease, was there ever a recreational facilities lease that contained such an escalation clause? Yes ___ No X
- (22) Are units in this condominium subject to a land lease? Yes ___ No X
- If yes, please answer a below.
- If no, please answer b below.
- (a) Does the land lease have an escalation clause tied to a nationally recognized price index? Yes ___ No ___
- (b) If units in this condominium are not presently subject to a lease, was there ever a land lease that contained such an escalation clause? Yes ___ No X

FINANCIAL INFORMATION

- (23) Is the developer obligated under any mortgage encumbering this development? Yes X No ___
- If yes, please provide the following information:
- Name of Lender Professional Savings Bank
- Address 3001 Ponce de Leon Blvd., Coral Gables
- State FL Zip 33134 Telephone (305) 460-7000

MISCELLANEOUS MAT

- (24) Is there a sales brochure for this condominium offering? Yes No
- (25) As a condition of ownership, are unit owners in this condominium required to join a club such as a golf or tennis club? Yes No
- (26) What is the date of the annual meeting of the association for this condominium? as determined by Board of Directors

DEVELOPER INFORMATION

- (27) If the developer has offered for sale or lease residential condominium units described by the attached documents for which there is a filing requirement prior to this filing being submitted to the Division, copies of these contracts are attached so that the Division may assure that all documents are in a proper form which purchasers are entitled to.
- (28) If the developer has closed on any contracts for sale, or contracts for lease with a lease period of more than five (5) years, prior to notification by the Division that the filing is proper or presumed proper, copies of those contracts and deeds, if deeded, are attached so that the Division may assure that all documents are in a proper form which purchasers are entitled to.
- (29) Is the information contained herein true and correct as of the date hereof and no material facts requested have been omitted to the best of your knowledge? Yes No

Uta Schramm
(Type or Print Name)

Uta Schramm
(Signature of Developer/Agent)

Attorney for Developer
(Title)

4/12/89
(Date)

FILING CHECKLIST

	EXECUTED COPY ENCLOSED	COPY OF PROPOSED INSTRUMENT ENCLOSED	N/A NO SUCH INSTRUMENT TO BE USED	WILL BE SUBMITTED AS AN AMENDMENT
PROSPECTUS TEXT		X		
DECLARATION OF CONDOMINIUM		X		
ARTICLES OF INCORPORATION	X			
CERTIFICATE OF INCORPORATION	X			
BYLAWS		X		
ESTIMATED OPERATING BUDGET		X		
FORM OF AGREEMENT FOR SALE OR LEASE		X		
RECEIPT FOR CONDOMINIUM DOCUMENTS		X		
ESCROW AGREEMENT		X		
CONTRACT SITE PLAN		X		
FLOOR PLAN		X		
SURVEY		X		
MANAGEMENT AND MAINTENANCE CONTRACTS			X	
GROUND LEASE			X	
FORM OF UNIT LEASE IF A LEASEHOLD			X	
LEASE OR AGREEMENT AND OTHER DOCUMENTS FOR USE OF RECREATION FACILITIES OR PROPERTY			X	
DECLARATIONS OF SERVITUDE			X	
CONVERSION INSPECTION REPORT			X	
TERMITE INSPECTION REPORT			X	
COVENANTS AND RESTRICTIONS		X		
RULES AND REGULATIONS		X		
SALES BROCHURE		X		

LAW OFFICES
MISHAN, SLOTO & HOFFMAN, P.A.
SOUTHEAST FINANCIAL CENTER-SUITE 2350
200 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131

PROFESSIONAL SAVINGS BANK

0002467

Check No.

63-158/670

04/12/89
DATE

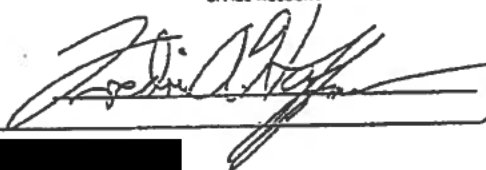
\$ 360.00
AMOUNT

PAY
TO THE
ORDER
OF

360 DOLLARS AND 00 CENTS

Department of Business Regulation

MISHAN, SLOTO & HOFFMAN, P.A.
OFFICE ACCOUNT



FOR Filing Fee 900.1



**RECEIPT FOR CONDOMINIUM DOCUMENTS
FOR
BANYAN GARDENS, A CONDOMINIUM**

The undersigned acknowledges that the documents checked below have been received or, as to plans and specifications, made available for inspection with respect to the condominium known as BANYAN GARDENS, 16200 - 16246 S.W. 92nd Avenue, Miami, Florida 33157.

SUBJECT CONDOMINIUM UNIT:

Unit _____ of BANYAN GARDENS, A CONDOMINIUM, according to the Declaration, recorded in Official Records Book _____ at Page _____ of the Public Records of Dade County, Florida.

ADDRESS OR PROPOSED ADDRESS OF UNIT: _____

Place a check in the column by each document received or for the plans and specifications as made available for inspection.

If an item does not apply, place "N/A" in the column.

DOCUMENTS:	RECEIVED
Prospectus Text	_____
Declaration of Condominium	_____
Articles of Incorporation	_____
By-Laws	_____
Estimated Operating Budget	_____
Form of Agreement for Sale or Lease	_____
Rules and Regulations	_____
Covenants and Restrictions	N/A
Ground Lease	N/A
Management and Maintenance Contracts for more than one year	N/A
Renewable Management Contracts	N/A
Lease for Recreational and other facilities to be used exclusively by Unit Owners of subject Condominiums	N/A
Form of Unit Lease, if a Leasehold	N/A
Declaration of Servitude	N/A
Sales Brochures	N/A
Phase Development Description	N/A
Lease of Recreational and other facilities to be used by Unit Owners with other Condominiums	N/A
Description of Management for Single Management for multiple Condominiums	N/A
Conversion Inspection Report	N/A
Conversion Termite Inspection Report	N/A
Plot Plan	_____
Floor Plan	_____
Survey of Land and graphic description of improvements	_____
Executed Escrow Agreement	_____

MADE AVAILABLE

Plans and Specifications _____

THE PURCHASE AGREEMENT IS VOIDABLE BY PURCHASER BY DELIVERING WRITTEN NOTICE OF PURCHASER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THE PURCHASE AGREEMENT BY THE PURCHASER AND RECEIPT BY PURCHASER OF ALL OF THE DOCUMENTS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER. THE AGREEMENT IS ALSO VOIDABLE BY THE PURCHASER BY DELIVERING WRITTEN NOTICE OF THE PURCHASER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE PURCHASER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. PURCHASER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF

NOT MORE THAN 15 DAYS AFTER PURCHASER HAS RECEIVED ALL OF THE DOCUMENTS REQUIRED. PURCHASER'S RIGHT TO VOID THE PURCHASE AGREEMENT SHALL TERMINATE AT CLOSING.

Executed this _____ day of _____, 19____.

PURCHASER:

ESCROW AGREEMENT

THIS AGREEMENT, made this 10th day of January, 1989, by and between MISHAN, SLOTO, HOFFMAN & GREENBERG, P.A., 200 South Biscayne Boulevard, Suite 2350, Miami, Florida 33131, hereinafter referred to as "Escrow Agent" and APD, INC. located at 3001 Ponce De Leon Boulevard, Coral Gables, Florida, 33134, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is offering for sale units in a condominium project to be known as BANYAN GARDENS CONDOMINIUM (the "Condominium") to be constructed on that certain real property located and being in Dade County, Florida; and

WHEREAS, Developer intends to offer units in the Condominium for sale to prospective purchasers under Reservation Receipts prior to the execution by such purchasers of the Contract; and

WHEREAS, Developer desires to make arrangements to escrow the deposits on each Reservation Receipt; and

WHEREAS, Escrow Agent has consented to hold all deposits it receives pursuant to the terms and provisions hereof,

NOW, THEREFORE, the Escrow Agent and the Developer do hereby agree as follows:

1. DEPOSITS. From time to time, Developer will deliver checks payable to MISHAN, SLOTO, HOFFMAN & GREENBERG, P.A., Escrow Agent, which will represent deposits on Reservation Receipts, together with a copy of each executed Reservation Receipt if required by the Escrow Agent and if not previously delivered with prior deposits. The Escrow Agent shall, acknowledge receipt of the deposit and deliver an executed copy of same to the Developer and the individual unit purchaser.

2. DISBURSEMENTS. The Escrow Agent agrees to disburse the purchaser's deposit escrowed hereunder and a prorata portion of any interest earned thereon, subject to clearance of funds, in accordance with the following:

(a) To purchasers under Reservation Receipts who have not yet executed Contracts, within ten (10) days after receipt of written demand from such purchaser. Escrow Agent shall notify Developer of every such return of reservation deposits. Escrow Agent is responsible for not releasing the reservation deposit directly to the Developer except as a downpayment on the purchase price at the time of the execution of the Contract. Notwithstanding anything to the contrary contained in this

Paragraph 2(a), Escrow Agent's obligation to return such reservation deposit to a purchaser shall, subject to the terms and conditions hereinafter contained, terminate after the purchaser has executed a binding contract.

(b) If the deposit of a purchaser, together with any interest earned thereon, has not been previously disbursed in accordance with the provisions of subparagraph 2(a) above, the same shall be disbursed to the Developer upon receipt from the Developer of a closing statement or other verification signed by the purchaser or his attorney or authorized agent reflecting that the transaction for the sale and purchase of the subject unit has been closed and consummated.

(c) The Escrow Agent shall at any time make distribution of the Purchaser's deposit and interest earned thereon upon written direction duly executed by the Developer and Purchaser.

3. INVESTMENTS. The Escrow Agent shall, if the Developer so elects, invest the deposits received hereunder in savings or time deposits in institutions insured by an agency of the United States, or in securities of the United States or any agency thereof, or in such other lawful manner as Developer shall direct, provided title thereto shall always evidence the escrow relationship. Any and all interest earned thereon shall be disbursed as provided in Florida Statute Section 718.202.

4. CAPACITY OF ESCROW AGENT. The parties hereto acknowledge and agree that nothing herein shall prohibit Escrow Agent from serving in a similar capacity on behalf of other Developers or other clients.

5. LIABILITY. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statements or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof, has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instructions delivered to it, nor as to the identity, authority or rights of any person executing the same. The duties of the Escrow Agent shall be limited to the safe keeping of the deposits and for disbursements of same in accordance with the written instructions described above. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. Upon the Escrow Agent disbursing the deposit of a purchaser in accordance with the provisions hereof, the escrow shall terminate as regards said purchaser's deposit and Escrow Agent shall thereafter be released

of all liability hereunder in connection therewith.

6. INDEMNIFICATION. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authority and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or error of judgment or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence and Developer agrees to indemnify and hold the Escrow Agent harmless from any claims, demands, causes of action, liability, damages, judgments, including the cost of defending any action against it together with any reasonable attorneys' fees incurred therewith in connection with Escrow Agent's undertaking pursuant to the terms and conditions of this Escrow Agreement, unless such act or omission is a result of the willful misconduct or gross negligence of the Escrow Agent.

7. INTERPLEADER. In the event of disagreement about the interpretations of this Agreement or about the rights and obligations set forth herein or the propriety of any action contemplated by the Escrow Agent hereunder, Escrow Agent may, at its sole discretion, file an action in interpleader to resolve the said disagreement. Escrow Agent shall be indemnified by Developer for all costs, including reasonable attorneys' fees, in connection with the aforesaid interpleader action.

8. RESIGNATION OF ESCROW AGENT. The Escrow Agent may resign at any time upon the giving of thirty (30) days written notice to the Developer. If a Successor Escrow Agent is not appointed within thirty (30) days after notice of resignation, the Escrow Agent may petition any court of competent jurisdiction to name a Successor Escrow Agent and the Escrow Agent herein shall be fully relieved of any liability under this Agreement to any and all parties upon the transfer of the escrow deposit to the Successor Escrow Agent either designated by the Developer or appointed by the Court.

9. REPLACEMENT OF ESCROW AGENT. The Developer shall have the right to replace the Escrow Agent upon thirty (30) days written notice with a Successor Escrow Agent named by the Developer. In such event, the Escrow Agent shall turn over to the Successor Escrow Agent all funds, documents, records and properties deposited with the Escrow Agent in connection herewith and thereafter shall have no further liability hereunder.

10. APPLICABLE LAW. This Agreement shall be construed and enforced according to the laws of the State of Florida and this Agreement shall be made a part, in its entirety, of any Prospectus or Offering Circular distributed to purchasers or prospective purchasers of units in the Condominium.

11. INCORPORATION BY REFERENCE. This Escrow Agreement shall be expressly incorporated by reference in all Reservation Receipts between Developer and purchaser.

12. ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof and shall be binding upon the parties, their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Signed in the presence of:

MISHAN, SLOTO, HOFFMAN &
GREENBERG, P.A., Escrow Agent

Paula Vitell
Alta Schramm

By: James R. Sloto
JAMES R. SLOTO

APD, INC., Developer

Caiceda Brusso
John Brusso

By: John Brusso
John Brusso

RESERVATION RECEIPT

PROPOSED CONDOMINIUM UNIT # _____, BUILDING # _____ of
BANYAN GARDENS CONDOMINIUM

PURCHASE PRICE: \$ _____

BANYAN GARDENS CONDOMINIUM, INC. acknowledges receipt of a check (subject to clearance) in the sum \$ _____, payable to MISHAN, SLOTO, HOFFMAN & GREENBERG, P.A., Escrow Agent, whose address is 200 S. Biscayne Boulevard, Suite 2350, Miami, Florida 33131, as a good faith refundable deposit for the purchase of the above Condominium Unit from:

PURCHASER NAME: _____
HOME ADDRESS: _____ ZIP: _____
MAILING ADDRESS: _____ ZIP: _____
PHONE: (HOME) _____ (OFFICE) _____

The sole purpose of this Reservation Receipt is to permit the Purchaser to temporarily reserve the Unit until the Purchaser has executed the formal Agreement of Purchase and Sale (the "Agreement"), which Purchaser agrees to do within forty-eight (48) hours after receipt of same from Seller. Seller is obligated to file condominium documents with the Division of Florida Land Sales and Condominiums prior to entering into said Agreement. Purchaser shall receive all Condominium Documents required Florida Statutes 718 at or prior to the time of signing such Agreement.

Purchaser shall be entitled to a receipt for his deposit, and Escrow Agent shall provide such receipt. Purchaser shall be entitled to the immediate unqualified refund of his deposit upon written request to the Escrow Agent by the Purchaser or by Seller at any time prior to execution of the Agreement. Upon a refund being made at the request of either Purchaser or Seller, the Purchaser and the Seller shall both be released and relieved from any further liabilities and obligations hereunder, and this Reservation Receipt shall be terminated.

The purchase price hereinabove set forth for this Unit is guaranteed by the Developer to be the same price as will be set forth in the Agreement of Purchase and Sale.

DATED this ____ day of _____, 1989.

APD, INC.

By: _____

PURCHASER

PURCHASER

APD, INC.

ESCROW AGREEMENT

THIS AGREEMENT, made this 5th day of June, 1989, by and between MISHAN, SLOTO, HOFFMAN & GREENBERG, P.A., 200 South Biscayne Boulevard, Suite 2350, Miami, Florida 33131, hereinafter referred to as "Escrow Agent" and APD, INC. located at 3001 Ponce De Leon Boulevard, Coral Gables, Florida, 33134, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is offering for sale units in a condominium project to be known as BANYAN GARDENS CONDOMINIUM (the "Condominium") to be constructed on that certain real property located and being in Dade County, Florida; and

WHEREAS, Developer intends to offer units in the Condominium for sale to prospective purchasers prior to substantial completion of all condominium units and amenities; and

WHEREAS, Developer desires to make arrangements to escrow the deposits on each Agreement for Purchase and Sale; and

WHEREAS, Escrow Agent has consented to hold all deposits it receives pursuant to the terms and provisions hereof,

NOW, THEREFORE, the Escrow Agent and the Developer do hereby agree as follows:

1. DEPOSITS. From time to time, Developer will deliver checks payable to MISHAN, SLOTO, HOFFMAN & GREENBERG, P.A., Escrow Agent, which will represent deposits on Agreement of Purchase and Sale, together with a copy of each executed Agreement of Purchase and Sale if required by the Escrow Agent and if not previously delivered with prior deposits. The Escrow Agent shall, acknowledge receipt of the deposit and deliver an executed copy of same to the Developer and the individual unit purchaser.

2. DISBURSEMENTS. The Escrow Agent agrees to disburse the purchaser's deposit escrowed hereunder and a prorata portion of any interest earned thereon, subject to clearance of funds, in accordance with the following:

(a) The deposit of a purchaser shall be disbursed to the Developer upon receipt from the Developer of a closing statement or other verification signed by the purchaser or his attorney or authorized agent reflecting that the transaction for the sale and purchase of the subject unit has been closed and consummated.

(b) The Escrow Agent shall at any time make distribution of the Purchaser's deposit and interest earned thereon upon written direction duly executed by the Developer and Purchaser.

(c) All escrowed funds together with interest earned thereon shall be released to the Developer if Purchaser defaults in the performance of the Agreement for Purchase and Sale, or shall be released to Purchaser within 45 days from the date Purchaser properly terminated the Agreement for Purchase and Sale pursuant to its terms or pursuant to Florida Statute Chapter 718, as the case may be.

3. INVESTMENTS. The Escrow Agent shall, if the Developer so elects, invest the deposits received hereunder in savings or time deposits in institutions insured by an agency of the United States, or in securities of the United States or any agency thereof, or in such other lawful manner as Developer shall direct, provided title thereto shall always evidence the escrow relationship. Any and all interest earned thereon shall be disbursed as provided in Florida Statute Section 718.202.

4. CAPACITY OF ESCROW AGENT. The parties hereto acknowledge and agree that nothing herein shall prohibit Escrow Agent from serving in a similar capacity on behalf of other Developers or other clients.

5. LIABILITY. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statements or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof, has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instructions delivered to it, nor as to the identity, authority or rights of any person executing the same. The duties of the Escrow Agent shall be limited to the safe keeping of the deposits and for disbursements of same in accordance with the written instructions described above. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. Upon the Escrow Agent disbursing the deposit of a purchaser in accordance with the provisions hereof, the escrow shall terminate as regards said purchaser's deposit and Escrow Agent shall thereafter be released of all liability hereunder in connection therewith.

6. INDEMNIFICATION. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authority and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or error of judgment or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence and Developer agrees to indemnify and hold the Escrow

Agent harmless from any claims, demands, causes of action, liability, damages, judgments, including the cost of defending any action against it together with any reasonable attorneys' fees incurred therewith in connection with Escrow Agent's undertaking pursuant to the terms and conditions of this Escrow Agreement, unless such act or omission is a result of the willful misconduct or gross negligence of the Escrow Agent.

7. INTERPLEADER. In the event of disagreement about the interpretations of this Agreement or about the rights and obligations set forth herein or the propriety of any action contemplated by the Escrow Agent hereunder, Escrow Agent may, at its sole discretion, file an action in interpleader to resolve the said disagreement. Escrow Agent shall be indemnified by Developer for all costs, including reasonable attorneys' fees, in connection with the aforesaid interpleader action.

8. RESIGNATION OF ESCROW AGENT. The Escrow Agent may resign at any time upon the giving of thirty (30) days written notice to the Developer. If a Successor Escrow Agent is not appointed within thirty (30) days after notice of resignation, the Escrow Agent may petition any court of competent jurisdiction to name a Successor Escrow Agent and the Escrow Agent herein shall be fully relieved of any liability under this Agreement to any and all parties upon the transfer of the escrow deposit to the Successor Escrow Agent either designated by the Developer or appointed by the Court.

9. REPLACEMENT OF ESCROW AGENT. The Developer shall have the right to replace the Escrow Agent upon thirty (30) days written notice with a Successor Escrow Agent named by the Developer. In such event, the Escrow Agent shall turn over to the Successor Escrow Agent all funds, documents, records and properties deposited with the Escrow Agent in connection herewith and thereafter shall have no further liability hereunder.

10. APPLICABLE LAW. This Agreement shall be construed and enforced according to the laws of the State of Florida and this Agreement shall be made a part, in its entirety, of any Prospectus or Offering Circular distributed to purchasers or prospective purchasers of units in the Condominium.

11. ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof and shall be binding upon the parties, their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Signed in the presence of:

D. L. Vaitis
W. H. Schaeffer

MISKAN, SLOTO, HOFFMAN &
GREENBERG, P.A., Escrow Agent

By:

James R. Sloto
JAMES R. SLOTO

APD, INC., Developer

Caidad Bussora
J. J. Lennay

By:

J. J. Lennay
J. J. Lennay

ESCROW AGREEMENT

THIS AGREEMENT, made this 10th day of January, 1989, by and between MISHAN, SLOTO, HOFFMAN & GREENBERG, P.A., 200 South Biscayne Boulevard, Suite 2350, Miami, Florida 33131, hereinafter referred to as "Escrow Agent" and APD, INC. located at 3001 Ponce De Leon Boulevard, Coral Gables, Florida, 33134, hereinafter referred to as "Developer".

W I T N E S S E T H:

WHEREAS, Developer is offering for sale units in a condominium project to be known as BANYAN GARDENS CONDOMINIUM (the "Condominium") to be constructed on that certain real property located and being in Dade County, Florida; and

WHEREAS, Developer intends to offer units in the Condominium for sale to prospective purchasers under Reservation Receipts prior to the execution by such purchasers of the Contract; and

WHEREAS, Developer desires to make arrangements to escrow the deposits on each Reservation Receipt; and

WHEREAS, Escrow Agent has consented to hold all deposits it receives pursuant to the terms and provisions hereof,

NOW, THEREFORE, the Escrow Agent and the Developer do hereby agree as follows:

1. DEPOSITS. From time to time, Developer will deliver checks payable to MISHAN, SLOTO, HOFFMAN & GREENBERG, P.A., Escrow Agent, which will represent deposits on Reservation Receipts, together with a copy of each executed Reservation Receipt if required by the Escrow Agent and if not previously delivered with prior deposits. The Escrow Agent shall, acknowledge receipt of the deposit and deliver an executed copy of same to the Developer and the individual unit purchaser.

2. DISBURSEMENTS. The Escrow Agent agrees to disburse the purchaser's deposit escrowed hereunder and a prorata portion of any interest earned thereon, subject to clearance of funds, in accordance with the following:

(a) To purchasers under Reservation Receipts who have not yet executed Contracts, within ten (10) days after receipt of written demand from such purchaser. Escrow Agent shall notify Developer of every such return of reservation deposits. Escrow Agent is responsible for not releasing the reservation deposit directly to the Developer except as a downpayment on the purchase price at the time of the execution of the Contract. Notwithstanding anything to the contrary contained in this

Paragraph 2(a), Escrow Agent's obligation to return such reservation deposit to a purchaser shall, subject to the terms and conditions hereinafter contained, terminate after the purchaser has executed a binding contract.

(b) If the deposit of a purchaser, together with any interest earned thereon, has not been previously disbursed in accordance with the provisions of subparagraph 2(a) above, the same shall be disbursed to the Developer upon receipt from the Developer of a closing statement or other verification signed by the purchaser or his attorney or authorized agent reflecting that the transaction for the sale and purchase of the subject unit has been closed and consummated.

(c) The Escrow Agent shall at any time make distribution of the Purchaser's deposit and interest earned thereon upon written direction duly executed by the Developer and Purchaser.

3. INVESTMENTS. The Escrow Agent shall, if the Developer so elects, invest the deposits received hereunder in savings or time deposits in institutions insured by an agency of the United States, or in securities of the United States or any agency thereof, or in such other lawful manner as Developer shall direct, provided title thereto shall always evidence the escrow relationship. Any and all interest earned thereon shall be disbursed as provided in Florida Statute Section 718.202.

4. CAPACITY OF ESCROW AGENT. The parties hereto acknowledge and agree that nothing herein shall prohibit Escrow Agent from serving in a similar capacity on behalf of other Developers or other clients.

5. LIABILITY. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statements or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof, has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instructions delivered to it, nor as to the identity, authority or rights of any person executing the same. The duties of the Escrow Agent shall be limited to the safe keeping of the deposits and for disbursements of same in accordance with the written instructions described above. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. Upon the Escrow Agent disbursing the deposit of a purchaser in accordance with the provisions hereof, the escrow shall terminate as regards said purchaser's deposit and Escrow Agent shall thereafter be released

of all liability hereunder in connection therewith.

6. INDEMNIFICATION. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authority and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or error of judgment or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence and Developer agrees to indemnify and hold the Escrow Agent harmless from any claims, demands, causes of action, liability, damages, judgments, including the cost of defending any action against it together with any reasonable attorneys' fees incurred therewith in connection with Escrow Agent's undertaking pursuant to the terms and conditions of this Escrow Agreement, unless such act or omission is a result of the willful misconduct or gross negligence of the Escrow Agent.

7. INTERPLEADER. In the event of disagreement about the interpretations of this Agreement or about the rights and obligations set forth herein or the propriety of any action contemplated by the Escrow Agent hereunder, Escrow Agent may, at its sole discretion, file an action in interpleader to resolve the said disagreement. Escrow Agent shall be indemnified by Developer for all costs, including reasonable attorneys' fees, in connection with the aforesaid interpleader action.

8. RESIGNATION OF ESCROW AGENT. The Escrow Agent may resign at any time upon the giving of thirty (30) days written notice to the Developer. If a Successor Escrow Agent is not appointed within thirty (30) days after notice of resignation, the Escrow Agent may petition any court of competent jurisdiction to name a Successor Escrow Agent and the Escrow Agent herein shall be fully relieved of any liability under this Agreement to any and all parties upon the transfer of the escrow deposit to the Successor Escrow Agent either designated by the Developer or appointed by the Court.

9. REPLACEMENT OF ESCROW AGENT. The Developer shall have the right to replace the Escrow Agent upon thirty (30) days written notice with a Successor Escrow Agent named by the Developer. In such event, the Escrow Agent shall turn over to the Successor Escrow Agent all funds, documents, records and properties deposited with the Escrow Agent in connection herewith and thereafter shall have no further liability hereunder.

10. APPLICABLE LAW. This Agreement shall be construed and enforced according to the laws of the State of Florida and this Agreement shall be made a part, in its entirety, of any Prospectus or Offering Circular distributed to purchasers or prospective purchasers of units in the Condominium.

11. INCORPORATION BY REFERENCE. This Escrow Agreement shall be expressly incorporated by reference in all Reservation Receipts between Developer and purchaser.

12. ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof and shall be binding upon the parties, their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Signed in the presence of:

Paula Vitell
Ulta Schramm

MISHAN, SLOTO, HOFFMAN &
GREENBERG, P.A., Escrow Agent

By: James R. Sloto
JAMES R. SLOTO

APD, INC., Developer

Caridad Brusso
Mr. Sloto

By: John J. Sloto
John J. Sloto

PROSPECTUS
FOR
BANYAN GARDENS, A CONDOMINIUM

THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS AND SALES MATERIALS.

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

SUMMARY

THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

THE STATEMENTS CONTAINED IN THIS PROSPECTUS ARE ONLY SUMMARY IN NATURE. PROSPECTIVE PURCHASERS SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS AND SALES MATERIALS.

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

THIS CONDOMINIUM SHALL BE A FEE SIMPLE OWNERSHIP CONDOMINIUM AND THERE SHALL BE NO TIME-SHARE ESTATES IN THE CONDOMINIUM.

THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.

THE SALE, LEASE OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.

PROSPECTUS

FOR

BANYAN GARDENS, A CONDOMINIUM

A.P.D., INC., a Florida corporation, presents herewith its Prospectus for the establishment of a Plan of Condominium Ownership with respect to certain land and buildings to be constructed thereon as follows:

1. The Condominium to be created shall be known as BANYAN GARDENS, A CONDOMINIUM.

2. The Condominium shall be located in Dade County, Florida on that certain parcel of real property described in Exhibit "A" to the Declaration of Condominium of BANYAN GARDENS, A CONDOMINIUM. Said parcel of property consists of approximately 2.87 acres, more or less, and is bounded on the East by S.W. 92nd Avenue and on the South by S.W. 164th Street.

3. BANYAN GARDENS, A CONDOMINIUM, shall consist of a maximum of twenty-four (24) Units contained in five separate condominium buildings. Four (4) of the buildings contained in the Condominium shall consist of five (5) residential Units per building. Two (2) of such Units shall contain 3 bedrooms and 2 bathrooms and three (3) of such Units shall contain 2 bedrooms and 2 bathrooms. There shall be one building in the Condominium, which building shall consist of four (4) residential Units, two (2) of which shall contain 3 bedrooms and 2 baths and two (2) of which shall contain 2 bedrooms and 2 baths. Each Unit in each building of the Condominium shall be ground level entry and shall contain two stories. Copies of the survey, plot plans and graphic descriptions identifying the Condominium buildings and Units are annexed hereto as Exhibits "D" through "J".

4. The estimated completion date of constructing, finishing and equipping all of the buildings of the Condominium is June, 1989.

5. There shall be no other units, parcels or dwellings of any kind that shall use facilities in common with the Condominium. The maximum number of units to be contained in the Condominium, which shall use the common facility, shall be twenty-four (24).

6. FEE SIMPLE INTEREST WILL BE CONVEYED TO EACH PURCHASER OF A UNIT IN THE CONDOMINIUM.

7. A description of the commonly used facilities for use only by the Unit Owners of the Condominium is as follows:

A. Parking areas to be numbered and assigned as designated in the plot plan annexed hereto as Exhibit "D".

B. Driveways, walkways, pathways and green areas as indicated in Exhibit "D" annexed hereto.

C. Swimming pool and pool deck area as indicated in Exhibit "J" annexed hereto. The dimensions of the swimming pool shall be approximately 36 feet by 16 feet and its depth shall range from 3 feet to a maximum of 6 feet. The swimming pool will not be heated. The deck surrounding the swimming pool will contain approximately 2500 square feet. The cabana building will contain men's and women's separate rest room facilities and changing areas.

D. All of the common facilities, with the exception of the swimming pool and pool deck area, shall be available for use by all of the Unit Owners on or before June, 1989. The swimming pool and pool deck area shall be available for Unit Owners on or before June, 1989.

E. The Developer may not provide additional facilities, other than those herein described, without the consent of the Unit Owners as set forth in the Declaration. The Developer's program consists solely of marketing the Units in the Condominium for sale and the Developer does not plan or intend to lease any of the Units in the Condominium in lieu of selling same.

8. The management of the Condominium shall be by BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. (hereinafter referred to as the "ASSOCIATION") a non-profit Florida corporation. (See Declaration of Condominium annexed hereto and the Articles of Incorporation and the By-Laws attached thereto as Exhibits "N" and "P" respectively.)

9. THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD. THIS RIGHT TO CONTROL IS DESCRIBED IN THE ARTICLES OF INCORPORATION OF THE ASSOCIATION, ANNEXED HERETO AS EXHIBIT "N".

10. THE SALE, LEASE OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED. Provisions relating to restrictions or limitations on the sale, lease or transfer of Units are described in Article XIII, MAINTENANCE OF COMMUNITY INTERESTS, in the Declaration of Condominium annexed hereto.

11. Units of the Condominium shall be restricted to use only as a residence by a Unit Owner, members of his family, his guests and permitted lessees. Restrictions on the use of the Condominium Property are set forth in Article XII of the Declaration of Condominium annexed hereto and in the Rules and Regulations of the Association attached to the Declaration as Exhibit "Q" thereto.

12. All utilities and other services, including sewage, waste disposal, water supply and storm drainage are supplied and installed by the Developer. Waste disposal and pick-up services shall be provided to the Condominium by Dade County and no further application for such service shall be necessary by any Unit Owner. Each Unit Owner shall make application to the following entities for the appropriate utility services to his Unit:

- A. Telephone - Southern Bell Telephone Company.
- B. Water - Miami Dade Water and Sewer Authority.
- C. Electricity - Florida Power and Light Company.

13. The Common Elements and Common Expenses shall be apportioned among the Units as provided in the Schedules annexed hereto as Exhibit "C", which apportionment has been determined by the square footage contained within each Unit.

14. An estimated operating budget for the Condominium and the Association and a schedule of the Unit Owners' expenses are annexed hereto as Exhibit "K".

15. A schedule of estimated closing expenses to be paid by the purchaser of a Unit is annexed hereto as Exhibit "T".

16. The Developer shall not be obligated to provide an abstract to any purchaser but shall provide an owner's title insurance policy to purchaser at seller's expense. Should purchaser or purchaser's first mortgagee require a mortgagee's title insurance policy, seller will provide same at purchaser's expense.

17. The Developer of BANYAN GARDENS CONDOMINIUM is APD, Inc., a Florida corporation. The chief operating officer of the corporation is John V. Raisbeck. The Developer has not had any previous condominium experience other than as a Successor Developer at Nob Hill at Welleby, Sunrise, Florida.

INDEX OF EXHIBITS TO
DECLARATION OF COVENANTS AND RESTRICTIONS
OF
BANYAN GARDENS, A CONDOMINIUM

Exhibit A	Legal Description of SUBJECT PROPERTY
Exhibit B	Identification and Designation of UNITS by Numbers; Description of UNITS
Exhibit C	Share of COMMON ELEMENTS, COMMON EXPENSES and COMMON SURPLUS Appurtenant to each UNIT Expressed as a Percentage
Exhibit D	Site Plan and Survey
Exhibit E	Elevations and Floor Plans for BUILDING Type 1 (3 pages)
Exhibit F	Elevations and Floor Plans for BUILDING Type 2 (2 pages)
Exhibit G	Elevations and Floor Plans for BUILDING Type 3 (3 pages)
Exhibit H	Floor Plan for 3 Bedroom/2 Bath UNITS (2 pages)
Exhibit I	Floor Plan for 2 Bedroom/2 Bath UNITS
Exhibit J	Pool and Equipment Room Elevations, Plans and Specifications (4 pages)
Exhibit K	Estimated Annual Operating Budget and Monthly Maintenance (24 Units)
Exhibit L	Special Warranty Deed (2 pages)
Exhibit M	Assignment of Use of Parking Space
Exhibit N	Articles of Incorporation of Banyan Gardens Homeowners Association, Inc. (11 pages)
Exhibit O	State of Florida Corporate Charter for Banyan Gardens Homeowners Association, Inc.
Exhibit P	By-Laws of Banyan Gardens Homeowners Association, Inc. (27 pages)
Exhibit Q	Rules and Regulations of Banyan Gardens Homeowners Association, Inc. (6 pages)
Exhibit R	Acceptance, Warranty and Waiver
Exhibit S	Agreement for Purchase and Sale (9 pages)
Exhibit T	Proposed Closing Expenses for the Purchase of a Condominium Unit in Banyan Gardens, a Condominium

THIS PACKAGE CONTAINS THE OFFERING CIRCULAR,
CONDOMINIUM OWNERS DECLARATION AND EXHIBITS
OF
BANYAN GARDENS, A CONDOMINIUM

OFF. REC. 16772-4392

95R180848 1995 MAY 08 14:29

AMENDMENT TO THE DECLARATION OF CONDOMINIUM
OF BANYAN GARDENS, A CONDOMINIUM

By vote of the Board of Directors and members of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., a Condominium, the Declaration of Condominium of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. recorded in Official Records Book 14165, at Pages 1391 through 1439, of the Public Records of Dade County, Florida, is hereby amended in the following respects:

1. ARTICLE XIX (C.) is hereby deleted in its entirety, and the following provision is inserted in lieu thereof:

C. INTEREST, ADMINISTRATIVE FEES AND APPLICATION OF PAYMENTS: ASSESSMENTS and installments thereof not received by the ASSOCIATION, in the manner provided for by the ASSOCIATION, on or before 10 days after the date when due, shall be delinquent and bear interest at the highest rate permitted by the laws of the State of Florida, from the date when due until paid. The ASSOCIATION shall charge an administrative late fee, in addition to such interest, at the highest amount or rate permitted by the Condominium Act of the State of Florida. Any ASSESSMENT or installment thereof paid in an amount less than that required or specified shall be deemed and constitute a partial payment thereon if accepted for deposit by the ASSOCIATION, with the unpaid balance delinquent if not timely received by the ASSOCIATION, and such acceptance shall not be deemed or constitute a waiver of any right or remedy of the ASSOCIATION in the collection of delinquent payments, unless otherwise agreed to in writing by the ASSOCIATION. All payments upon account received by the ASSOCIATION shall be applied first to any accrued interest, then to any administrative late fees, then to the delinquent ASSESSMENT. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

15.00

OFF REC 16772-4394

STATE OF FLORIDA)
)
COUNTY OF DADE)

BEFORE ME, the undersigned authority, appeared CLAUDETTE DANIELS-CATANESE who is personally known to me and who executed the foregoing instrument as the Secretary of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., and she acknowledged to and before me that she executed said instrument on behalf of and in the name of said corporation as such officer, that it was affixed thereto by due and regular corporate authority, that she is duly authorized by said corporation to execute said instrument, and that said instrument is the free act and deed of said corporation.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my seal this 29 day of APRIL, 1995.

SHEELA JOSEPH
Notary Public, State of Florida
My Comm. expires Oct 24, 1998
No. GC415580

Sheela Joseph
Notary Public, State of Florida

My Commission Expires:

This Instrument Was Prepared By:

Jay G. Kolman, Esq.
P.O. Box 570171
Miami, Florida 22257-0171

RECORDED IN OFFICIAL RECORDS DEPT
OF DADE COUNTY, FLORIDA
RECORD NUMBER
HARVEY RUVIN;
Clerk of Circuit & County
Courts

REC: 1465271109

AMENDMENT TO THE
DECLARATION OF CONDOMINIUM
OF
BANYAN GARDENS, A CONDOMINIUM

This Amendment replaces the Amendment to the Declaration of Condominium of Banyan Gardens, A Condominium, which was previously recorded in Official Records Book 14422 at pages 1230 through 14340, and in Official Records Book 14340 at pages 456 through 477.

By vote of the Board of Directors and of the Association of Banyan Gardens, A Condominium, the Declaration of Condominium is hereby amended, pursuant to ARTICLE XXII.B.i. of the Declaration in the following respects:

1. ARTICLE V.D. is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

D. COMPLETION OF IMPROVEMENTS: The improvements described in Exhibits "D" through "J" to this DECLARATION have been substantially completed. The descriptions and dimensions contained in said Exhibits accurately depict the improvements as completed by the DEVELOPER. The certification required by Section 718.104(e), Florida Statutes, is attached to this DECLARATION as Exhibit U.

2. The attached Exhibit "U" is hereby adopted as Exhibit "U" of the Declaration.

3. ARTICLE XIII (MAINTENANCE OF COMMUNITY INTERESTS) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

Per customer

109.56

ARTICLE XIII
MAINTENANCE OF COMMUNITY INTERESTS

In order to maintain a community of congenial residents who are financially responsible and to protect the value of the UNITS, the transfer of UNITS by any UNIT OWNER other than the DEVELOPER shall be subject to the following provisions so long as the CONDOMINIUM and the CONDOMINIUM buildings, in useful condition, shall exist and each UNIT OWNER covenants to observe each of the following provisions:

A. SELLING, LEASING AND MORTGAGING OF UNITS: No UNIT OWNER other than the DEVELOPER may sell or lease his UNIT except by complying with the following:

i. Any deed or lease shall provide (or shall be deemed by the provisions hereof to provide) that the acceptance thereof by the grantee or tenant shall constitute an assumption of the provisions of this DECLARATION, the BY-LAWS, the ARTICLES OF INCORPORATION, all applicable rules and regulations and other agreements, documents or instruments affecting the CONDOMINIUM PROPERTY as the same may be amended from time to time.

ii. Any lease of a Unit shall be in writing and shall be subject to this DECLARATION and to the ARTICLES, BY-LAWS and rules and regulations. The BOARD OF DIRECTORS shall have the power, but shall not be obligated, to terminate any lease and/or to bring summary proceedings in the name of the Lessor thereunder to evict the Lessee in the event of (1) a default by the Lessee in the performance of its obligations under such lease to the extent such default affects the ASSOCIATION in the sole opinion of the BOARD OF DIRECTORS or (2) a foreclosure of the lien granted under the CONDOMINIUM ACT.

iii. Except as hereinbefore set forth, the form of any lease shall contain such other provisions as may be required, in writing, by the BOARD OF DIRECTORS. Any lease executed by the ASSOCIATION as Lessee shall provide that the ASSOCIATION may enter into a sublease of the premises without the consent of the

Lessor. No lease shall be executed for an initial term of less than six months.

iv. Any purported sale or lease of a UNIT in violation of this Article, shall be voidable at any time at the election of the ASSOCIATION and, if the BOARD OF DIRECTORS shall select, the UNIT OWNER shall be deemed to have authorized and empowered the ASSOCIATION to institute legal proceedings to evict the purported Lessee (in case of an unauthorized lease) or void a conveyance (in case of an unauthorized sale). Said UNIT OWNER shall reimburse the ASSOCIATION for all expenses including reasonable attorneys fees and all disbursements incurred in connection with such proceedings.

v. The foregoing restrictions shall not apply to UNITS owned by or leased to the DEVELOPER or owned by any Institutional First Mortgagee acquiring title by foreclosure or by a deed in lieu of foreclosure.

vi. No part of the COMMON ELEMENTS may be sold, conveyed or otherwise disposed of, except as an appurtenance to the UNIT in connection with a sale, conveyance or other disposition of the UNIT to which such interest is appurtenant and any sale, conveyance or other disposition of a UNIT shall be deemed to include the UNIT's appurtenant interest in the COMMON ELEMENTS.

vii. A certificate executed and acknowledged by an officer of the ASSOCIATION stating that the provisions of this Article XIII have been satisfied by a UNIT OWNER shall be conclusive with respect to all persons who rely upon such certificate in good faith. The BOARD OF DIRECTORS shall furnish such certificate upon request to any UNIT OWNER who has complied with the provisions of this Article XIII. No fee shall be charged by the ASSOCIATION in connection with the furnishing of such certificate, in excess of the charges reasonably required for same, and such charges shall not exceed the maximum amount allowed under the CONDOMINIUM ACT, as amended from time to time. No charge shall be made in connection with the consideration of the

approval of an extension or renewal of a previously approved lease.

viii. The Association may purchase any UNIT on behalf of all UNIT OWNERS in accordance with Article XX of this DECLARATION. If the available funds of the ASSOCIATION are insufficient to effectuate any such purchase or lease, the BOARD OF DIRECTORS may, in its discretion, finance the acquisition of such UNIT, provided however that no such financing may be secured by an encumbrance or hypothecation of any portion of the CONDOMINIUM PROPERTY other than the UNIT to be purchased.

B. MORTGAGE OF UNITS: A UNIT OWNER may not mortgage his UNIT nor any interest therein without the approval of the ASSOCIATION, except to an INSTITUTIONAL MORTGAGEE, as hereinabove defined. The approval of any other mortgagee may be obtained upon conditions determined by the BOARD of the ASSOCIATION and said approval shall be, if granted, prepared in recordable form, executed by the President and Secretary of the ASSOCIATION. Where a UNIT OWNER sells his UNIT and takes back a purchase money mortgage, the approval of the ASSOCIATION is not required.

C. NOTICE OF LIEN OR SUIT:

i. Notice of Lien: A UNIT OWNER shall give written notice to the ASSOCIATION of every lien upon his UNIT, other than for permitted mortgages, taxes and special assessments, such notice to be given within 5 days after the attaching of such lien.

ii. Notice of Suit: A UNIT OWNER shall give notice, in writing, to the ASSOCIATION of any suit or other proceeding which may affect title to his UNIT, such notice to be given within 5 days after the UNIT OWNER receives knowledge thereof.

iii. Failure to comply with this Section concerning liens shall not effect the validity of any judicial sale of the subject UNIT.

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4. ARTICLE XVII (INSURANCE) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XVII
INSURANCE

The insurance, other than title insurance, which shall be carried upon the CONDOMINIUM PROPERTY and the property of the UNIT OWNER, shall be governed by the following provisions:

A. AUTHORITY TO PURCHASE: All insurance policies upon the CONDOMINIUM PROPERTY shall be purchased by the ASSOCIATION for the benefit of the ASSOCIATION and the UNIT OWNERS and their mortgagees as their interests may appear and provisions shall be made for the issuance of certificates of mortgage endorsements to the mortgagees and UNIT OWNERS. Such policies and endorsements shall be deposited with the Insurance Trustee. UNIT OWNERS may obtain insurance coverage at their own expense upon their personal property and for their personal liability and living expense. All policies purchased by the ASSOCIATION must be written by insurance companies authorized to do business in the State of Florida and with offices or agents in Dade County, Florida, provided, however, that all such insurance policies must be accepted and approved by the INSTITUTIONAL MORTGAGEE holding the largest aggregate dollar sum of mortgages encumbering PARCELS in the CONDOMINIUM, said sum to be ascertained at the time of purchase or renewal of each such policy.

B. COVERAGE:

i. Casualty: All Buildings and improvements upon the land, including UNITS and all personal property of the ASSOCIATION included in the CONDOMINIUM PROPERTY, are to be insured in an amount equal to 100% of current replacement cost, excluding land, foundation, excavation and other items normally excluded from coverage, and all such insurance must be obtained, if possible, from the same insurance company. Such coverage shall provide protection against the following:

a. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;

b. Flood disaster and loss;

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

ii. Public Liability: Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about, or in connection with, the insured property or adjoining driveways and walkways, or any work matters or things related to the insured property, with a cross liability endorsement to cover liabilities of the UNIT OWNERS as a group to any UNIT OWNER or OWNERS or vice versa; such coverage shall be in such amounts as shall be required by the BOARD OF DIRECTORS but with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for injury to person and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence for loss or damage to property.

iii. Workmen's Compensation: As shall be required to meet the requirements of law.

iv. Fidelity Insurance: Coverage extending to all Directors, officers and employees of the ASSOCIATION and managing agents who handle ASSOCIATION funds, if any.

v. Association Insurance: Such other insurance as the BOARD OF DIRECTORS of the ASSOCIATION, in its discretion, may determine from time to time to be in the best interest of the ASSOCIATION and the UNIT OWNERS, including Directors liability insurance or other insurance that an INSTITUTIONAL MORTGAGEE may reasonably require, so long as such INSTITUTIONAL MORTGAGEE shall be the owner of a mortgage encumbering any CONDOMINIUM PARCEL.

vi. Where appropriate and obtainable: Each policy of insurance provided for in this Article shall waive the insurer's right to:

a. Subrogation against the ASSOCIATION and against the UNIT OWNERS, individually and as a group;

b. Pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk; and

c. Avoid liability for a loss that is caused by an act of the BOARD OF DIRECTORS of the ASSOCIATION or by a member of the BOARD OF DIRECTORS or by one or more UNIT OWNERS.

C. PREMIUM: Premiums for insurance policies purchased by the ASSOCIATION shall be paid by the ASSOCIATION as a COMMON EXPENSE, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more UNITS or their appurtenances, or of the COMMON ELEMENTS by a particular UNIT OWNER shall be assessed against and paid by such UNIT OWNER. Premiums may be financed in such manner as the BOARD OF DIRECTORS deems appropriate.

D. INSURANCE POLICY INSPECTION: All insurance policies obtained by the ASSOCIATION shall be available for inspection by UNIT OWNERS or their authorized representatives at reasonable times at the offices of the ASSOCIATION.

E. ASSURED: All insurance policies purchased by the ASSOCIATION shall be for the benefit of the ASSOCIATION and the UNIT OWNERS and their mortgagees as their interest may appear and shall provide that the BOARD OF DIRECTORS shall pay all proceeds covering casualty losses to any national bank in Dade County, with trust powers as may be approved and designated as Insurance Trustee by the BOARD OF DIRECTORS of the ASSOCIATION. All insurance policies shall require written notification to each INSTITUTIONAL MORTGAGEE not less than 15 days prior to cancellation of any such policy insuring CONDOMINIUM PROPERTY.

The Insurance Trustee shall not be liable for payments of premiums nor for the renewal or sufficiency of the policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold same in trust for the purposes elsewhere stated herein and for the benefit of the UNIT OWNERS and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee:

i. COMMON ELEMENTS: Proceeds on account of COMMON ELEMENTS shall be held in as many undivided shares as there are UNITS in each building, the shares of each UNIT OWNER being the same as his share in the COMMON ELEMENTS, as same are hereinabove stated.

ii. UNITS: Proceeds on account of UNITS shall be held in the following undivided shares:

a. Partial Destruction: When a building is to be restored, then for the owners of damaged UNITS in proportion to the cost of repairing the damage suffered by each UNIT OWNER.

b. Total Destruction: When the building is to be restored then for the owners of all UNITS in the building in proportion to their share of the COMMON ELEMENTS appurtenant to their UNIT.

c. Mortgagee: In the event a mortgagee endorsement shall have been issued as to a UNIT, then the share of such UNIT OWNER shall be held in trust for the mortgagee and the UNIT OWNER as their interests appear. In no event shall any mortgagee have the right to demand the application of insurance proceeds to any mortgage or mortgages which it may hold against UNITS, except to such extent as said insurance proceeds may exceed the actual cost of repair or restoration of the damaged building or buildings and, no mortgagee shall have the right to participate in the determination as to whether or not improvements will be restored after casualty, loss or damage. Notwithstanding the foregoing, the mortgagee shall have the right to apply or have applied to the reduction of its mortgage debt any or

all sums of insurance proceeds applicable to its mortgaged UNIT, in the event insurance proceeds are insufficient to restore or repair the building or UNIT to the condition existing prior to the loss and additional monies are not available for such purpose.

G. DISTRIBUTION OF PROCEEDS: Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of Beneficial Owners in the following manner:

i. **Expense of the Insurance Trust:** All expenses of the Insurance Trustee shall be first paid or provisions made therefore.

ii. **Reconstruction or Repair:** If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the costs thereof as elsewhere herein provided. Any proceeds remaining after defraying such costs shall be distributed to the Beneficial Owners, remittances to UNIT OWNERS and their mortgagees, being payable jointly to them. This is a covenant for the benefit of any mortgagee of a UNIT and may be enforced by such mortgagee.

iii. **Failure to Reconstruct or Repair:** If it is determined, in the manner elsewhere herein provided, that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall then be distributed to the Beneficial Owners, remittances to UNIT OWNERS and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a UNIT and may be enforced by such mortgagee.

iv. **Certificate:** In making distribution to UNIT OWNERS and their mortgagees, the Insurance Trustee may rely upon a certificate of the ASSOCIATION made by the President and Secretary as to the names of the UNIT OWNERS and their respective shares of the distribution.

v. **ASSOCIATION as Agent:** The ASSOCIATION is hereby irrevocably appointed agent and attorney-in-fact for each UNIT OWNER and for

each owner of a mortgage or other lien upon a UNIT and for each owner of any other interest in any property to adjust all claims arising under insurance policies purchased by the ASSOCIATION and to execute and deliver releases upon the payment of such claims.

4. ARTICLE XVII (RECONSTRUCTION OR REPAIR AFTER CASUALTY) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XVIII
RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. DETERMINATION TO RECONSTRUCT OR REPAIR: If any part of the CONDOMINIUM PROPERTY shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

i. COMMON ELEMENTS: If the damaged improvement is a COMMON ELEMENT or LIMITED COMMON ELEMENT, the damaged property shall be reconstructed or repaired unless it is determined, in the manner elsewhere provided, that the CONDOMINIUM shall be terminated.

ii. CONDOMINIUM BUILDING:

a. If the damaged improvement is a part of a building and, if UNITS to which 50% of the COMMON ELEMENTS or appurtenances are found by the BOARD OF DIRECTORS of the ASSOCIATION to be tenantable, the damaged property shall be reconstructed or repaired, unless within 60 days after the casualty loss it is determined, in the manner elsewhere herein provided, that the CONDOMINIUM shall be terminated.

b. If the damaged improvement is part of a building and if UNITS to which more than 50% of the COMMON ELEMENTS are appurtenant are found by the BOARD OF DIRECTORS of the ASSOCIATION to be not tenantable, then the damaged property will not be reconstructed or repaired and the CONDOMINIUM will be terminated as elsewhere herein provided, unless within 60 days after the casualty loss, the owners of 75% of the COMMON ELEMENTS agree in writing to such reconstruction or repair. Any

election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the CONDOMINIUM PROPERTY requires the approval of the eligible holders of first mortgages on UNITS to which at least 51% of the votes of UNITS subject to mortgages held by such eligible holders are allocated. As used in this Article XVIII, the term "Eligible Holder" shall mean a holder of a first mortgage on a UNIT which has requested notice in accordance with the provisions of ARTICLE XXVII of this DECLARATION.

c. No reallocation of interest in the COMMON ELEMENTS resulting from a partial condemnation or partial destruction of the CONDOMINIUM may be effected without the approval of the eligible holders of first mortgages on UNITS to which at least 51% of the votes of UNITS subject to such mortgages held by such eligible holders are allocated.

iii. Certificate: The Insurance Trustee may rely upon a certificate of the ASSOCIATION made by the President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. PLANS AND SPECIFICATIONS: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original CONDOMINIUM building, portions of which are attached hereto as Exhibits, unless the approval of the eligible holders of first mortgages on UNITS to which at least 51% of the votes of UNITS subject to mortgages held by such eligible holders are allocated is obtained. If such approval is obtained, then reconstruction or repair may be made only according to plans and specifications approved by the BOARD OF DIRECTORS of the ASSOCIATION and, if the damaged property is a CONDOMINIUM building, then by the owners of not less than 75% of the COMMON ELEMENTS, including the owners of all damaged UNITS, which approval shall not be unreasonably withheld.

C. RESPONSIBILITY: If the damage is only to those parts of one UNIT for which the responsibility of maintenance and repair is that of the UNIT OWNER, then the UNIT OWNER shall be

responsible for reconstruction and repair after casualty loss. In all other instances, the responsibility of construction or repair after casualty loss shall be that of the ASSOCIATION.

D. ESTIMATES OF COSTS: Immediately after a casualty causing damage to property for which the ASSOCIATION has the responsibility of maintenance and repair, the ASSOCIATION shall obtain reliable and detailed estimates of the cost to repair or rebuild.

E. ASSESSMENTS: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the ASSOCIATION or, if at any time during reconstruction and repair, the funds for the payment of the costs thereof are insufficient, ASSESSMENTS shall be made against the UNIT OWNERS who own the damaged UNITS, and against all UNIT OWNERS in the case of damage to COMMON ELEMENTS, in sufficient amounts to provide funds to pay such estimated costs. Such ASSESSMENTS against the UNIT OWNERS for damage to UNITS shall be in proportion to the cost of reconstruction and repair of their respective UNITS. Such ASSESSMENTS on account of damage to COMMON ELEMENTS shall be in proportion to the UNIT OWNER's share in the COMMON ELEMENTS.

F. DEDUCTIBLE PROVISION: The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be a COMMON EXPENSE.

G. CONSTRUCTION FUNDS: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee, together with funds collected by the ASSOCIATION from ASSESSMENTS against UNIT OWNERS shall be disbursed in payment of such costs in the following manner:

i. ASSOCIATION: If costs of reconstruction and repair which are the responsibility of the ASSOCIATION are more than \$10,000.00, then the sums paid upon ASSESSMENTS to meet such costs shall be deposited by the ASSOCIATION with the Insurance Trustee. In all other cases, the

ASSOCIATION shall hold the sums paid upon such ASSESSMENTS and disburse the same in payment of the costs of reconstruction and repair.

ii. Insurance Trustee: The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the ASSOCIATION from the collection of ASSESSMENTS against UNIT OWNERS on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

a. UNIT OWNER: The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the UNIT OWNER shall be paid by the Insurance Trustee to the UNIT OWNER or, if there is a mortgagee endorsement, then to the UNIT OWNER and his mortgagee, jointly.

b. ASSOCIATION - Lesser Damage: If the amount of the estimated cost of reconstruction and repair which is the responsibility of the ASSOCIATION is less than \$10,000.00, then the construction funds shall be disbursed in payment of such costs upon the order of the ASSOCIATION, provided however, that upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such funds shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

c. ASSOCIATION - Major Damage: If the amount of the estimated cost of reconstruction and repair, which is the responsibility of the ASSOCIATION, is equal to or more than \$10,000.00, then the construction funds shall be disbursed in payment of such costs in the manner required by the BOARD OF DIRECTORS of the ASSOCIATION and upon approval of an architect qualified to practice in the State of Florida and employed by the ASSOCIATION to supervise the work.

d. Surplus: It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from

insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated, except however, that the part of a distribution to a beneficial owner which is not in excess of ASSESSMENTS paid by such owner into the construction fund, shall not be made payable to any mortgagee.

e. Certificate: Notwithstanding the provisions herein contained, the Insurance Trustee shall not be required to determine whether or not sums paid by UNIT OWNERS upon ASSESSMENTS shall be deposited by the ASSOCIATION with the Insurance Trustee nor to determine whether the disbursements from the construction fund are to be upon the order of the ASSOCIATION or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine the payee nor the amounts to be paid nor to determine whether surplus funds to be distributed are less than the ASSESSMENTS paid by UNIT OWNERS. Instead, the Insurance Trustee may rely upon a certificate of the ASSOCIATION made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to a UNIT OWNER and further, provided that when the ASSOCIATION or a mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction funds, so requires the approval of an architect named by the ASSOCIATION shall first be obtained by the ASSOCIATION upon disbursements in payment of costs of reconstruction and repair.

6. ARTICLE XXI (COMPLIANCE AND DEFAULT) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XXI
COMPLIANCE AND DEFAULT

Each UNIT OWNER shall be governed by and shall comply with the terms of this DECLARATION, the BY-LAWS of the ASSOCIATION and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time. Failure of UNIT OWNERS to comply therewith shall entitle the ASSOCIATION or other UNIT OWNERS to the following relief in addition to the remedies provided by the CONDOMINIUM ACT:

A. **NEGLIGENCE:** A UNIT OWNER shall be liable and may be assessed by the ASSOCIATION for the expense of any maintenance, repair or replacement rendered necessary by his willful, intentional or negligent act or by that of any member of his family or his or their guests, invitees, employees, licensees or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the ASSOCIATION. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a UNIT or its appurtenances or of the COMMON ELEMENTS.

B. **RIGHTS OF ACTION:** The ASSOCIATION and any aggrieved UNIT OWNER is hereby granted a right of action against UNIT OWNERS for failure to comply with the provisions of the DECLARATION, ARTICLES, BY-LAWS, RULES AND REGULATIONS, or with decisions of the ASSOCIATION which are made pursuant to authority granted the ASSOCIATION in such documents. UNIT OWNERS are hereby granted similar rights of actions against the ASSOCIATION.

C. **COSTS AND ATTORNEYS FEES:** In any proceeding arising because of an alleged failure of a UNIT OWNER to comply with the terms of the DECLARATION, ARTICLES, BY-LAWS and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys fees as may be awarded by the Court.

D. NO WAIVER OF RIGHTS: The failure of the ASSOCIATION or any UNIT OWNER to enforce a covenant, restriction or other provision of this DECLARATION or any of the Exhibits attached hereto, shall not constitute a waiver of the right to do so thereafter.

7. ARTICLE XXII (AMENDMENT OF DECLARATION) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XXII
AMENDMENT OF DECLARATION

Except as otherwise provided herein, this DECLARATION may be amended in the following manner:

A. NOTICE: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment shall be considered.

B. RESOLUTION OF ADOPTION: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS or by the members of the ASSOCIATION. Directors and members not present in person or by proxy at the meeting considering the amendment, may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approval must be as follows:

i. By not less than 67% of the entire membership of the BOARD OF DIRECTORS and by not less than 67% of the votes of the entire membership of the ASSOCIATION; or

ii. By not less than 75% of the votes of the entire membership of the ASSOCIATION; or

iii. By an agreement executed and acknowledged by all UNIT OWNERS of the CONDOMINIUM in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Dade County, Florida.

iv. In addition to the requirements of paragraphs i, ii and iii above, the approval of Eligible Holders (as defined in Article XVII above) of first mortgages on UNITS to which at least 51% of the votes of UNITS subject to a mortgage appertain, shall be required to materially amend any provision of this DECLARATION or BY-LAWS, which establish or regulate any of the following:

- a. voting;
- b. assessments, assessment liens or subordination of such liens;
- c. reserves for maintenance, repair and replacement of the COMMON ELEMENTS;
- d. insurance or Fidelity Bonds;
- e. rights to use of the COMMON ELEMENTS;
- f. responsibility for maintenance and repair of the several portions of the CONDOMINIUM;
- g. expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime;
- h. boundaries of any UNIT;
- i. the interests in the COMMON ELEMENTS or LIMITED COMMON ELEMENTS;
- j. convertibility of UNITS into COMMON ELEMENTS or of COMMON ELEMENTS into UNITS;
- k. leasing of UNITS;
- l. imposition of any right of first refusal or similar restriction on the right of a UNIT OWNER to sell, transfer, or otherwise convey his or her UNIT in the CONDOMINIUM;
- m. establishment of self-management by the ASSOCIATION where professional management has been required by any of the agencies or corporations; and

n. any provision which is for the express benefit of holders or insurers of first mortgages on UNITS in the CONDOMINIUM.

C. RESOLUTION OF ADOPTION FOR ERRORS OR OMISSIONS NOT MATERIALLY ADVERSELY AFFECTING PROPERTY RIGHTS OF UNIT OWNERS: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS of the ASSOCIATION or by the members of the ASSOCIATION whenever it appears that there is an omission or error in this DECLARATION or any Exhibit attached hereto or any amendment hereto, as follows:

i. Such amendment shall be approved by not less than 50% of the votes of the entire membership of the BOARD OF DIRECTORS and by not less than 50% of the votes of the entire membership of the ASSOCIATION.

ii. Any amendment adopted pursuant to the provisions of this Article XXII, Paragraph C shall not materially adversely effect the property rights of UNIT OWNERS.

iii. Until the DEVELOPER has sold and conveyed all of the UNITS in the CONDOMINIUM, any amendment adopted pursuant to this Article XXII, Paragraph C must be approved and consented to in writing by the DEVELOPER.

D. PROVISIO: Provided, however, that no amendment shall discriminate against any UNIT OWNER nor against any UNIT or class of groups of UNITS unless the UNIT OWNERS so affected shall consent; and no amendment shall change the configuration or size of any UNIT in any material fashion, materially alter or modify the appurtenances to the UNIT, or change the proportion or percentage by which the UNIT OWNER shares the COMMON EXPENSES and owns the COMMON SURPLUS unless the record owner of the UNIT concerned and all record owners of liens on such UNIT join in the execution of the amendment and unless all the record owners of all other UNITS approve the amendment. Neither shall an amendment make any change in the Section entitled "INSURANCE" nor in the Section entitled "RECONSTRUCTION OR REPAIR AFTER CASUALTY" unless the record owners of

8. ARTICLE XXVI (SEVERABILITY) is hereby renumbered. The new number of the article entitled SEVERABILITY is ARTICLE XXVIII.

9. A new ARTICLE XXVI is hereby inserted, which states as follows:

ARTICLE XXVI
TRANSFER OF CONTROL

Control of the ASSOCIATION shall pass to the UNIT OWNERS not later than the earlier of the following:

A. 120 days after the date by which 75 percent of the UNITS have been conveyed to UNIT purchasers, or

B. as set forth in the BY-LAWS.

10. ARTICLE XXVII (INVALIDITY) is hereby renumbered. The new number of the article entitled INVALIDITY is ARTICLE XXVIII.

11. A new ARTICLE XXVII is hereby inserted, which states as follows:

ARTICLE XXVII
NOTICES OF ACTION TO FIRST LIENHOLDERS

A holder, insurer or guarantor of a first mortgage, upon written request to the ASSOCIATION, (such request to state the name and address of such holder, insurer or guarantor and the UNIT number), will be entitled to timely written notice of:

A. any proposed amendment of the CONDOMINIUM documents effecting a change in (i) the boundaries of any UNIT or the exclusive easement rights appertaining thereto, (ii) the interests in the COMMON ELEMENTS or LIMITED COMMON ELEMENTS appertaining to any UNIT or the liability for COMMON EXPENSES appertaining thereto, (iii) the number of votes in the ASSOCIATION appertaining to any UNIT or (iv) the purposes to which any UNIT or the COMMON ELEMENTS are restricted;

B. any proposed termination of the condominium regime;

C. any delinquency in the payment of ASSESSMENTS or charges owed by a UNIT OWNER subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days; and

D. any lapse, cancellation or material modification of any insurance policy maintained by the ASSOCIATION.

12. ARTICLE XXVIII (INTERPRETATION AND GOVERNING LAW) is hereby renumbered. The new number of the article entitled INTERPRETATION AND GOVERNING LAW is ARTICLE XXX.

13. ARTICLE XXIX (MISCELLANEOUS PROVISIONS) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XXXI
MISCELLANEOUS PROVISIONS

A. FINANCIAL STATEMENT: Upon written request from any agency or corporation which has an interest in or a prospective interest in the CONDOMINIUM, the ASSOCIATION shall prepare and furnish within a reasonable time an audited financial statement for the immediately preceding fiscal year.

B. NOTICES: All notices to the ASSOCIATION required or desired hereunder or under the ARTICLES or the BY-LAWS shall be sent by certified mail, return receipt requested to the ASSOCIATION in care of its offices at the CONDOMINIUM or to such other address as the ASSOCIATION may hereinafter designate from time to time by notice, in writing, to all UNIT OWNERS. Except as provided specifically herein, all notices to any UNIT OWNER shall be sent by first class mail to the address of the UNIT that such UNIT OWNER owns or such other address as may have been designated by him from time to time, in writing, to the ASSOCIATION. All notices to mortgagees of UNITS

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AMENDMENT TO THE
DECLARATION OF CONDOMINIUM
OF
BANYAN GARDENS, A CONDOMINIUM

By vote of the Board of Directors and members of the Banyan Gardens Condominium Owners Association, the Declaration of Condominium of Banyan Gardens, A Condominium is hereby amended, pursuant to ARTICLE XXII.B.i. of the Declaration, in the following respects:

~~1. ARTICLE V.D. is hereby deleted in its entirety and the following provision is inserted in lieu thereof:~~

~~D. COMPLETION OF IMPROVEMENTS: The improvements described in Exhibits "D" through "J" to this DECLARATION have been substantially completed. The descriptions and dimensions contained in said Exhibits accurately depict the improvements as completed by the DEVELOPER. The certification required by Section 718.104(e), Florida Statutes, is attached to this DECLARATION as Exhibit U.~~

*Amended
5/90*

2. The attached Exhibit "U" is hereby adopted as Exhibit "U" of the Declaration.

3. ARTICLE XIII (MAINTENANCE OF COMMUNITY INTERESTS) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XIII
MAINTENANCE OF COMMUNITY INTERESTS

~~In order to maintain a community of congenial residents who are financially responsible and to protect the value of the UNITS, the transfer of UNITS by any UNIT OWNER other than the DEVELOPER shall be subject to the following provisions so long as the CONDOMINIUM and the CONDOMINIUM buildings, in useful condition, shall exist and~~

*Amend
5/90*

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each UNIT OWNER covenants to observe each of the following provisions:

A. SELLING, LEASING AND MORTGAGING OF UNITS: No UNIT OWNER other than the DEVELOPER may sell or lease his UNIT except by complying with the following:

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i. Any deed or lease shall provide (or shall be deemed by the provisions hereof to provide) that the acceptance thereof by the grantee or tenant shall constitute an assumption of the provisions of this DECLARATION, the BY-LAWS, the ARTICLES OF INCORPORATION, all applicable rules and regulations and other agreements, documents or instruments affecting the CONDOMINIUM PROPERTY as the same may be amended from time to time.

ii. Any lease of a Unit shall be in writing and shall be subject to this DECLARATION and to the ARTICLES, BY-LAWS and rules and regulations. The BOARD OF DIRECTORS shall have the power, but shall not be obligated, to terminate any lease and/or to bring summary proceedings in the name of the Lessor thereunder to evict the Lessee in the event of (1) a default by the Lessee in the performance of its obligations under such lease to the extent such default affects the ASSOCIATION in the sole opinion of the BOARD OF DIRECTORS or (2) a foreclosure of the lien granted under the CONDOMINIUM ACT.

iii. Except as hereinbefore set forth, the form of any lease shall contain such other provisions as may be required, in writing, by the BOARD OF DIRECTORS. Any lease executed by the ASSOCIATION as Lessee shall provide that the ASSOCIATION may enter into a sublease of the premises without the consent of the Lessor. No lease shall be executed for an initial term of less than six months.

iv. Any purported sale or lease of a UNIT in violation of this Article, shall be voidable at any time at the election of the ASSOCIATION and, if the BOARD OF DIRECTORS shall select, the UNIT OWNER shall be deemed to have authorized and empowered the ASSOCIATION to institute legal proceedings to evict the purported Lessee (in case of an unauthorized lease) or void a conveyance (in case of an unauthorized sale). Said UNIT OWNER shall reimburse the ASSOCIATION

for all expenses including reasonable attorneys fees and all disbursements incurred in connection with such proceedings.

v. The foregoing restrictions shall not apply to UNITS owned by or leased to the DEVELOPER or owned by any Institutional First Mortgagee acquiring title by foreclosure or by a deed in lieu of foreclosure.

vi. No part of the COMMON ELEMENTS may be sold, conveyed or otherwise disposed of, except as an appurtenance to the UNIT in connection with a sale, conveyance or other disposition of the UNIT to which such interest is appurtenant and any sale, conveyance or other disposition of a UNIT shall be deemed to include the UNIT's appurtenant interest in the COMMON ELEMENTS.

vii. A certificate executed and acknowledged by an officer of the ASSOCIATION stating that the provisions of this Article XIII have been satisfied by a UNIT OWNER shall be conclusive with respect to all persons who rely upon such certificate in good faith. The BOARD OF DIRECTORS shall furnish such certificate upon request to any UNIT OWNER who has complied with the provisions of this Article XIII. No fee shall be charged by the ASSOCIATION in connection with the furnishing of such certificate, in excess of the charges reasonably required for same, and such charges shall not exceed the maximum amount allowed under the CONDOMINIUM ACT, as amended from time to time. No charge shall be made in connection with the consideration of the approval of an extension or renewal of a previously approved lease.

viii. The Association may purchase any UNIT on behalf of all UNIT OWNERS in accordance with Article XX of this DECLARATION. If the available funds of the ASSOCIATION are insufficient to effectuate any such purchase or lease, the BOARD OF DIRECTORS may, in its discretion, finance the acquisition of such UNIT, provided however that no such financing may be secured by an encumbrance or hypothecation of any portion of the CONDOMINIUM PROPERTY other than the UNIT to be purchased.

B. MORTGAGE OF UNITS: A UNIT OWNER may not mortgage his UNIT nor any interest therein

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without the approval of the ASSOCIATION, except to an INSTITUTIONAL MORTGAGEE, as hereinabove defined. The approval of any other mortgagee may be obtained upon conditions determined by the BOARD of the ASSOCIATION and said approval shall be, if granted, prepared in recordable form, executed by the President and Secretary of the ASSOCIATION. Where a UNIT OWNER sells his UNIT and takes back a purchase money mortgage, the approval of the ASSOCIATION is not required.

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C. NOTICE OF LIEN OR SUIT:

i. Notice of Lien: A UNIT OWNER shall give written notice to the ASSOCIATION of every lien upon his UNIT, other than for permitted mortgages, taxes and special assessments, such notice to be given within 5 days after the attaching of such lien.

ii. Notice of Suit: A UNIT OWNER shall give notice, in writing, to the ASSOCIATION of any suit or other proceeding which may affect title to his UNIT, such notice to be given within 5 days after the UNIT OWNER receives knowledge thereof.

iii. Failure to comply with this Section concerning liens shall not effect the validity of any judicial sale of the subject UNIT.

4. ARTICLE XVII (INSURANCE) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XVII
INSURANCE

The insurance, other than title insurance, which shall be carried upon the CONDOMINIUM PROPERTY and the property of the UNIT OWNER, shall be governed by the following provisions:

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A. AUTHORITY TO PURCHASE: All insurance policies upon the CONDOMINIUM PROPERTY shall be purchased by the ASSOCIATION for the benefit of the ASSOCIATION and the UNIT OWNERS and their mortgagees as their interests may appear and provisions shall be made for the issuance of certificates of mortgage endorsements to the mortgagees and UNIT OWNERS. Such policies and

endorsements shall be deposited with the Insurance Trustee. UNIT OWNERS may obtain insurance coverage at their own expense upon their personal property and for their personal liability and living expense. All policies purchased by the ASSOCIATION must be written by insurance companies authorized to do business in the State of Florida and with offices or agents in Dade County, Florida, provided, however, that all such insurance policies must be accepted and approved by the INSTITUTIONAL MORTGAGEES holding the largest aggregate dollar sum of mortgages encumbering PARCELS in the CONDOMINIUM, said sum to be ascertained at the time of purchase or renewal of each such policy.

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B. COVERAGE:

i. **Casualty:** All Buildings and improvements upon the land, including UNITS and all personal property of the ASSOCIATION included in the CONDOMINIUM PROPERTY, are to be insured in an amount equal to 100% of current replacement cost, excluding land, foundation, excavation and other items normally excluded from coverage, and all such insurance must be obtained, if possible, from the same insurance company. Such coverage shall provide protection against the following:

a. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;

b. Flood disaster and loss;

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

ii. **Public Liability:** Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about, or in connection with, the insured property or adjoining driveways and walkways, or any work matters or things related to the insured property, with a cross liability endorsement to cover liabilities of the UNIT OWNERS as a group to any UNIT OWNER or OWNERS or vice versa; such

coverage shall be in such amounts as shall be required by the BOARD OF DIRECTORS but with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for injury to person and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence for loss or damage to property.

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iii. Workmen's Compensation: As shall be required to meet the requirements of law.

iv. Fidelity Insurance: Coverage extending to all Directors, officers and employees of the ASSOCIATION and managing agents who handle ASSOCIATION funds, if any.

v. Association Insurance: Such other insurance as the BOARD OF DIRECTORS of the ASSOCIATION, in its discretion, may determine from time to time to be in the best interest of the ASSOCIATION and the UNIT OWNERS, including Directors liability insurance or other insurance that an INSTITUTIONAL MORTGAGEE may reasonably require, so long as such INSTITUTIONAL MORTGAGEE shall be the owner of a mortgage encumbering any CONDOMINIUM PARCEL.

vi. Where appropriate and obtainable: Each policy of insurance provided for in this Article shall waive the insurer's right to:

a. Subrogation against the ASSOCIATION and against the UNIT OWNERS, individually and as a group;

b. Pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk; and

c. Avoid liability for a loss that is caused by an act of the BOARD OF DIRECTORS of the ASSOCIATION or by a member of the BOARD OF DIRECTORS or by one or more UNIT OWNERS.

C. PREMIUM: Premiums for insurance policies purchased by the ASSOCIATION shall be paid by the ASSOCIATION as a COMMON EXPENSE, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more UNITS or their appurtenances, or of the COMMON ELEMENTS by a particular UNIT OWNER

shall be assessed against and paid by such UNIT OWNER. Premiums may be financed in such manner as the BOARD OF DIRECTORS deems appropriate.

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D. **INSURANCE POLICY INSPECTION:** All insurance policies obtained by the ASSOCIATION shall be available for inspection by UNIT OWNERS or their authorized representatives at reasonable times at the offices of the ASSOCIATION.

E. **ASSURED:** All insurance policies purchased by the ASSOCIATION shall be for the benefit of the ASSOCIATION and the UNIT OWNERS and their mortgagees as their interest may appear and shall provide that the BOARD OF DIRECTORS shall pay all proceeds covering casualty losses to any national bank in Dade County, with trust powers as may be approved and designated as Insurance Trustee by the BOARD OF DIRECTORS of the ASSOCIATION. All insurance policies shall require written notification to each INSTITUTIONAL MORTGAGEE not less than 15 days prior to cancellation of any such policy insuring CONDOMINIUM PROPERTY.

The Insurance Trustee shall not be liable for payments of premiums nor for the renewal or sufficiency of the policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold same in trust for the purposes elsewhere stated herein and for the benefit of the UNIT OWNERS and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee:

i. **COMMON ELEMENTS:** Proceeds on account of COMMON ELEMENTS shall be held in as many undivided shares as there are UNITS in each building, the shares of each UNIT OWNER being the same as his share in the COMMON ELEMENTS, as same are hereinabove stated.

ii. **UNITS:** Proceeds on account of UNITS shall be held in the following undivided shares:

a. **Partial Destruction:** When a building is to be restored, then for the owners of damaged UNITS in proportion to the cost of repairing the damage suffered by each UNIT OWNER.

iii. Failure to Reconstruct or Repair: If it is determined, in the manner elsewhere herein provided, that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall then be distributed to the Beneficial Owners, remittances to UNIT OWNERS and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a UNIT and may be enforced by such mortgagee.

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iv. Certificate: In making distribution to UNIT OWNERS and their mortgagees, the Insurance Trustee may rely upon a certificate of the ASSOCIATION made by the President and Secretary as to the names of the UNIT OWNERS and their respective shares of the distribution.

v. ASSOCIATION as Agent: The ASSOCIATION is hereby irrevocably appointed agent and attorney-in-fact for each UNIT OWNER and for each owner of a mortgage or other lien upon a UNIT and for each owner of any other interest in any property to adjust all claims arising under insurance policies purchased by the ASSOCIATION and to execute and deliver releases upon the payment of such claims.

4. ARTICLE XVII (RECONSTRUCTION OR REPAIR AFTER CASUALTY) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XVIII
RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. DETERMINATION TO RECONSTRUCT OR REPAIR: If any part of the CONDOMINIUM PROPERTY shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

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i. COMMON ELEMENTS: If the damaged improvement is a COMMON ELEMENT or LIMITED COMMON ELEMENT, the damaged property shall be reconstructed or repaired unless it is determined, in the manner elsewhere provided, that the CONDOMINIUM shall be terminated.

ii. CONDOMINIUM BUILDING:

of which are attached hereto as Exhibits, unless the approval of the eligible holders of first mortgages on UNITS to which at least 51% of the votes of UNITS subject to mortgages held by such eligible holders are allocated is obtained. If such approval is obtained, then reconstruction or repair may be made only according to plans and specifications approved by the BOARD OF DIRECTORS of the ASSOCIATION and, if the damaged property is a CONDOMINIUM building, then by the owners of not less than 75% of the COMMON ELEMENTS, including the owners of all damaged UNITS, which approval shall not be unreasonably withheld.

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C. RESPONSIBILITY: If the damage is only to those parts of one UNIT for which the responsibility of maintenance and repair is that of the UNIT OWNER, then the UNIT OWNER shall be responsible for reconstruction and repair after casualty loss. In all other instances, the responsibility of construction or repair after casualty loss shall be that of the ASSOCIATION.

D. ESTIMATES OF COSTS: Immediately after a casualty causing damage to property for which the ASSOCIATION has the responsibility of maintenance and repair, the ASSOCIATION shall obtain reliable and detailed estimates of the cost to repair or rebuild.

E. ASSESSMENTS: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the ASSOCIATION or, if at any time during reconstruction and repair, the funds for the payment of the costs thereof are insufficient, ASSESSMENTS shall be made against the UNIT OWNERS who own the damaged UNITS, and against all UNIT OWNERS in the case of damage to COMMON ELEMENTS, in sufficient amounts to provide funds to pay such estimated costs. Such ASSESSMENTS against the UNIT OWNERS for damage to UNITS shall be in proportion to the cost of reconstruction and repair of their respective UNITS. Such ASSESSMENTS on account of damage to COMMON ELEMENTS shall be in proportion to the UNIT OWNER's share in the COMMON ELEMENTS.

F. DEDUCTIBLE PROVISION: The funds necessary to cover any deductible amount under an insurance policy against which a claim is made

shall be a COMMON EXPENSE.

G. CONSTRUCTION FUNDS: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee, together with funds collected by the ASSOCIATION from ASSESSMENTS against UNIT OWNERS shall be disbursed in payment of such costs in the following manner:

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i. ASSOCIATION: If costs of reconstruction and repair which are the responsibility of the ASSOCIATION are more than \$10,000.00, then the sums paid upon ASSESSMENTS to meet such costs shall be deposited by the ASSOCIATION with the Insurance Trustee. In all other cases, the ASSOCIATION shall hold the sums paid upon such ASSESSMENTS and disburse the same in payment of the costs of reconstruction and repair.

ii. Insurance Trustee: The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the ASSOCIATION from the collection of ASSESSMENTS against UNIT OWNERS on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

a. UNIT OWNER: The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the UNIT OWNER shall be paid by the Insurance Trustee to the UNIT OWNER or, if there is a mortgagee endorsement, then to the UNIT OWNER and his mortgagee, jointly.

b. ASSOCIATION - Lesser Damage: If the amount of the estimated cost of reconstruction and repair which is the responsibility of the ASSOCIATION is less than \$10,000.00, then the construction funds shall be disbursed in payment of such costs upon the order of the ASSOCIATION, provided however, that upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such funds shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

c. ASSOCIATION - Major Damage: If the amount of the estimated cost of reconstruction and repair, which is the responsibility of the ASSOCIATION, is equal to or more than \$10,000.00, then the construction funds shall be disbursed in payment of such costs in the manner required by the BOARD OF DIRECTORS of the ASSOCIATION and upon approval of an architect qualified to practice in the State of Florida and employed by the ASSOCIATION to supervise the work.

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

e. Certificate: Notwithstanding the provisions herein contained, the Insurance Trustee shall not be required to determine whether or not sums paid by UNIT OWNERS upon ASSESSMENTS shall be deposited by the ASSOCIATION with the Insurance Trustee nor to determine whether the disbursements from the construction fund are to be upon the order of the ASSOCIATION or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine the payee nor the amounts to be paid nor to determine whether surplus funds to be distributed are less than the ASSESSMENTS paid by UNIT OWNERS. Instead, the Insurance Trustee may rely upon a certificate of the ASSOCIATION made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to a UNIT OWNER and further, provided that when the ASSOCIATION or a

mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction funds, so requires the approval of an architect named by the ASSOCIATION shall first be obtained by the ASSOCIATION upon disbursements in payment of costs of reconstruction and repair.

6. ARTICLE XXI (COMPLIANCE AND DEFAULT) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XXI
COMPLIANCE AND DEFAULT

Each UNIT OWNER shall be governed by and shall comply with the terms of this DECLARATION, the BY-LAWS of the ASSOCIATION and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time. Failure of UNIT OWNERS to comply therewith shall entitle the ASSOCIATION or other UNIT OWNERS to the following relief in addition to the remedies provided by the CONDOMINIUM ACT:

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A. NEGLIGENCE: A UNIT OWNER shall be liable and may be assessed by the ASSOCIATION for the expense of any maintenance, repair or replacement rendered necessary by his willful, intentional or negligent act or by that of any member of his family or his or their guests, invitees, employees, licensees or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the ASSOCIATION. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a UNIT or its appurtenances or of the COMMON ELEMENTS.

B. RIGHTS OF ACTION: The ASSOCIATION and any aggrieved UNIT OWNER is hereby granted a right of action against UNIT OWNERS for failure to comply with the provisions of the DECLARATION, ARTICLES, BY-LAWS, RULES AND REGULATIONS, or with decisions of the ASSOCIATION which are made pursuant to authority granted the ASSOCIATION in such documents. UNIT OWNERS are hereby granted similar rights of actions against the ASSOCIATION.

C. COSTS AND ATTORNEYS FEES: In any proceeding arising because of an alleged failure of a UNIT OWNER to comply with the terms of the DECLARATION, ARTICLES, BY-LAWS and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys fees as may be awarded by the Court.

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D. NO WAIVER OF RIGHTS: The failure of the ASSOCIATION or any UNIT OWNER to enforce a covenant, restriction or other provision of this DECLARATION or any of the Exhibits attached hereto, shall not constitute a waiver of the right to do so thereafter.

7. ARTICLE XXII (AMENDMENT OF DECLARATION) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XXII
AMENDMENT OF DECLARATION

Except as otherwise provided herein, this DECLARATION may be amended in the following manner:

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A. NOTICE: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment shall be considered.

B. RESOLUTION OF ADOPTION: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS or by the members of the ASSOCIATION. Directors and members not present in person or by proxy at the meeting considering the amendment, may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approval must be as follows:

i. By not less than 67% of the entire membership of the BOARD OF DIRECTORS and by not less than 67% of the votes of the entire membership of the ASSOCIATION; or

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ii. By not less than 75% of the votes of the entire membership of the ASSOCIATION; or

iii. By an agreement executed and acknowledged by all UNIT OWNERS of the CONDOMINIUM in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Dade County, Florida.

iv. In addition to the requirements of paragraphs i, ii and iii above, the approval of Eligible Holders (as defined in Article XVII above) of first mortgages on UNITS to which at least 51% of the votes of UNITS subject to a mortgage appertain, shall be required to materially amend any provision of this DECLARATION or BY-LAWS, which establish or regulate any of the following:

- a. voting;
- b. assessments, assessment liens or subordination of such liens;
- c. reserves for maintenance, repair and replacement of the COMMON ELEMENTS;
- d. insurance or Fidelity Bonds;
- e. rights to use of the COMMON ELEMENTS;
- f. responsibility for maintenance and repair of the several portions of the CONDOMINIUM;
- g. expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime;
- h. boundaries of any UNIT;
- i. the interests in the COMMON ELEMENTS or LIMITED COMMON ELEMENTS;
- j. convertibility of UNITS into COMMON ELEMENTS or of COMMON ELEMENTS into UNITS;
- k. leasing of UNITS;
- l. imposition of any right of first refusal or similar restriction on the right of a UNIT

OWNER to sell, transfer, or otherwise convey his or her UNIT in the CONDOMINIUM;

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- m. establishment of self-management by the ASSOCIATION where professional management has been required by any of the agencies or corporations; and
- n. any provision which is for the express benefit of holders or insurers of first mortgages on UNITS in the CONDOMINIUM.

C. RESOLUTION OF ADOPTION FOR ERRORS OR OMISSIONS NOT MATERIALLY ADVERSELY AFFECTING PROPERTY RIGHTS OF UNIT OWNERS: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS of the ASSOCIATION or by the members of the ASSOCIATION whenever it appears that there is an omission or error in this DECLARATION or any Exhibit attached hereto or any amendment hereto, as follows:

i. Such amendment shall be approved by not less than 50% of the votes of the entire membership of the BOARD OF DIRECTORS and by not less than 50% of the votes of the entire membership of the ASSOCIATION.

ii. Any amendment adopted pursuant to the provisions of this Article XXII, Paragraph C shall not materially adversely effect the property rights of UNIT OWNERS.

iii. Until the DEVELOPER has sold and conveyed all of the UNITS in the CONDOMINIUM, any amendment adopted pursuant to this Article XXII, Paragraph C must be approved and consented to in writing by the DEVELOPER.

D. PROVISIO: Provided, however, that no amendment shall discriminate against any UNIT OWNER nor against any UNIT or class of groups of UNITS unless the UNIT OWNERS so affected shall consent; and no amendment shall change any UNIT nor the share in the COMMON ELEMENTS appurtenant to it, nor increase the a UNIT OWNER's share of the COMMON EXPENSES unless the record owner of the UNIT concerned and all record owners of mortgages on such UNIT shall join in the execution of the amendment. Neither shall an amendment make any change in the Section entitled "INSURANCE" nor in the Section entitled

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"RECONSTRUCTION OR REPAIR AFTER CASUALTY" unless the record owners of all mortgages upon the CONDOMINIUM shall join in the execution of such amendment. No amendment shall be adopted without the consent and approval of the DEVELOPER so long as it shall own one or more UNITS in the CONDOMINIUM. No amendment shall make any change which would in any way affect any of the rights, reservations, privileges, powers and/or options herein provided in favor of or reserved to the DEVELOPER or any person who is an officer, stockholder or director of the DEVELOPER, or any corporation having some or all of its directors, officers or stockholders in common with the DEVELOPER, unless the DEVELOPER shall join in the execution of such amendment. No amendment shall make any change which would, in any way, affect any of the rights, reservations, privileges, powers and/or options herein provided in favor of or reserved to any Institutional First Mortgagee unless such Institutional First Mortgagee shall join in the execution of such amendment. In case of condemnation or substantial loss to the UNITS or COMMON ELEMENTS of the CONDOMINIUM, the ASSOCIATION shall not be entitled to partition or subdivide any UNIT or to abandon, partition, subdivide, encumber, sell or transfer any of the COMMON ELEMENTS unless at least 66 2/3% of the INSTITUTIONAL MORTGAGEES (based upon the number of UNITS encumbered, i.e., if one INSTITUTIONAL MORTGAGEE shall hold 66 2/3% of the mortgages on the total number of UNITS in the CONDOMINIUM, then only the approval of said INSTITUTIONAL MORTGAGEE shall be necessary) and 66 2/3% of the UNIT OWNERS have given their prior written approval, except as provided in the CONDOMINIUM ACT as of the date hereof.

E. 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 formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Public Records of Dade County, Florida.

F. AMENDMENTS: The Article entitled "TERMINATION" cannot be amended without consent of all UNIT OWNERS and all record owners of mortgages

upon CONDOMINIUM PARCELS.

8. ARTICLE XXVI (SEVERABILITY) is hereby renumbered. The new number of the article entitled SEVERABILITY is ARTICLE XXVIII.

9. A new ARTICLE XXVI is hereby inserted, which states as follows:

ARTICLE XXVI
TRANSFER OF CONTROL

Control of the ASSOCIATION shall pass to the UNIT OWNERS not later than the earlier of the following:

A. 120 days after the date by which 75 percent of the UNITS have been conveyed to UNIT purchasers, or

B. as set forth in the BY-LAWS.

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10. ARTICLE XXVII (INVALIDITY) is hereby renumbered. The new number of the article entitled INVALIDITY is ARTICLE XXVIII.

11. A new ARTICLE XXVII is hereby inserted, which states as follows:

ARTICLE XXVII
NOTICES OF ACTION TO FIRST LIENHOLDERS

A holder, insurer or guarantor of a first mortgage, upon written request to the ASSOCIATION, (such request to state the name and address of such holder, insurer or guarantor and the UNIT number), will be entitled to timely written notice of:

A. any proposed amendment of the CONDOMINIUM documents effecting a change in (i) the boundaries of any UNIT or the exclusive easement rights appertaining thereto, (ii) the interests in the COMMON ELEMENTS or LIMITED COMMON ELEMENTS appertaining to any UNIT or the liability for COMMON EXPENSES appertaining thereto, (iii) the number of votes in the ASSOCIATION appertaining to any UNIT or (iv) the

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time, in writing, to the ASSOCIATION. All notices to mortgagees of UNITS shall be sent by first class mail to their respective addresses or such other address as may be designated by them from time to time, in writing, to the ASSOCIATION. All notices shall be deemed to have been given when mailed in a postage prepaid seal wrapper, except notices of a change of address which shall be deemed to have been given when received. Notwithstanding anything in this DECLARATION to the contrary, the ASSOCIATION shall not be responsible to any mortgagee or lienor of any UNIT under any of the provisions hereof and may assume the UNIT is free of any such mortgages or liens unless written notice of the existence of such mortgage or lien is received by the ASSOCIATION.

C. WAIVER: No provision contained in this DECLARATION shall be deemed to have been waived by reason of any failure to enforce same without regard to the number of violations or breaches thereof which may occur.

D. RATIFICATION: Each UNIT OWNER, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise) and each occupant of a UNIT, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this DECLARATION, the ARTICLES, the BY-LAWS and the Rules and Regulations of the ASSOCIATION are fair and reasonable in all material respects.

E. GENDER; PLURALITY: Whenever the context so permits or requires, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all or no genders.

F. CAPTIONS: The captions herein and in the Exhibits attached hereto and made a part hereof are only inserted as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or of any provision thereof.

The foregoing Amendments were adopted by the Board of Directors and members of Banyan Gardens Condominium Owners

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Association, Inc. in accordance with Article XXII.B.i. of the Declaration of Condominium.

DATED AT Miami, Florida, this 10th day of November, 1989.

By: [Signature]
John V. Raisbeck, President

Attest: [Signature]
Daisy Ventura, Secretary

STATE OF FLORIDA
COUNTY OF DADE

I hereby certify that before me, the undersigned authority duly authorized to administer oaths and take acknowledgments, personally appeared John V. Raisbeck and Daisy Ventura, to me well known, and they acknowledged before me that they executed the foregoing in their respective capacities of President and Secretary of Banyan Gardens Condominium Association, Inc. and that they executed the same freely and voluntarily for the purposes therein set forth and expressed.

Witness my hand and official seal this 10 day of November, 1989.

[Signature]
NOTARY PUBLIC, State of Florida

My Commission Expires:

STATE OF FLORIDA



RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
BOOKS VERIFIED
RICHARD P. BRINER
CLERK COUNTY CO.

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AMENDMENT TO THE
DECLARATION OF CONDOMINIUM
OF
BANYAN GARDENS, A CONDOMINIUM

1990 FEB -5 PM 4:28

90R046320

By vote of the Board of Directors and members of the Banyan Gardens Condominium Owners Association, the Declaration of Condominium of Banyan Gardens, A Condominium is hereby amended, pursuant to ARTICLE XXII.B.i. of the Declaration, in the following respects:

1. ARTICLE V.D. is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

D. COMPLETION OF IMPROVEMENTS: The improvements described in Exhibits "D" through "J" to this DECLARATION have been substantially completed. The descriptions and dimensions contained in said Exhibits accurately depict the improvements as completed by the DEVELOPER. The certification required by Section 718.104(e), Florida Statutes, is attached to this DECLARATION as Exhibit U.

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2. The attached Exhibit "U" is hereby adopted as Exhibit "U" of the Declaration.

3. ARTICLE XIII (MAINTENANCE OF COMMUNITY INTERESTS) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XIII
MAINTENANCE OF COMMUNITY INTERESTS

In order to maintain a community of congenial residents who are financially responsible and to protect the value of the UNITS, the transfer of UNITS by any UNIT OWNER other than the DEVELOPER shall be subject to the following provisions so long as the CONDOMINIUM and the CONDOMINIUM buildings, in useful condition, shall exist and

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each UNIT OWNER covenants to observe each of the following provisions:

A. SELLING, LEASING AND MORTGAGING OF UNITS:
No UNIT OWNER other than the DEVELOPER may sell or lease his UNIT except by complying with the following:

i. Any deed or lease shall provide (or shall be deemed by the provisions hereof to provide) that the acceptance thereof by the grantee or tenant shall constitute an assumption of the provisions of this DECLARATION, the BY-LAWS, the ARTICLES OF INCORPORATION, all applicable rules and regulations and other agreements, documents or instruments affecting the CONDOMINIUM PROPERTY as the same may be amended from time to time. *Amend*

ii. Any lease of a Unit shall be in writing and shall be subject to this DECLARATION and to the ARTICLES, BY-LAWS and rules and regulations. The BOARD OF DIRECTORS shall have the power, but shall not be obligated, to terminate any lease and/or to bring summary proceedings in the name of the Lessor thereunder to evict the Lessee in the event of (1) a default by the Lessee in the performance of its obligations under such lease to the extent such default affects the ASSOCIATION in the sole opinion of the BOARD OF DIRECTORS or (2) a foreclosure of the lien granted under the CONDOMINIUM ACT.

iii. Except as hereinbefore set forth, the form of any lease shall contain such other provisions as may be required, in writing, by the BOARD OF DIRECTORS. Any lease executed by the ASSOCIATION as Lessee shall provide that the ASSOCIATION may enter into a sublease of the premises without the consent of the Lessor. No lease shall be executed for an initial term of less than six months.

iv. Any purported sale or lease of a UNIT in violation of this Article, shall be voidable at any time at the election of the ASSOCIATION and, if the BOARD OF DIRECTORS shall select, the UNIT OWNER shall be deemed to have authorized and empowered the ASSOCIATION to institute legal proceedings to evict the purported Lessee (in case of an unauthorized lease) or void a conveyance (in case of an unauthorized sale). Said UNIT OWNER shall reimburse the ASSOCIATION

for all expenses including reasonable attorneys fees and all disbursements incurred in connection with such proceedings.

v. The foregoing restrictions shall not apply to UNITS owned by or leased to the DEVELOPER or owned by any Institutional First Mortgagee acquiring title by foreclosure or by a deed in lieu of foreclosure.

vi. No part of the COMMON ELEMENTS may be sold, conveyed or otherwise disposed of, except as an appurtenance to the UNIT in connection with a sale, conveyance or other disposition of the UNIT to which such interest is appurtenant and any sale, conveyance or other disposition of a UNIT shall be deemed to include the UNIT's appurtenant interest in the COMMON ELEMENTS. *Amend*

vii. A certificate executed and acknowledged by an officer of the ASSOCIATION stating that the provisions of this Article XIII have been satisfied by a UNIT OWNER shall be conclusive with respect to all persons who rely upon such certificate in good faith. The BOARD OF DIRECTORS shall furnish such certificate upon request to any UNIT OWNER who has complied with the provisions of this Article XIII. No fee shall be charged by the ASSOCIATION in connection with the furnishing of such certificate, in excess of the charges reasonably required for same, and such charges shall not exceed the maximum amount allowed under the CONDOMINIUM ACT, as amended from time to time. No charge shall be made in connection with the consideration of the approval of an extension or renewal of a previously approved lease.

viii. The Association may purchase any UNIT on behalf of all UNIT OWNERS in accordance with Article XX of this DECLARATION. If the available funds of the ASSOCIATION are insufficient to effectuate any such purchase or lease, the BOARD OF DIRECTORS may, in its discretion, finance the acquisition of such UNIT, provided however that no such financing may be secured by an encumbrance or hypothecation of any portion of the CONDOMINIUM PROPERTY other than the UNIT to be purchased.

B. MORTGAGE OF UNITS: A UNIT OWNER may not mortgage his UNIT nor any interest therein

endorsements shall be deposited with the Insurance Trustee. UNIT OWNERS may obtain insurance coverage at their own expense upon their personal property and for their personal liability and living expense. All policies purchased by the ASSOCIATION must be written by insurance companies authorized to do business in the State of Florida and with offices or agents in Dade County, Florida, provided, however, that all such insurance policies must be accepted and approved by the INSTITUTIONAL MORTGAGEE holding the largest aggregate dollar sum of mortgages encumbering PARCELS in the CONDOMINIUM, said sum to be ascertained at the time of purchase or renewal of each such policy.

Amend

B. COVERAGE:

i. **Casualty:** All Buildings and improvements upon the land, including UNITS and all personal property of the ASSOCIATION included in the CONDOMINIUM PROPERTY, are to be insured in an amount equal to 100% of current replacement cost, excluding land, foundation, excavation and other items normally excluded from coverage, and all such insurance must be obtained, if possible, from the same insurance company. Such coverage shall provide protection against the following:

a. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;

b. Flood disaster and loss;

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

ii. **Public Liability:** Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about, or in connection with, the insured property or adjoining driveways and walkways, or any work matters or things related to the insured property, with a cross liability endorsement to cover liabilities of the UNIT OWNERS as a group to any UNIT OWNER or OWNERS or vice versa; such

endorsements shall be deposited with the Insurance Trustee. UNIT OWNERS may obtain insurance coverage at their own expense upon their personal property and for their personal liability and living expense. All policies purchased by the ASSOCIATION must be written by insurance companies authorized to do business in the State of Florida and with offices or agents in Dade County, Florida, provided, however, that all such insurance policies must be accepted and approved by the INSTITUTIONAL MORTGAGEE holding the largest aggregate dollar sum of mortgages encumbering PARCELS in the CONDOMINIUM, said sum to be ascertained at the time of purchase or renewal of each such policy.



B. COVERAGE:

- i. **Casualty:** All Buildings and improvements upon the land, including UNITS and all personal property of the ASSOCIATION included in the CONDOMINIUM PROPERTY, are to be insured in an amount equal to 100% of current replacement cost, excluding land, foundation, excavation and other items normally excluded from coverage, and all such insurance must be obtained, if possible, from the same insurance company. Such coverage shall provide protection against the following:
 - a. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;
 - b. Flood disaster and loss;
 - c. Such other risks as, from time to time, shall be customarily covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.
- ii. **Public Liability:** Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about, or in connection with, the insured property or adjoining driveways and walkways, or any work matters or things related to the insured property, with a cross liability endorsement to cover liabilities of the UNIT OWNERS as a group to any UNIT OWNER or OWNERS or vice versa; such

coverage shall be in such amounts as shall be required by the BOARD OF DIRECTORS but with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for injury to person and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence for loss or damage to property.

iii. Workmen's Compensation: As shall be required to meet the requirements of law.

iv. Fidelity Insurance: Coverage extending to all Directors, officers and employees of the ASSOCIATION and managing agents who handle ASSOCIATION funds, if any.

v. Association Insurance: Such other insurance as the BOARD OF DIRECTORS of the ASSOCIATION, in its discretion, may determine from time to time to be in the best interest of the ASSOCIATION and the UNIT OWNERS, including Directors liability insurance or other insurance that an INSTITUTIONAL MORTGAGEE may reasonably require, so long as such INSTITUTIONAL MORTGAGEE shall be the owner of a mortgage encumbering any CONDOMINIUM PARCEL.

vi. Where appropriate and obtainable: Each policy of insurance provided for in this Article shall waive the insurer's right to:

a. Subrogation against the ASSOCIATION and against the UNIT OWNERS, individually and as a group;

b. Pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk; and

c. Avoid liability for a loss that is caused by an act of the BOARD OF DIRECTORS of the ASSOCIATION or by a member of the BOARD OF DIRECTORS or by one or more UNIT OWNERS.

C. PREMIUM: Premiums for insurance policies purchased by the ASSOCIATION shall be paid by the ASSOCIATION as a COMMON EXPENSE, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more UNITS or their appurtenances, or of the COMMON ELEMENTS by a particular UNIT OWNER

Amended

shall be assessed against and paid by such UNIT OWNER. Premiums may be financed in such manner as the BOARD OF DIRECTORS deems appropriate.

D. INSURANCE POLICY INSPECTION: All insurance policies obtained by the ASSOCIATION shall be available for inspection by UNIT OWNERS or their authorized representatives at reasonable times at the offices of the ASSOCIATION.

E. ASSURED: All insurance policies purchased by the ASSOCIATION shall be for the benefit of the ASSOCIATION and the UNIT OWNERS and their mortgagees as their interest may appear and shall provide that the BOARD OF DIRECTORS shall pay all proceeds covering casualty losses to any national bank in Dade County, with trust powers as may be approved and designated as Insurance Trustee by the BOARD OF DIRECTORS of the ASSOCIATION. All insurance policies shall require written notification to each INSTITUTIONAL MORTGAGEE not less than 15 days prior to cancellation of any such policy insuring CONDOMINIUM PROPERTY.

The Insurance Trustee shall not be liable for payments of premiums nor for the renewal or sufficiency of the policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold same in trust for the purposes elsewhere stated herein and for the benefit of the UNIT OWNERS and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee:

i. COMMON ELEMENTS: Proceeds on account of COMMON ELEMENTS shall be held in as many undivided shares as there are UNITS in each building, the shares of each UNIT OWNER being the same as his share in the COMMON ELEMENTS, as same are hereinabove stated.

ii. UNITS: Proceeds on account of UNITS shall be held in the following undivided shares:

a. Partial Destruction: When a building is to be restored, then for the owners of damaged UNITS in proportion to the cost of repairing the damage suffered by each UNIT OWNER.

iii. Failure to Reconstruct or Repair: If it is determined, in the manner elsewhere herein provided, that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall then be distributed to the Beneficial Owners, remittances to UNIT OWNERS and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a UNIT and may be enforced by such mortgagee.

iv. Certificate: In making distribution to UNIT OWNERS and their mortgagees, the Insurance Trustee may rely upon a certificate of the ASSOCIATION made by the President and Secretary as to the names of the UNIT OWNERS and their respective shares of the distribution.

v. ASSOCIATION as Agent: The ASSOCIATION is hereby irrevocably appointed agent and attorney-in-fact for each UNIT OWNER and for each owner of a mortgage or other lien upon a UNIT and for each owner of any other interest in any property to adjust all claims arising under insurance policies purchased by the ASSOCIATION and to execute and deliver releases upon the payment of such claims.

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4. ARTICLE XVII (RECONSTRUCTION OR REPAIR AFTER CASUALTY) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XVIII
RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. DETERMINATION TO RECONSTRUCT OR REPAIR: If any part of the CONDOMINIUM PROPERTY shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

i. COMMON ELEMENTS: If the damaged improvement is a COMMON ELEMENT or LIMITED COMMON ELEMENT, the damaged property shall be reconstructed or repaired unless it is determined, in the manner elsewhere provided, that the CONDOMINIUM shall be terminated.

ii. CONDOMINIUM BUILDING:

of which are attached hereto as Exhibits, unless the approval of the eligible holders of first mortgages on UNITS to which at least 51% of the votes of UNITS subject to mortgages held by such eligible holders are allocated is obtained. If such approval is obtained, then reconstruction or repair may be made only according to plans and specifications approved by the BOARD OF DIRECTORS of the ASSOCIATION and, if the damaged property is a CONDOMINIUM building, then by the owners of not less than 75% of the COMMON ELEMENTS, including the owners of all damaged UNITS, which approval shall not be unreasonably withheld.

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C. RESPONSIBILITY: If the damage is only to those parts of one UNIT for which the responsibility of maintenance and repair is that of the UNIT OWNER, then the UNIT OWNER shall be responsible for reconstruction and repair after casualty loss. In all other instances, the responsibility of construction or repair after casualty loss shall be that of the ASSOCIATION.

D. ESTIMATES OF COSTS: Immediately after a casualty causing damage to property for which the ASSOCIATION has the responsibility of maintenance and repair, the ASSOCIATION shall obtain reliable and detailed estimates of the cost to repair or rebuild.

E. ASSESSMENTS: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the ASSOCIATION or, if at any time during reconstruction and repair, the funds for the payment of the costs thereof are insufficient, ASSESSMENTS shall be made against the UNIT OWNERS who own the damaged UNITS, and against all UNIT OWNERS in the case of damage to COMMON ELEMENTS, in sufficient amounts to provide funds to pay such estimated costs. Such ASSESSMENTS against the UNIT OWNERS for damage to UNITS shall be in proportion to the cost of reconstruction and repair of their respective UNITS. Such ASSESSMENTS on account of damage to COMMON ELEMENTS shall be in proportion to the UNIT OWNER's share in the COMMON ELEMENTS.

F. DEDUCTIBLE PROVISION: The funds necessary to cover any deductible amount under an insurance policy against which a claim is made

c. ASSOCIATION - Major Damage: If the amount of the estimated cost of reconstruction and repair, which is the responsibility of the ASSOCIATION, is equal to or more than \$10,000.00, then the construction funds shall be disbursed in payment of such costs in the manner required by the BOARD OF DIRECTORS of the ASSOCIATION and upon approval of an architect qualified to practice in the State of Florida and employed by the ASSOCIATION to supervise the work.

Amend

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

e. Certificate: Notwithstanding the provisions herein contained, the Insurance Trustee shall not be required to determine whether or not sums paid by UNIT OWNERS upon ASSESSMENTS shall be deposited by the ASSOCIATION with the Insurance Trustee nor to determine whether the disbursements from the construction fund are to be upon the order of the ASSOCIATION or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine the payee nor the amounts to be paid nor to determine whether surplus funds to be distributed are less than the ASSESSMENTS paid by UNIT OWNERS. Instead, the Insurance Trustee may rely upon a certificate of the ASSOCIATION made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to a UNIT OWNER and further, provided that when the ASSOCIATION or a

mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction funds, so requires the approval of an architect named by the ASSOCIATION shall first be obtained by the ASSOCIATION upon disbursements in payment of costs of reconstruction and repair.

6. ARTICLE XXI (COMPLIANCE AND DEFAULT) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XXI
COMPLIANCE AND DEFAULT

Each UNIT OWNER shall be governed by and shall comply with the terms of this DECLARATION, the BY-LAWS of the ASSOCIATION and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time. Failure of UNIT OWNERS to comply therewith shall entitle the ASSOCIATION or other UNIT OWNERS to the following relief in addition to the remedies provided by the CONDOMINIUM ACT:

Amend

A. NEGLIGENCE: A UNIT OWNER shall be liable and may be assessed by the ASSOCIATION for the expense of any maintenance, repair or replacement rendered necessary by his willful, intentional or negligent act or by that of any member of his family or his or their guests, invitees, employees, licensees or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the ASSOCIATION. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a UNIT or its appurtenances or of the COMMON ELEMENTS.

B. RIGHTS OF ACTION: The ASSOCIATION and any aggrieved UNIT OWNER is hereby granted a right of action against UNIT OWNERS for failure to comply with the provisions of the DECLARATION, ARTICLES, BY-LAWS, RULES AND REGULATIONS, or with decisions of the ASSOCIATION which are made pursuant to authority granted the ASSOCIATION in such documents. UNIT OWNERS are hereby granted similar rights of actions against the ASSOCIATION.

C. COSTS AND ATTORNEYS FEES: In any proceeding arising because of an alleged failure of a UNIT OWNER to comply with the terms of the DECLARATION, ARTICLES, BY-LAWS and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys fees as may be awarded by the Court.

D. NO WAIVER OF RIGHTS: The failure of the ASSOCIATION or any UNIT OWNER to enforce a covenant, restriction or other provision of this DECLARATION or any of the Exhibits attached hereto, shall not constitute a waiver of the right to do so thereafter.

7. ARTICLE XXII (AMENDMENT OF DECLARATION) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XXII
AMENDMENT OF DECLARATION

Amend

Except as otherwise provided herein, this DECLARATION may be amended in the following manner:

A. NOTICE: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment shall be considered.

B. RESOLUTION OF ADOPTION: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS or by the members of the ASSOCIATION. Directors and members not present in person or by proxy at the meeting considering the amendment, may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approval must be as follows:

i. By not less than 67% of the entire membership of the BOARD OF DIRECTORS and by not less than 67% of the votes of the entire membership of the ASSOCIATION; or

ii. By not less than 75% of the votes of the entire membership of the ASSOCIATION; or

iii. By an agreement executed and acknowledged by all UNIT OWNERS of the CONDOMINIUM in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Dade County, Florida.

Amend

iv. In addition to the requirements of paragraphs i, ii and iii above, the approval of Eligible Holders (as defined in Article XVII above) of first mortgages on UNITS to which at least 51% of the votes of UNITS subject to a mortgage appertain, shall be required to materially amend any provision of this DECLARATION or BY-LAWS, which establish or regulate any of the following:

- a. voting;
- b. assessments, assessment liens or subordination of such liens;
- c. reserves for maintenance, repair and replacement of the COMMON ELEMENTS;
- d. insurance or Fidelity Bonds;
- e. rights to use of the COMMON ELEMENTS;
- f. responsibility for maintenance and repair of the several portions of the CONDOMINIUM;
- g. expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime;
- h. boundaries of any UNIT;
- i. the interests in the COMMON ELEMENTS or LIMITED COMMON ELEMENTS;
- j. convertibility of UNITS into COMMON ELEMENTS or of COMMON ELEMENTS into UNITS;
- k. leasing of UNITS;
- l. imposition of any right of first refusal or similar restriction on the right of a UNIT

OWNER to sell, transfer, or otherwise convey his or her UNIT in the CONDOMINIUM;

- m. establishment of self-management by the ASSOCIATION where professional management has been required by any of the agencies or corporations; and
- n. any provision which is for the express benefit of holders or insurers of first mortgages on UNITS in the CONDOMINIUM.

Amend

C. RESOLUTION OF ADOPTION FOR ERRORS OR OMISSIONS NOT MATERIALLY ADVERSELY AFFECTING PROPERTY RIGHTS OF UNIT OWNERS: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS of the ASSOCIATION or by the members of the ASSOCIATION whenever it appears that there is an omission or error in this DECLARATION or any Exhibit attached hereto or any amendment hereto, as follows:

i. Such amendment shall be approved by not less than 50% of the votes of the entire membership of the BOARD OF DIRECTORS and by not less than 50% of the votes of the entire membership of the ASSOCIATION.

ii. Any amendment adopted pursuant to the provisions of this Article XXII, Paragraph C shall not materially adversely effect the property rights of UNIT OWNERS.

iii. Until the DEVELOPER has sold and conveyed all of the UNITS in the CONDOMINIUM, any amendment adopted pursuant to this Article XXII, Paragraph C must be approved and consented to in writing by the DEVELOPER.

D. PROVISIO: Provided, however, that no amendment shall discriminate against any UNIT OWNER nor against any UNIT or class of groups of UNITS unless the UNIT OWNERS so affected shall consent; and no amendment shall change any UNIT nor the share in the COMMON ELEMENTS appurtenant to it, nor increase the a UNIT OWNER's share of the COMMON EXPENSES unless the record owner of the UNIT concerned and all record owners of mortgages on such UNIT shall join in the execution of the amendment. Neither shall an amendment make any change in the Section entitled "INSURANCE" nor in the Section entitled

"RECONSTRUCTION OR REPAIR AFTER CASUALTY" unless the record owners of all mortgages upon the CONDOMINIUM shall join in the execution of such amendment. No amendment shall be adopted without the consent and approval of the DEVELOPER so long as it shall own one or more UNITS in the CONDOMINIUM. No amendment shall make any change which would in any way affect any of the rights, reservations, privileges, powers and/or options herein provided in favor of or reserved to the DEVELOPER or any person who is an officer, stockholder or director of the DEVELOPER, or any corporation having some or all of its directors, officers or stockholders in common with the DEVELOPER, unless the DEVELOPER shall join in the execution of such amendment. No amendment shall make any change which would, in any way, affect any of the rights, reservations, privileges, powers and/or options herein provided in favor of or reserved to any Institutional First Mortgagee unless such Institutional First Mortgagee shall join in the execution of such amendment. In case of condemnation or substantial loss to the UNITS or COMMON ELEMENTS of the CONDOMINIUM, the ASSOCIATION shall not be entitled to partition or subdivide any UNIT or to abandon, partition, subdivide, encumber, sell or transfer any of the COMMON ELEMENTS unless at least 66 2/3% of the INSTITUTIONAL MORTGAGEES (based upon the number of UNITS encumbered, i.e., if one INSTITUTIONAL MORTGAGEE shall hold 66 2/3% of the mortgages on the total number of UNITS in the CONDOMINIUM, then only the approval of said INSTITUTIONAL MORTGAGEE shall be necessary) and 66 2/3% of the UNIT OWNERS have given their prior written approval, except as provided in the CONDOMINIUM ACT as of the date hereof.

Amended

E. 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 formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Public Records of Dade County, Florida.

F. AMENDMENTS: The Article entitled "TERMINATION" cannot be amended without consent of all UNIT OWNERS and all record owners of mortgages

upon CONDOMINIUM PARCELS.

8. ARTICLE XXVI (SEVERABILITY) is hereby renumbered. The new number of the article entitled SEVERABILITY is ARTICLE XXVIII.

9. A new ARTICLE XXVI is hereby inserted, which states as follows:

ARTICLE XXVI
TRANSFER OF CONTROL

Amend

Control of the ASSOCIATION shall pass to the UNIT OWNERS not later than the earlier of the following:

- A. 120 days after the date by which 75 percent of the UNITS have been conveyed to UNIT purchasers, or
- B. as set forth in the BY-LAWS.

10. ARTICLE XXVII (INVALIDITY) is hereby renumbered. The new number of the article entitled INVALIDITY is ARTICLE XXVIII.

11. A new ARTICLE XXVII is hereby inserted, which states as follows:

ARTICLE XXVII
NOTICES OF ACTION TO FIRST LIENHOLDERS

Amend

A holder, insurer or guarantor of a first mortgage, upon written request to the ASSOCIATION, (such request to state the name and address of such holder, insurer or guarantor and the UNIT number), will be entitled to timely written notice of:

- A. any proposed amendment of the CONDOMINIUM documents effecting a change in (i) the boundaries of any UNIT or the exclusive easement rights appertaining thereto, (ii) the interests in the COMMON ELEMENTS or LIMITED COMMON ELEMENTS appertaining to any UNIT or the liability for COMMON EXPENSES appertaining thereto, (iii) the number of votes in the ASSOCIATION appertaining to any UNIT or (iv) the

purposes to which any UNIT or the COMMON ELEMENTS are restricted;

B. any proposed termination of the condominium regime;

C. any delinquency in the payment of ASSESSMENTS or charges owed by a UNIT OWNER subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days; and

D. any lapse, cancellation or material modification of any insurance policy maintained by the ASSOCIATION.

Amend

12. ARTICLE XXVIII (INTERPRETATION AND GOVERNING LAW) is hereby renumbered. The new number of the article entitled INTERPRETATION AND GOVERNING LAW is ARTICLE XXX.

13. ARTICLE XXIX (MISCELLANEOUS PROVISIONS) is hereby deleted in its entirety and the following provision is inserted in lieu thereof:

ARTICLE XXXI
MISCELLANEOUS PROVISIONS

A. FINANCIAL STATEMENT: Upon written request from any agency or corporation which has an interest in or a prospective interest in the CONDOMINIUM, the ASSOCIATION shall prepare and furnish within a reasonable time an audited financial statement for the immediately preceding fiscal year.

B. NOTICES: All notices to the ASSOCIATION required or desired hereunder or under the ARTICLES or the BY-LAWS shall be sent by certified mail, return receipt requested to the ASSOCIATION in care of its offices at the CONDOMINIUM or to such other address as the ASSOCIATION may hereinafter designate from time to time by notice, in writing, to all UNIT OWNERS. Except as provided specifically herein, all notices to any UNIT OWNER shall be sent by first class mail to the address of the UNIT that such UNIT OWNER owns or such other address as may have been designated by him from time to

AMENDMENT TO
DECLARATION OF CONDOMINIUM OF
BANYAN GARDENS, A CONDOMINIUM

Pursuant to Article XXII, Section C, of the Declaration of Condominium of Banyan Gardens, A Condominium, dated June 27, 1989, the existing Declaration of Condominium of Banyan Gardens, A Condominium, recorded in Official Records Book 14965, at Page 1391 through 1495 of the Public Records of Dade County, Florida, is hereby amended in the following respects.

1. Exhibit "B" of the Declaration of Condominium of Banyan Gardens, A Condominium (identification and designation of units by number; description of unit) is hereby deleted in its entirety and the attached Exhibit "B" is inserted in lieu thereof.

The foregoing Amendment was adopted in accordance with Article XXII, Section C of the Declaration of Condominium of Banyan Gardens, A Condominium, on this 24 day of July, 1989.

BANYAN GARDENS CONDOMINIUM
ASSOCIATION, INC.

Amend

By: *John V. Raisbeck*
John V. Raisbeck, President

Attest: *Daisy Ventura*
Daisy Ventura, Secretary

STATE OF FLORIDA
COUNTY OF DADE

I hereby certify that before me, the undersigned authority duly authorized to administer oaths and take acknowledgments, personally appeared John V. Raisbeck and Daisy Ventura, to me well known, and they acknowledged before me that they executed the foregoing in their respective capacities of President and Secretary of Banyan Gardens Condominium Association, Inc. and that they executed the same freely and voluntarily for the purposes therein set forth and expressed.

Witness my hand and official seal this 24 day of July, 1989.

Candida Boushka
NOTARY PUBLIC, State of Florida



My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES APR 22, 1992
BOARDED INTO GENERAL L.A.S. 11/87

THIS DOCUMENT PREPARED BY:

Mishan, Sloto, Hoffman & Greenberg, P.A.
200 South Biscayne Boulevard
2350 Southeast Financial Center
Miami, Florida 33131
(305) 379-1792

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Rec. .20678 556

EXHIBIT "B" TO
DECLARATION OF CONDOMINIUM
BANYAN GARDENS, A CONDOMINIUM
IDENTIFICATION AND DESIGNATION OF UNIT BY NUMBER;
DESCRIPTION OF UNIT

UNIT NO.	STREET ADDRESS	NO. BEDROOMS- BATHROOMS	SQUARE FOOTAGE
1	16240 S.W. 92 Avenue	3-2½	1548
2	16242 S.W. 92 Avenue	2-2½	1445
3	16244 S.W. 92 Avenue	2-2½	1445
4	16246 S.W. 92 Avenue	3-2½	1548
5	16230 S.W. 92 Avenue	3-2½	1667
6	16232 S.W. 92 Avenue	2-2½	1421
7	16234 S.W. 92 Avenue	2-2½	1421
8	16236 S.W. 92 Avenue	2-2½	1421
9	16238 S.W. 92 Avenue	3-2½	1667
10	16228 S.W. 92 Avenue	3-2½	1667
11	16226 S.W. 92 Avenue	2-2½	1421
12	16224 S.W. 92 Avenue	2-2½	1421
13	16222 S.W. 92 Avenue	2-2½	1421
14	16220 S.W. 92 Avenue	3-2½	1667
15	16218 S.W. 92 Avenue	3-2½	1667
16	16216 S.W. 92 Avenue	2-2½	1421
17	16214 S.W. 92 Avenue	2-2½	1421
18	16212 S.W. 92 Avenue	2-2½	1421
19	16210 S.W. 92 Avenue	3-2½	1667
20	16208 S.W. 92 Avenue	3-2½	1667
21	16206 S.W. 92 Avenue	2-2½	1421
22	16204 S.W. 92 Avenue	2-2½	1421
23	16202 S.W. 92 Avenue	2-2½	1421
24	16200 S.W. 92 Avenue	3-2½	1667

Amend

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA.
RECORD YIELDED
RICHARD P. BRINKER
CLERK CIRCUIT COURT

REG. 1416581391

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CONDOMINIUM OWNERS DECLARATION
OF
BANYAN GARDENS, A CONDOMINIUM

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DECLARATION OF CONDOMINIUM

FOR

BANYAN GARDENS, A CONDOMINIUM

MADE this 27th day of June, 1989, by APD, Inc., a Florida corporation, as owner of the real property hereinafter described and developer of the improvements thereon (hereinafter called the "DEVELOPER") for itself, its successors, grantees, assigns and/or their transferees.

WHEREAS, the DEVELOPER, as owner, makes the following declaration:

ARTICLE I

PURPOSE

The purpose of this DECLARATION is to submit the lands described in this instrument and improvements on such lands to the condominium form of ownership and use, in the manner provided by Chapter 718 of the Florida Statutes (hereinafter referred to as the "CONDOMINIUM ACT"), and the DEVELOPER does hereby submit the lands described in this instrument and improvements on such lands to the condominium form of ownership and use.

ARTICLE II

NAME

The name by which the CONDOMINIUM shall be identified is BANYAN GARDENS, A CONDOMINIUM.

ARTICLE III

CONDOMINIUM LAND

A. DESCRIPTION: The lands owned by the DEVELOPER which, by this instrument, are submitted to the condominium form of ownership, are those certain lands lying in Dade County, Florida as described in Exhibit "A" hereto and made a part hereof, which shall hereinafter be referred to as the "LAND". Said LAND shall be subject to all conditions, restrictions, limitations, easements and reservations of record.

B. COVENANTS: All provisions of the DECLARATION shall be construed to be perpetual covenants running with the land and with every part thereof and interest therein and every condominium parcel owner and claimant of the land or any part thereof or interest therein and his heirs and personal representatives, successors and assigns shall be bound by all of the provisions of the DECLARATION unless this DECLARATION shall be terminated pursuant to the CONDOMINIUM ACT and/or as provided herein. Both the burdens imposed and the benefits provided shall run with each condominium parcel as herein defined.

ARTICLE IV

DEFINITIONS

The terms used in this DECLARATION and in the Articles of Incorporation, By-Laws and Rules and Regulations of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. shall have the meaning stated in the CONDOMINIUM ACT and as follows, unless the context otherwise requires:

A. ASSESSMENT means a share of the funds required for the payment of COMMON EXPENSES, which from time to time is assessed against the UNIT OWNER.

N. LIMITED COMMON ELEMENTS means those COMMON ELEMENTS which are reserved for use by a certain CONDOMINIUM UNIT or UNITS to the exclusion of other UNITS, as specified in the DECLARATION.

O. OPERATION or "OPERATION OF CONDOMINIUM" includes the administration and management of the CONDOMINIUM PROPERTY.

P. UNIT means a part of the CONDOMINIUM PROPERTY which is subject to exclusive ownership. A UNIT may be in improvements, land or land and improvements together as specified in the DECLARATION.

Q. UNIT OWNER or "owner of a unit" means the owner of a CONDOMINIUM PARCEL.

R. UTILITY SERVICES, as used in the CONDOMINIUM ACT and construed with reference to this CONDOMINIUM, and as used in the DECLARATION and all exhibits attached hereto, shall include but not be limited to electric power, gas, hot and cold water, heating and refrigeration, air conditioning, garbage and sewage disposal and other required services imposed by governmental authorities.

ARTICLE V

DEVELOPMENT PLANS AND DESCRIPTION OF IMPROVEMENTS

A. IMPROVEMENTS:

i. Annexed hereto and made a part hereof as Exhibits "E" through "J" are the survey and site plan and graphic description of all UNITS, including their identification numbers, locations and dimensions. The legend and notes contained therein are incorporated herein and made a part hereof by reference.

ii. Where more than one typical UNIT has been acquired by the same owner and combined into a single dwelling place, the unit plans, as described in Exhibits "H" and "I", may not reflect the interior plans of the combined UNITS but the exterior boundaries of the combined UNITS remain the same. Should any UNITS be combined, such combined UNITS shall exist as separate UNITS as described in this DECLARATION for the purpose of applying the provisions of this DECLARATION and all exhibits attached hereto.

B. PLOT PLAN: A survey and plot plan of the lands comprising the CONDOMINIUM and locating the improvements constructed thereon or to be constructed thereon are attached hereto as Exhibits "D" and "J" respectively.

C. UNIT PLANS: The development plans of the CONDOMINIUM which contain a survey, plot plan, elevations and floor plans are attached hereto as Exhibits "D" and "J". The legal description of each UNIT shall consist of the identifying number of each such UNIT as shown on Exhibit "B" attached hereto. Every deed, lease, mortgage or other instrument may legally describe a UNIT, apartment and/or CONDOMINIUM PARCEL by its identifying number, as provided for on the attached Exhibit "B" and each and every description shall be deemed good and sufficient for all purposes.

D. IMPROVEMENTS NOT COMPLETED: The improvements described in Exhibits "D" through "J" to this DECLARATION have not been substantially completed at the time of execution of the DECLARATION. However, the descriptions and dimensions contained in said Exhibits accurately depict the improvements to be completed by the DEVELOPER. Upon completion of the improvements, the DEVELOPER or the ASSOCIATION shall, from time to time, amend the DECLARATION to include the certification in accordance with Section 718.104(e), Florida Statutes.

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ARTICLE VI

UNIT BOUNDARIES

Each UNIT shall include that part of the building containing the UNIT that lies within the boundaries of the UNIT. The boundaries are as follows:

A. UPPER AND LOWER BOUNDARIES: The upper and lower boundaries of the UNIT shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(i) Upper boundaries shall be the horizontal plane of the undecorated finished ceiling.

(ii) Lower boundaries shall be the horizontal plane of the undecorated finished floor.

B. PERIMETRICAL BOUNDARIES: The perimetrical boundaries of the UNIT shall be the vertical plane of the undecorated and/or unfinished inner surfaces of the walls bounding the UNIT, extending to intersections with each other and with the upper and lower boundaries.

C. BOUNDARIES FURTHER DEFINED: The boundaries of the UNIT shall not include all of those spaces and improvements lying within the undecorated and/or unfinished inner surfaces of the perimeter walls and those surfaces above the undecorated finished ceilings of each UNIT and those surfaces below the undecorated, finished floor of each UNIT and further, shall not include those spaces and improvements lying within the undecorated and/or unfinished inner surfaces of all interior bearing walls and/or bearing partitions and further, shall exclude all pipes, ducts, wires, conduits and other utilities running through any interior wall or partition for the furnishing of UTILITY SERVICES to other UNITS and/or COMMON ELEMENTS or LIMITED COMMON ELEMENTS. In those UNITS where attic storage access is provided, if any, a UNIT OWNER may use the crawl space for storage at the UNIT OWNER's risk. Any damage caused to the UNIT or COMMON ELEMENTS by using such attic storage space, shall be the singular expense of the UNIT OWNER causing such damage.

C. BALCONIES AND PATIOS: A UNIT shall include, wherein indicated on the floor plans attached as Exhibits "H" through "I", a balcony and/or patio. The boundaries of the balcony and/or patio shall be as follows: all lower and all perimetrical boundaries shall be the same as set forth in Paragraphs A and B of this Article VI, however, should a perimetrical boundary be a railing, then the UNIT shall include the railing and the boundary shall be the exterior surface of the railing. Maintenance of the finished floor of the balcony and/or patio shall be borne by the UNIT OWNER to which the balcony and/or patio is appurtenant. Each balcony is a part of the UNIT which it abuts and is for the exclusive use of the owner of the abutting UNIT, provided however, no UNIT OWNER shall paint or otherwise decorate or change the appearance of any portion of the CONDOMINIUM building and/or CONDOMINIUM PROPERTY.

ARTICLE VII

OWNERSHIP

A. TYPE OF OWNERSHIP: Ownership of each CONDOMINIUM PARCEL shall be in fee simple or in any other estate in real property recognized by law and subject to this DECLARATION.

B. ASSOCIATION MEMBERSHIP: Each UNIT OWNER of record shall be a member of the ASSOCIATION. There shall be one membership for each UNIT and if there is more than one UNIT OWNER of record per UNIT, then such membership shall be divided among such UNIT OWNERS in the same manner and proportion as is their ownership in the UNIT.

C. UNIT OWNER'S RIGHTS: A UNIT OWNER shall be entitled to the exclusive possession of his UNIT. He shall be entitled to use the COMMON ELEMENTS and LIMITED COMMON ELEMENTS in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of other UNIT OWNERS. There shall be a joint use of the COMMON ELEMENTS and a joint mutual easement for that purpose is hereby created.

ARTICLE VIII

RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

The fee title of each CONDOMINIUM PARCEL shall include both the CONDOMINIUM UNIT and an undivided interest in the COMMON ELEMENTS; said undivided interest is deemed to be conveyed and/or encumbered with its respective CONDOMINIUM UNIT, even though the description in the instrument of conveyance may refer only to the fee title to the UNIT. The share in the COMMON ELEMENTS appurtenant to a UNIT cannot be conveyed or encumbered except together with the UNIT. Any attempt to separate and/or action to partition the fee title to a UNIT from the undivided interest in the COMMON ELEMENTS appurtenant to each UNIT shall be null and void.

ARTICLE IX

PERCENTAGE OF OWNERSHIP OF COMMON AREAS

Each UNIT OWNER shall own an undivided interest in the COMMON ELEMENTS according to the "Schedule of Shares" attached hereto as Exhibit "C".

ARTICLE X

COMMON EXPENSES AND COMMON SURPLUS

A. The COMMON EXPENSES to be borne by each UNIT OWNER shall be a proportionate share of the total expenses and costs of the ASSOCIATION. Each UNIT OWNER shall be responsible for a portion of the COMMON EXPENSES and costs and such share shall be in the percentage of the undivided share in the COMMON ELEMENTS to his UNIT as set forth in Exhibit "C" to this DECLARATION.

B. Any COMMON SURPLUS of the ASSOCIATION shall be owned by each of the UNIT OWNERS in the same proportion as such UNIT OWNER'S percentage of liability for COMMON EXPENSES.

ARTICLE XI

MAINTENANCE, ALTERATIONS AND IMPROVEMENTS

Responsibility for the maintenance of the CONDOMINIUM PROPERTY and restrictions upon its alterations and improvements shall be as follows:

A. UNITS:

i. By the ASSOCIATION: The ASSOCIATION shall maintain, repair and replace, at the ASSOCIATION'S expense, the following:

a. Outside walls of all buildings in which UNITS are contained and all fixtures on all such outside walls and those portions of boundary walls not a part of a UNIT; floors and ceiling slabs; load bearing columns and load bearing walls.

b. All conduits, ducts, plumbing, wiring and other facilities for the furnishing of UTILITY SERVICES contained in the portion of a UNIT maintained by the ASSOCIATION, and all such facilities contained within a UNIT that service a part or parts of

the CONDOMINIUM other than the UNIT within which such facilities are contained.

c. All incidental damage caused to a UNIT by the work described in a. and b. above, shall be repaired promptly at the expense of the ASSOCIATION.

ii. By the UNIT OWNER: The responsibility of the UNIT OWNER shall be as follows:

a. To keep and maintain his UNIT, its equipment and appurtenances in good order, condition and repair and to perform promptly all maintenance and repair work within the UNIT which, if omitted, would affect the CONDOMINIUM in its entirety or in any part belonging to others, and a UNIT OWNER shall be expressly responsible for any damage or liability resulting from his failure to do so.

b. Notwithstanding anything in this DECLARATION, each UNIT OWNER shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all windows and all exterior doors, including sliding glass doors and all air conditioning and heating equipment, stoves, refrigerators, fans and other appliances and equipment, including pipes, wiring, ducts, fixtures and/or their connection required to provide water, light, power, air conditioning, heating, telephone, sewage, sanitary service and other utilities or services to his UNIT which may now or hereafter be situated in his UNIT. Any of the items listed in this paragraph, including any air conditioning units or parts thereof, which are located outside of the UNIT boundaries as set forth in Article VI of the Declaration, are hereby designated to be LIMITED COMMON ELEMENTS and the OWNER of the UNIT to which such items are attached shall have the exclusive right to the use thereof.

c. To maintain, repair and replace any and all walls, ceilings and floor interior surfaces, painting, decorating and furnishing and all other accessories which such UNIT OWNER may desire to place and maintain in his UNIT.

d. Where applicable, to maintain and keep in a neat and trim condition, floors, interior walls, screening and railings of patios, sun decks and balconies.

e. To promptly report to the ASSOCIATION any defect or need for repairs for which the ASSOCIATION is responsible.

f. Plumbing and electrical repairs to fixtures and equipment located within a UNIT and exclusively servicing a UNIT shall be paid for and be a financial obligation of the UNIT OWNER.

g. Any officer of the ASSOCIATION or any agent of the BOARD shall have the irrevocable right to have access to each UNIT from time to time, during reasonable hours as may be necessary for inspection, maintenance, repair or replacement of any COMMON ELEMENT or LIMITED COMMON ELEMENT therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the COMMON ELEMENTS, LIMITED COMMON ELEMENTS or to any other UNIT or UNITS.

h. No UNIT OWNER shall paint or otherwise decorate or change the appearance of any portion of the exterior of the CONDOMINIUM building and/or PROPERTY.

iii. Alteration and Improvement: Except as elsewhere reserved to the DEVELOPER, neither a UNIT OWNER nor the ASSOCIATION shall make any alteration in any of the items, property or facilities described in Paragraph A of this Article, nor remove any portion of such, nor make any additions to them, nor do anything that would jeopardize the safety, soundness or integrity of the building or impair any easement, without the prior written approval of all UNIT OWNERS in the building so affected, together with the written approval of the BOARD OF DIRECTORS of the ASSOCIATION. A copy of plans for all such work, prepared by an architect licensed to practice in this state, shall be filed with the ASSOCIATION prior to the start of the work.

B. COMMON ELSE.

i. By the ASSOCIATION: The maintenance and operation of the LIMITED COMMON ELEMENTS and COMMON ELEMENTS, including the repair, maintenance and replacement of landscaping and other improvements and facilities shall be the responsibility of the ASSOCIATION as a COMMON EXPENSE.

ii. Alteration and Improvement: After the completion of the improvements included in the COMMON ELEMENTS contemplated by this DECLARATION, there shall be no alteration or further improvement of the real estate constituting the COMMON ELEMENTS without prior approval, in writing, by the members of the ASSOCIATION. Any alteration or improvement shall be a COMMON EXPENSE which shall exceed in cumulative expenditure for the calendar year, the sum of ONE THOUSAND DOLLARS (\$1,000.00). Any such alteration or improvement shall not interfere with the rights of any UNIT OWNER without his consent. The cost of such work shall not be assessed against an INSTITUTIONAL MORTGAGEE as defined in this DECLARATION, where such INSTITUTIONAL MORTGAGEE has acquired its title as a result of owning a mortgage upon a UNIT unless such INSTITUTIONAL MORTGAGEE, as owner, shall approve the alteration or improvement, and this shall be so whether title is acquired by deed from a mortgagor or through foreclosure proceedings. The share of any cost not so approved by an INSTITUTIONAL MORTGAGEE shall be assessed to the remaining UNIT OWNERS in the proportion that their shares for the COMMON EXPENSES of the ASSOCIATION bear to one another.

There shall be no change in the shares and rights of a UNIT OWNER in the COMMON ELEMENTS or in his share of the COMMON EXPENSES whether or not the UNIT OWNER contributes to the costs of such alteration or improvements.

iii. Land Acquisition: Land acquired by the ASSOCIATION may be added to the LAND submitted to condominium ownership hereby. This may be done by an amendment to this DECLARATION that includes the description of the acquired land and submits said land to condominium ownership under the terms of this DECLARATION. The amendment shall be executed by the ASSOCIATION and adopted by the UNIT OWNERS in the manner elsewhere herein provided. Such amendment, when recorded in the public records of Dade County, Florida, shall divest the ASSOCIATION of title to the land and shall state that it conveys all interest of the ASSOCIATION in said land and vests title thereto in the UNIT OWNERS without naming them and without further conveyance, in the same undivided shares as the undivided shares in the COMMON ELEMENTS appurtenant to the UNITS owned by them.

iv. Land Not Incorporated: Any land acquired by the ASSOCIATION that is not incorporated into the land by amendment of this DECLARATION, may be sold or mortgaged or otherwise disposed of by the ASSOCIATION after approval, in writing, by the record UNIT OWNERS of not less than 75% of the COMMON ELEMENTS. This approval shall be evidenced by a certificate stating that the approval was duly given, which certificate shall be executed by the officers of the ASSOCIATION with the formalities of a deed and delivered to a purchaser or mortgagee of such land.

v. Personal Property: Any personal property acquired by the ASSOCIATION may be sold or mortgaged or otherwise disposed of by the ASSOCIATION.

C. ENFORCEMENT OF MAINTENANCE: In the event a UNIT OWNER fails to maintain a UNIT as required in this DECLARATION, the ASSOCIATION, DEVELOPER or any other UNIT OWNER shall have the right to proceed to an appropriate court for recovery of damages and/or injunctive relief against the UNIT OWNER, compelling the UNIT OWNER to comply with the provisions of this DECLARATION and the prevailing party in any such litigation shall be entitled to recovery of its

court costs and reasonable attorneys fees. The ASSOCIATION shall have the right to assess such UNIT OWNER and the UNIT for the cost of any work which is necessary to comply with the foregoing provisions. After such assessment, the ASSOCIATION shall have the right to have its employees or agents enter the UNIT and do the necessary work to enforce compliance with the above provisions.

Further, in the event that a UNIT OWNER violates any of the provisions of this Article XI, the DEVELOPER and/or the ASSOCIATION shall have the right to take any and all such steps as may be necessary to remedy such violation, including but not limited to entry of the subject UNIT, with or without consent of the UNIT OWNER, and the repair and maintenance of any item requiring same, all at the expense of the UNIT OWNER.

ARTICLE XII

USE RESTRICTIONS

The use of the property of the CONDOMINIUM shall be in accordance with the following provisions:

A. UNITS:

i. Each UNIT shall be occupied only as a single family, private residential dwelling by the UNIT OWNER, members of his family, guests and permitted lessees, as elsewhere herein provided.

ii. Except as reserved to the DEVELOPER, no UNIT may be divided or subdivided into a smaller UNIT nor any portion thereof sold or otherwise transferred without first amending this DECLARATION in accordance with the requirements for amendment as elsewhere herein provided, to show the changes in the UNITS to be affected thereby.

iii. Nothing shall be hung, affixed, displayed or placed on the exterior walls, doors or windows of the UNIT or building without the prior written consent of the BOARD OF DIRECTORS of the ASSOCIATION.

iv. No clothes-lines or similar devices shall be allowed on any patios, balconies or sun decks of any UNIT or any other part of the CONDOMINIUM PROPERTY, without the prior written consent of the BOARD OF DIRECTORS of the ASSOCIATION.

v. No UNIT OWNER shall make, allow or cause to be made any structural addition or alteration of or to his UNIT or the COMMON ELEMENTS or LIMITED COMMON ELEMENTS without the prior written consent of the ASSOCIATION.

vi. No UNIT shall be occupied by relatives, tenants or guests while the UNIT OWNER is not in residence unless such relatives, guests or tenants have been authorized by written correspondence to the ASSOCIATION from the UNIT OWNER, prior to such occupancy. The BOARD OF DIRECTORS shall promulgate reasonable rules and regulations to accomplish such registration and procedure.

vii. Any UNIT owned by a corporation may be occupied only by persons approved by the ASSOCIATION, in writing, and such approval shall be granted to carry out the use of the UNIT for residential purposes only and not for temporary or transient tenancy. Corporately owned UNITS shall be used as residences and not as vacation or hotel accommodations.

B. COMMON ELEMENTS AND LIMITED COMMON ELEMENTS: The COMMON ELEMENTS and LIMITED COMMON ELEMENTS shall be used only for the purposes for which they are intended and the ASSOCIATION shall promulgate such reasonable rules and regulations as are necessary with respect to the use thereof.

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C. NUISANCES: No nuisances shall be allowed within the CONDOMINIUM PROPERTY nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper residential use of the property by its owners and residents. All parts of the PROPERTY shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate, or any fire hazard allowed to exist. No UNIT OWNER shall permit any use of his UNIT or of the COMMON ELEMENTS or LIMITED COMMON ELEMENTS which will increase the rate of insurance upon the CONDOMINIUM PROPERTY or any part thereof.

D. LAWFUL USE: No immoral, improper, offensive or unlawful use shall be made of the CONDOMINIUM PROPERTY or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the CONDOMINIUM PROPERTY shall be the same as the responsibility for maintenance and repair of the property concerned.

E. SIGNS: No signs shall be displayed from a UNIT or on COMMON ELEMENTS or LIMITED COMMON ELEMENTS without the prior written approval of the ASSOCIATION.

F. RULES AND REGULATIONS: Reasonable rules and regulations concerning the use of the CONDOMINIUM PROPERTY shall be made and amended from time to time by the ASSOCIATION in the manner provided for in its ARTICLES OF INCORPORATION and BY-LAWS. Copies of all such regulations and amendments thereto shall be furnished by the ASSOCIATION to all UNIT OWNERS and residents of the CONDOMINIUM upon request. A copy of the initial Rules and Regulations is attached hereto as Exhibit "Q".

G. PROVISIO: Until such time as the DEVELOPER has completed all of the contemplated improvements and closed the sales of all of the UNITS of the CONDOMINIUM, neither the UNIT OWNERS nor the ASSOCIATION nor the use of the CONDOMINIUM PROPERTY or any part thereof shall interfere with the completion of all contemplated improvements and the sale of all UNITS in the CONDOMINIUM and the DEVELOPER may make such use of the unsold UNITS and COMMON ELEMENTS as may facilitate such completion and sale, including but not limited to maintenance of a sales office, showing the CONDOMINIUM PROPERTY or any part thereof and the display of signs.

ARTICLE XIII

MAINTENANCE OF COMMUNITY INTERESTS

In order to maintain a community of congenial residents who are financially responsible and to protect the value of the UNITS, the transfer of UNITS by any UNIT OWNER other than the DEVELOPER shall be subject to the following provisions so long as the CONDOMINIUM and the CONDOMINIUM buildings, in useful condition, shall exist and each UNIT OWNER covenants to observe each of the following provisions:

A. SELLING, LEASING AND MORTGAGING OF UNITS: No UNIT OWNER other than the DEVELOPER may sell or lease his UNIT except by complying with the following:

i. Right of First Refusal: Any UNIT OWNER who receives a bona fide offer to purchase or lease his UNIT (any such offer whether to lease or purchase shall be referred to herein as an "OUTSIDE OFFER" and the party making any such OUTSIDE OFFER shall be referred to herein as an "OUTSIDE OFFEROR" and the UNIT OWNER to whom such OUTSIDE OFFER is made shall be referred to herein as an "OFFEREE OWNER") which he intends to accept, shall give notice by certified mail, return receipt requested, to the BOARD OF DIRECTORS

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of the ASSOCIATION of the receipt of such OUTSIDE OFFER. Said notice shall also state the name and address of the OUTSIDE OFFEROR, the terms of the proposed transaction and such other information as the BOARD OF DIRECTORS may reasonably require. The giving of such notice to the BOARD OF DIRECTORS shall constitute an offer by such UNIT OWNER to sell his UNIT or to lease his UNIT to the ASSOCIATION or its designee upon the same terms and conditions as contained in such OUTSIDE OFFER and shall also constitute a warranty and representation by the OFFEREE OWNER to the ASSOCIATION that such OFFEREE OWNER believes the OUTSIDE OFFER to be bona fide in all respects. The OFFEREE OWNER shall submit, in writing, such further information with respect thereto as the BOARD OF DIRECTORS may reasonably request. Not later than 30 days after the receipt of such notice, together with such further information as may have been requested, the ASSOCIATION or its designee may elect, by sending written notice to such OFFEREE OWNER before the expiration of such 30 day period by certified mail, to purchase or lease such UNIT as the case may be, upon the same terms and conditions as contained in the OUTSIDE OFFER and as stated in the notice from the OFFEREE OWNER.

a. In the event the ASSOCIATION shall timely elect to purchase or lease such UNIT, as the case may be, or to cause same to be purchased or leased by its designee, title shall close or the lease shall be executed at the office of the attorneys for the ASSOCIATION, in accordance with the terms of the OUTSIDE OFFER, within 45 days after the giving of notice by the ASSOCIATION of its election to accept such offer. If, pursuant to such OUTSIDE OFFER to purchase, the OUTSIDE OFFEROR was to take title to the UNIT subject to the OFFEREE OWNER's existing mortgage or mortgages, the ASSOCIATION may purchase the UNIT and take title thereto subject to said existing mortgage or mortgages, as the case may be. At the closing, the OFFEREE OWNER, if such UNIT is to be sold, shall convey same to the ASSOCIATION or its designee by Statutory Warranty Deed and all documentary stamps or surtax shall be affixed thereto at the expense of the OFFEREE OWNER, who shall also pay all other taxes arising out of such sale. Title shall be good, marketable and insurable and the OFFEREE OWNER shall deliver an abstract of title or provide a title insurance commitment at his expense, at least 30 days prior to such closing. If the OFFEREE OWNER shall elect to provide a title insurance commitment as herein provided, then he shall, within 15 days subsequent to such closing, provide a policy of title insurance based upon said commitment, insuring the ASSOCIATION or its designee, as the fee owner of the UNIT. Real estate taxes, mortgage interest, if any, and COMMON EXPENSES shall be apportioned between the OFFEREE OWNER and the ASSOCIATION, or its designee, as of the closing date. In the event such UNIT is to be leased, the OFFEREE OWNER shall execute and deliver to the BOARD OF DIRECTORS of the ASSOCIATION, or its designee, a lease between the OFFEREE OWNER as Lessor and the ASSOCIATION, or its designee, as Lessee for the rental and term contained in the OUTSIDE OFFER.

b. In the event the ASSOCIATION or its designee shall fail to accept such offer or, in the case of the Lease, shall fail to reject the proposed lease as permitted elsewhere in this Article XIII, within 20 days after receipt of notice and all additional information as requested, as aforesaid, then the OFFEREE OWNER shall be free to accept the OUTSIDE OFFER within 60 days after receipt of either notice of refusal by the ASSOCIATION or the expiration of the period within which the ASSOCIATION shall have to accept such offer. In the event the OFFEREE OWNER shall not, within such 60 day period, accept in writing the OUTSIDE OFFER or if the OFFEREE OWNER shall accept such OUTSIDE OFFER within said 60 day period but, such sale or lease, as the case may be, shall not be consummated in accordance with the terms of the OUTSIDE OFFER or within a reasonable time after the date set for closing thereunder, then, in the event such OFFEREE OWNER shall thereafter elect to sell or lease the subject UNIT, the OFFEREE OWNER shall be required to again comply with all of the terms and provisions of this Article XIII, Paragraph A.

ii. Any deed or lease to an OUTSIDE OFFEROR shall provide (or shall be deemed by the provisions hereof to provide) that the acceptance thereof by the grantee or tenant shall constitute an assumption of the provisions of this DECLARATION, the BY-LAWS, the ARTICLES OF INCORPORATION, all applicable rules and regulations and other agreements, documents or instruments affecting the CONDOMINIUM PROPERTY as the same may be amended from time to time.

iii. Any lease executed in connection with the acceptance of any OUTSIDE OFFER to lease a UNIT shall be consistent herewith and with the ARTICLES, BY-LAWS and rules and regulations and shall provide specifically that such lease may not be modified, amended, extended or assigned without the prior consent in writing of the BOARD OF DIRECTORS; that the Lessee shall not assign his interest in such lease or sublet the demised premises or any part thereof without the prior written consent of the BOARD OF DIRECTORS; and the BOARD OF DIRECTORS shall have the power, but shall not be obligated, to terminate such lease and/or to bring summary proceedings in the name of the Lessor thereunder to evict the Lessee in the event of (1) a default by the Lessee in the performance of its obligations under such lease to the extent such default affects the ASSOCIATION in the sole opinion of the BOARD OF DIRECTORS or (2) a foreclosure of the lien granted under the CONDOMINIUM ACT. Such lease shall also comply with all other provisions of this DECLARATION.

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Except as hereinbefore set forth, the form of any such lease executed by the ASSOCIATION or an OUTSIDE OFFEROR shall contain such other provisions as may be required, in writing, by the BOARD OF DIRECTORS. Any lease executed by the ASSOCIATION as Lessee shall provide, however, that the ASSOCIATION may enter into a sublease of the premises without the consent of the Lessor.

iv. Any purported sale or lease of a UNIT in violation of this Article, shall be voidable at any time at the election of the ASSOCIATION and, if the BOARD OF DIRECTORS shall select, the UNIT OWNER shall be deemed to have authorized and empowered the ASSOCIATION to institute legal proceedings to evict the purported Lessee (in case of an unauthorized lease) or void a conveyance (in case of an unauthorized sale). Said UNIT OWNER shall reimburse the ASSOCIATION for all expenses including reasonable attorneys fees and all disbursements incurred in connection with such proceedings.

v. The foregoing restrictions shall not apply to UNITS owned by or leased to the DEVELOPER or owned by any Institutional First Mortgagee acquiring title by foreclosure or by a deed in lieu of foreclosure. The DEVELOPER and such Institutional First Mortgagee shall have the right to sell and the DEVELOPER shall also have the right to lease or sublease UNITS they may own without having to first offer the same for sale or lease to the ASSOCIATION.

vi. The ASSOCIATION shall not exercise any option, hereinabove set forth, to purchase or lease any UNIT without the prior approval of a majority of UNIT OWNERS present in person or by proxy and voting in a meeting at which a quorum has been obtained.

vii. No part of the COMMON ELEMENTS may be sold, conveyed or otherwise disposed of, except as an appurtenance to the UNIT in connection with a sale, conveyance or other disposition of the UNIT to which such interest is appurtenant and any sale, conveyance or other disposition of a UNIT shall be deemed to include the UNIT's appurtenant interest in the COMMON ELEMENTS.

viii. The right of first refusal contained in this Article XIII(A)(1) may be released by the ASSOCIATION only in the manner provided in Article XIII(A)(1)(a) or (b). In the event the ASSOCIATION shall release or waive its right of first refusal as to any such UNIT, such UNIT may be sold, conveyed or leased free and clear of the provisions of this Article XIII.

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ix. A certificate executed and acknowledged by an officer of the ASSOCIATION stating that the provisions of this Article XIII have been satisfied by a UNIT OWNER or stating that the right of first refusal contained therein has been duly released or waived by the ASSOCIATION and that as a result thereof, the rights of the ASSOCIATION thereunder have terminated (as to that sale or lease only) shall be conclusive with respect to all persons who rely upon such certificate of good faith. The BOARD OF DIRECTORS shall furnish such certificate upon request to any UNIT OWNER in respect to whom the provisions of such Section have, in fact, terminated or been waived. No fee shall be charged by the ASSOCIATION in connection with the furnishing of such certificate, in excess of the charges reasonably required for same, and such charges shall not exceed the maximum amount allowed under the CONDOMINIUM ACT, as amended from time to time. No charge shall be made in connection with the consideration of the approval of an extension or renewal of a previously approved lease.

x. The purchase of any UNIT by the ASSOCIATION shall be made on behalf of all UNIT OWNERS if approved in the manner set forth in this Article XIII. If the available funds of the ASSOCIATION are insufficient to effectuate any such purchase, the BOARD OF DIRECTORS may levy an assessment against each UNIT OWNER (other than the OFFEREE OWNER) in proportion to his share of the COMMON EXPENSES and/or the BOARD may, in its discretion, finance the acquisition of such UNIT, provided however that no such financing may be secured by an encumbrance or hypothecation of any portion of the CONDOMINIUM PROPERTY other than the UNIT to be purchased.

B. EXCEPTIONS: The provisions of this Article XIII shall not apply with respect to any lease, sale or conveyance of any UNIT by:

i. The UNIT OWNER thereof to his spouse, adult children, parents, parents-in-law, adult siblings or a trustee, corporation or other entity where the UNIT OWNER or aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trustee, corporation or other entity or to any one or more of the above;

ii. The DEVELOPER;

iii. The ASSOCIATION;

iv. Any proper officer conducting the sale of a UNIT in connection with the foreclosure of a mortgage or other lien encumbering such UNIT or delivering a deed in lieu of foreclosure; or

v. An Institutional First Mortgagee (or its designee) deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure, provided however, that each succeeding UNIT OWNER shall be bound by and his UNIT subject to the provisions of this Article XIII.

C. GIFTS AND DEVISES: Any UNIT OWNER shall be free to convey or transfer his UNIT by gift, to devise his UNIT by Will or to have the UNIT pass by intestacy without restriction, provided however, that each succeeding UNIT OWNER shall be bound by and his UNIT subject to the provisions of this Article XIII.

D. MORTGAGE OF UNITS: A UNIT OWNER may not mortgage his UNIT nor any interest therein without the approval of the ASSOCIATION, except to an INSTITUTIONAL MORTGAGEE, as hereinabove defined. The approval of any other mortgagee may be contained upon conditions determined by the BOARD of the ASSOCIATION and said approval shall be, if granted, prepared in recordable form, executed by the President and Secretary of the ASSOCIATION. Where a UNIT OWNER sells his UNIT and takes back a purchase money mortgage, the approval of the ASSOCIATION shall be not required.

E. NOTICE OF LIEN OR SUIT:

i. Notice of Lien: A UNIT OWNER shall give written notice to the ASSOCIATION of every lien upon his UNIT, other than for permitted mortgages, taxes and special assessments, such notice to be given within 5 days after the attaching of such lien.

ii. Notice of Suit: A UNIT OWNER shall give notice, in writing, to the ASSOCIATION of any suit or other proceeding which may affect title to his UNIT, such notice to be given within 5 days after the UNIT OWNER receives knowledge thereof.

iii. Failure to comply with this Section concerning liens shall not effect the validity of any judicial sale of the subject UNIT.

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F. RIGHTS OF THE DEVELOPER: Anything to the contrary herein notwithstanding, before the ASSOCIATION approves any sale of a UNIT or elects to purchase the UNIT itself, the ASSOCIATION must first offer such UNIT to the DEVELOPER and allow the DEVELOPER to accept the OUTSIDE OFFER as long as the DEVELOPER shall own at least one UNIT in the CONDOMINIUM. Notice of receipt of an OUTSIDE OFFER must be delivered to the DEVELOPER by the ASSOCIATION within 5 days after such notice is received by the ASSOCIATION, as described above. The DEVELOPER's election shall be given to the BOARD OF DIRECTORS, in writing, within 5 days of the date the DEVELOPER is notified, in writing, of the OUTSIDE OFFER. The approval of any sale by the ASSOCIATION, however, in violation of this Section shall be conclusive and may be relied upon by an OUTSIDE OFFEROR acting in good faith and acquiring the UNIT for value. The ASSOCIATION will, however, in such cases, remain liable to the DEVELOPER for damages.

ARTICLE XIV

PARKING SPACES

The following provisions will be applicable to the transfer and assignment of parking spaces.

A. ASSIGNMENT OF PARKING SPACES: Each assigned parking space exists as a LIMITED COMMON ELEMENT and is identified, described and located on Exhibit "D". Upon the assignment by the DEVELOPER of such parking space in the LIMITED COMMON ELEMENTS to a UNIT, the owner of such UNIT shall have the exclusive right to the use thereof without separate charge by the ASSOCIATION, although nothing herein contained shall be construed as relieving such UNIT OWNER from any portion of any assessment for COMMON EXPENSES made against a UNIT, as herein provided, it being the intent that the cost of maintenance and administration of parking spaces shall be included as a part of the COMMON EXPENSES applicable to all UNITS for purposes of assessments. The assignment of parking spaces shall be at the sole discretion of the DEVELOPER. Each UNIT shall be assigned a minimum of one (1) parking space. The DEVELOPER reserves the right to assign more than one parking space to a UNIT for consideration. Upon such assignment, an owner of a UNIT to whom such assignment is made shall have the exclusive right of use of such parking space and the parking space shall become an appurtenance to said UNIT. Upon the conveyance of title to the UNIT to which such parking space was assigned, such parking space shall pass as an appurtenance to the UNIT in the same manner as the undivided interest in the COMMON ELEMENTS appurtenant to such UNIT; provided however, in such cases where two or more parking spaces are assigned to a UNIT, then all of the parking spaces in excess of the one required parking space may be assigned to another UNIT within the CONDOMINIUM. Each UNIT shall, at all times, have at least one parking space assigned to it. After the DEVELOPER has sold, transferred and conveyed all UNITS, the DEVELOPER will assign any remaining unassigned parking spaces to the ASSOCIATION to be designated as "guest parking spaces." No guest parking space may be assigned to a UNIT or

otherwise transferred unless approved in the same manner as required to amend this DECLARATION.

B. GUEST PARKING SPACES: Guest parking spaces shall be a part of the COMMON ELEMENTS and shall be under the control and jurisdiction of the ASSOCIATION, except that no guest parking space may be assigned to a UNIT or otherwise transferred unless approved in the same manner as required to amend this DECLARATION. All guest parking spaces shall be clearly designated by painting on the ground or curb stone (if any) provided to such space the word "GUEST."

ARTICLE XV

EASEMENTS

The following easements are covenants running with the land of the CONDOMINIUM and, notwithstanding any of the other provisions of this DECLARATION, may not be substantially amended or revoked in such a way as to unreasonably interfere with their proper and intended uses and purposes and shall survive the termination of the CONDOMINIUM and the exclusion of any lands or properties of the CONDOMINIUM from the CONDOMINIUM.

A. UTILITIES: As may be required for utility services in order to adequately serve the CONDOMINIUM PROPERTY, provided however, easements through a UNIT shall be only according to the plans and specifications for the building or as the building is actually constructed unless approved in writing by the UNIT OWNER.

B. PEDESTRIAN AND VEHICULAR TRAFFIC: For pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist upon the COMMON ELEMENTS, and for pedestrian and vehicular traffic and parking over, through and across such portions of the COMMON ELEMENTS as may from time to time be paved and intended for such purposes. Furthermore, a nonexclusive easement is hereby created for ingress and egress over streets, walks, and other rights-of-way serving the UNITS, as part of the COMMON ELEMENTS necessary to provide reasonable access to the public ways, or a dedication of the streets, walks, and other rights-of-way to the public. All easements for ingress and egress shall not be encumbered by any leasehold or lien other than those on the PARCELS, unless:

(i) Any such lien is subordinate to the rights of UNIT OWNERS, or

(ii) The holder of any encumbrance or leasehold of any easement has executed and recorded an agreement that the use-rights of each UNIT OWNER will not be terminated as long as the UNIT OWNER has not been evicted because of a default under the encumbrance or lease, and the use-rights of any mortgagee of a UNIT who has acquired title to a UNIT may not be terminated.

C. SUPPORT: Every portion of a UNIT contributing to the support of a BUILDING or an adjacent UNIT shall be burdened with an easement of support for the benefit of all other UNITS and COMMON ELEMENTS in the building.

D. PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON AREAS: The COMMON ELEMENTS shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive appurtenant easement in favor of all of the UNIT OWNERS, for their use and the use of their immediate families, guests and invitees for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said UNIT OWNERS.

E. RIGHT OF ENTRY INTO PRIVATE DWELLINGS IN EMERGENCIES: In case of an emergency originating in or threatening any UNIT, regardless of whether or not the OWNER is present at the time of such emergency, the BOARD OF DIRECTORS of the ASSOCIATION or any other person authorized by the BOARD OF DIRECTORS, or the building manager or managing agent shall have the right to enter such UNIT for the purpose of remedying or abating the cause of such emergency and such right of entry shall be immediate. To facilitate entry in the event of any such emergency, the owner of each UNIT, if required by the ASSOCIATION, shall deposit under the control of the ASSOCIATION, a key to such UNIT.

F. RIGHT OF ENTRY FOR MAINTENANCE OF COMMON PROPERTY: Whenever it shall be necessary to enter any UNIT for the purpose of performing any maintenance, alteration or repair to any portion of the CONDOMINIUM PROPERTY, the owner of each UNIT shall permit other owners, by their representatives, or the duly constituted and authorized agent of the ASSOCIATION, to enter such UNIT for such purpose, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

G. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENT: In the event that any UNIT shall encroach upon any of the COMMON ELEMENTS for any reason not caused by the intentional, purposeful or negligent act of the UNIT OWNER or OWNERS or agents thereof, then an easement appurtenant to such UNIT shall exist for the continuance of such encroachment into the COMMON ELEMENTS for so long as any such encroachment shall naturally exist; in the event that any portion of the COMMON ELEMENTS shall encroach upon any UNIT, then an easement shall exist for the continuance of such encroachment of COMMON ELEMENTS into any such UNIT for so long as such encroachment shall naturally exist.

H. AIR SPACE: An exclusive easement shall exist for the use of the air space occupied by a CONDOMINIUM UNIT as it exists at any particular time and as the UNIT may lawfully be altered.

I. EASEMENTS OR ENCROACHMENTS: There shall be an easement for encroachments by the perimeter walls, ceilings and floors surrounding each CONDOMINIUM UNIT.

J. OVERHANG: There shall be an easement for overhanging troughs or gutters, downspouts and the discharge therefrom of rain water and the subsequent flow thereof over UNITS or any of them.

K. EASEMENT FOR AIR SPACE OF COMMON ELEMENTS: An exclusive easement for the use of the area and air space occupied by the air conditioning compressor and the equipment and fixtures appurtenant thereto, situated in or on the COMMON ELEMENTS of the CONDOMINIUM, but exclusively serving and individually owned by the UNIT OWNER as the same exists in and on the land, which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air conditioning compressor and the equipment and fixtures appurtenant thereto; provided, however, that the removal of same for repair or replacement shall not be construed to be a permanent vacation of the air space which it occupies.

ARTICLE XVI

ASSOCIATION

In order to provide for the proficient and effective administration of this CONDOMINIUM by the UNIT OWNERS, a non-profit corporation known and designated as BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. has been organized under the laws of the State of Florida and said corporation shall administer the operation and management of the CONDOMINIUM and undertake and perform all acts and duties incident thereto, in accordance with the terms, provisions

and conditions of the DECLARATION, its ARTICLES OF INCORPORATION, BY-LAWS and the Rules and Regulations promulgated by the ASSOCIATION, from time to time.

A. ARTICLES OF INCORPORATION: A copy of the ARTICLES OF INCORPORATION of the ASSOCIATION is attached hereto as Exhibit "N". No amendment to the ARTICLES shall be deemed an amendment to this DECLARATION, and this DECLARATION shall not prohibit or restrict amendments to the ARTICLES, except as specifically provided herein.

B. BY-LAWS: The BY-LAWS of the ASSOCIATION, a copy of which is attached hereto as Exhibit "P", shall be the BY-LAWS of the CONDOMINIUM. No amendment to the BY-LAWS shall be deemed an amendment to this DECLARATION, and this DECLARATION shall not prohibit or restrict amendments to the BY-LAWS, except as specifically provided herein.

C. LIMITATION UPON LIABILITY OF ASSOCIATION: Notwithstanding the duty of the ASSOCIATION to maintain and repair parts of the CONDOMINIUM PROPERTY, the ASSOCIATION shall not be liable to UNIT OWNERS or any person 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.

D. RESTRAINT UPON ASSIGNMENT OF SHARES IN ASSETS: The shares of members and the funds and assets of the ASSOCIATION shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to a UNIT.

E. APPROVAL OR DISAPPROVAL OF MATTERS BY THE ASSOCIATION: Whenever the approval, consent or decision of a UNIT OWNER is required upon any matter, whether or not the subject of an ASSOCIATION meeting, such approval, consent or decision shall be expressed in accordance with the BY-LAWS of the ASSOCIATION.

F. MEMBERSHIP: The record owners of all UNITS in the CONDOMINIUM shall be members of the ASSOCIATION and no other persons or entities shall be entitled to membership except for subscribers to the ARTICLES OF INCORPORATION. Membership shall be established by acquisition of ownership of fee title to or fee interest in a CONDOMINIUM PARCEL in said CONDOMINIUM, whether by conveyance, devise, judicial decree or otherwise, subject to the provisions of this DECLARATION and by the recording among the public records of Dade County, Florida of the deed or other instrument establishing the acquisition and designating the PARCEL affected thereby and by the delivery to the ASSOCIATION of a true copy of such recorded deed or other instrument. The new UNIT OWNER designated in such deed or other instrument shall thereupon become a member of the ASSOCIATION and the membership of the prior owner as to the PARCEL designated shall be terminated.

G. VOTING: On all matters as to which the membership shall be entitled to vote, there shall be only one vote for each UNIT.

ARTICLE XVII

INSURANCE

The insurance, other than title insurance, which shall be carried upon the CONDOMINIUM PROPERTY and the property of the UNIT OWNER, shall be governed by the following provisions:

A. AUTHORITY TO PURCHASE: All insurance policies upon the CONDOMINIUM PROPERTY shall be purchased by the ASSOCIATION for the benefit of the ASSOCIATION and the UNIT OWNERS and their mortgagees as their interests may appear and provisions shall be made for the issuance of certificates of mortgage endorsements to the mortgagees of UNIT OWNERS. Such policies and endorsements shall be deposited with the Insurance Trustee. UNIT OWNERS may obtain insurance

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c. Avoid liability for a loss that is caused by an act of the BOARD OF DIRECTORS of the ASSOCIATION or by a member of the BOARD OF DIRECTORS or by one or more UNIT OWNERS.

C. PREMIUM: Premiums for insurance policies purchased by the ASSOCIATION shall be paid by the ASSOCIATION as a COMMON EXPENSE, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more UNITS or their appurtenances, or of the COMMON ELEMENTS by a particular UNIT OWNER shall be assessed against and paid by such UNIT OWNER. Premiums may be financed in such manner as the BOARD OF DIRECTORS deems appropriate.

D. INSURANCE POLICY INSPECTION: All insurance policies obtained by the ASSOCIATION shall be available for inspection by UNIT OWNERS or their authorized representatives at reasonable times at the offices of the ASSOCIATION.

E. ASSURED: All insurance policies purchased by the ASSOCIATION shall be for the benefit of the ASSOCIATION and the UNIT OWNERS and their mortgagees as their interest may appear and shall provide that the BOARD OF DIRECTORS shall pay all proceeds covering casualty losses to any national bank in Dade County, with trust powers as may be approved and designated as Insurance Trustee by the BOARD OF DIRECTORS of the ASSOCIATION. All insurance policies shall require written notification to each INSTITUTIONAL MORTGAGEE not less than 15 days prior to cancellation of any such policy insuring CONDOMINIUM PROPERTY.

The Insurance Trustee shall not be liable for payments of premiums nor for the renewal or sufficiency of the policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold same in trust for the purposes elsewhere stated herein and for the benefit of the UNIT OWNERS and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee:

i. COMMON ELEMENTS: Proceeds on account of COMMON ELEMENTS shall be held in as many undivided shares as there are UNITS in each building, the shares of each UNIT OWNER being the same as his share in the COMMON ELEMENTS, as same are hereinabove stated.

ii. UNITS: Proceeds on account of UNITS shall be held in the following undivided shares:

a. Partial Destruction: When a building is to be restored, then for the owners of damaged UNITS in proportion to the cost of repairing the damage suffered by each UNIT OWNER.

b. Total Destruction: When the building is to be restored then for the owners of all UNITS in the building in proportion to their share of the COMMON ELEMENTS appurtenant to their UNIT.

c. Mortgagees: In the event a mortgagee endorsement shall have been issued as to a UNIT, then the share of such UNIT OWNER shall be held in trust for the mortgagee and the UNIT OWNER as their interests appear. In no event shall any mortgagee have the right to demand the application of insurance proceeds to any mortgage or mortgages which it may hold against UNITS, except to such extent as said insurance proceeds may exceed the actual cost of repair or restoration of the damaged building or buildings and, no mortgagee shall have the right to participate in the determination as to whether or not improvements will be restored after casualty, loss or damage. Notwithstanding the foregoing, the mortgagee shall have the right to apply or have applied to the reduction of its mortgage debt any or all sums of insurance proceeds applicable to its mortgaged UNIT, in the event insurance proceeds are insufficient to restore or repair the building or UNIT to the condition existing

prior to the loss and additional monies are not available for such purpose.

G. DISTRIBUTION OF PROCEEDS: Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of Beneficial Owners in the following manner:

i. Expense of the Insurance Trust: All expenses of the Insurance Trustee shall be first paid or provisions made therefor.

ii. Reconstruction or Repair: If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the costs thereof as elsewhere herein provided. Any proceeds remaining after defraying such costs shall be distributed to the Beneficial Owners, remittances to UNIT OWNERS and their mortgagees, being payable jointly to them. This is a covenant for the benefit of any mortgagee of a UNIT and may be enforced by such mortgagee.

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iii. Failure to Reconstruct or Repair: If it is determined, in the manner elsewhere herein provided, that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall then be distributed to the Beneficial Owners, remittances to UNIT OWNERS and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a UNIT and may be enforced by such mortgagee.

iv. Certificate: In making distribution to UNIT OWNERS and their mortgagees, the Insurance Trustee may rely upon a certificate of the ASSOCIATION made by the President and Secretary as to the names of the UNIT OWNERS and their respective shares of the distribution.

v. ASSOCIATION as Agent: The ASSOCIATION is hereby irrevocably appointed agent and attorney-in-fact for each UNIT OWNER and for each owner of a mortgage or other lien upon a UNIT and for each owner of any other interest in any property to adjust all claims arising under insurance policies purchased by the ASSOCIATION and to execute and deliver releases upon the payment of such claims.

ARTICLE XVII

RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. DETERMINATION TO RECONSTRUCT OR REPAIR: If any part of the CONDOMINIUM PROPERTY shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

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i. COMMON ELEMENTS: If the damaged improvement is a COMMON ELEMENT or LIMITED COMMON ELEMENT, the damaged property shall be reconstructed or repaired unless it is determined, in the manner elsewhere provided, that the CONDOMINIUM shall be terminated.

ii. CONDOMINIUM BUILDING:

a. If the damaged improvement is a part of a building and, if UNITS to which 50% of the COMMON ELEMENTS or appurtenances are found by the BOARD OF DIRECTORS of the ASSOCIATION to be tenantable, the damaged property shall be reconstructed or repaired, unless within 60 days after the casualty loss it is determined, in the manner elsewhere herein provided, that the CONDOMINIUM shall be terminated.

b. If the damaged improvement is part of a building and if UNITS to which more than 50% of the COMMON ELEMENTS are appurtenant are found by the BOARD OF DIRECTORS of the ASSOCIATION to be not tenantable, then the damaged property will not be reconstructed or repaired and the CONDOMINIUM will be terminated as

elsewhere herein provided, unless within 60 days after the casualty loss, the owners of 75% of the COMMON ELEMENTS agree in writing to such reconstruction or repair.

iii. Certificate: The Insurance Trustee may rely upon a certificate of the ASSOCIATION made by the President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. PLANS AND SPECIFICATIONS: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original CONDOMINIUM building, portions of which are attached hereto as Exhibits or, if not, then according to plans and specifications approved by the BOARD OF DIRECTORS of the ASSOCIATION and, if the damaged property is a CONDOMINIUM building, then by the owners of not less than 75% of the COMMON ELEMENTS, including the owners of all damaged UNITS, which approval shall not be unreasonably withheld.

C. RESPONSIBILITY: If the damage is only to those parts of one UNIT for which the responsibility of maintenance and repair is that of the UNIT OWNER, then the UNIT OWNER shall be responsible for reconstruction and repair after casualty loss. In all other instances, the responsibility of construction or repair after casualty loss shall be that of the ASSOCIATION.

D. ESTIMATES OF COSTS: Immediately after a casualty causing damage to property for which the ASSOCIATION has the responsibility of maintenance and repair, the ASSOCIATION shall obtain reliable and detailed estimates of the cost to repair or rebuild.

E. ASSESSMENTS: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the ASSOCIATION or, if at any time during reconstruction and repair, the funds for the payment of the costs thereof are insufficient, ASSESSMENTS shall be made against the UNIT OWNERS who own the damaged UNITS, and against all UNIT OWNERS in the case of damage to COMMON ELEMENTS, in sufficient amounts to provide funds to pay such estimated costs. Such ASSESSMENTS against the UNIT OWNERS for damage to UNITS shall be in proportion to the cost of reconstruction and repair of their respective UNITS. Such ASSESSMENTS on account of damage to COMMON ELEMENTS shall be in proportion to the UNIT OWNER's share in the COMMON ELEMENTS.

F. DEDUCTIBLE PROVISION: The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be a COMMON EXPENSE.

G. CONSTRUCTION FUNDS: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee, together with funds collected by the ASSOCIATION from ASSESSMENTS against UNIT OWNERS shall be disbursed in payment of such costs in the following manner:

i. ASSOCIATION: If costs of reconstruction and repair which are the responsibility of the ASSOCIATION are more than \$10,000.00, then the sums paid upon ASSESSMENTS to meet such costs shall be deposited by the ASSOCIATION with the Insurance Trustee. In all other cases, the ASSOCIATION shall hold the sums paid upon such ASSESSMENTS and disburse the same in payment of the costs of reconstruction and repair.

ii. Insurance Trustee: The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the ASSOCIATION from the collection of ASSESSMENTS against UNIT OWNERS on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

a. UNIT OWNER: The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the UNIT OWNER shall be paid by the Insurance Trustee to the UNIT OWNER or, if there is a mortgagee endorsement, then to the UNIT OWNER and his mortgagee, jointly.

b. ASSOCIATION - Lesser Damage: If the amount of the estimated cost of reconstruction and repair which is the responsibility of the ASSOCIATION is less than \$10,000.00, then the construction funds shall be disbursed in payment of such costs upon the order of the ASSOCIATION, provided however, that upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such funds shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

c. ASSOCIATION - Major Damage: If the amount of the estimated cost of reconstruction and repair, which is the responsibility of the ASSOCIATION, is equal to or more than \$10,000.00, then the construction funds shall be disbursed in payment of such costs in the manner required by the BOARD OF DIRECTORS of the ASSOCIATION and upon approval of an architect qualified to practice in the State of Florida and employed by the ASSOCIATION to supervise the work.

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

e. Certificate: Notwithstanding the provisions herein contained, the Insurance Trustee shall not be required to determine whether or not sums paid by UNIT OWNERS upon ASSESSMENTS shall be deposited by the ASSOCIATION with the Insurance Trustee nor to determine whether the disbursements from the construction fund are to be upon the order of the ASSOCIATION or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine the payee nor the amounts to be paid nor to determine whether surplus funds to be distributed are less than the ASSESSMENTS paid by UNIT OWNERS. Instead, the Insurance Trustee may rely upon a certificate of the ASSOCIATION made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to a UNIT OWNER and further, provided that when the ASSOCIATION or a mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction funds, so requires the approval of an architect named by the ASSOCIATION shall first be obtained by the ASSOCIATION upon disbursements in payment of costs of reconstruction and repair.

ARTICLE XIX

ASSESSMENTS

The making and collecting of ASSESSMENTS against UNIT OWNERS for COMMON EXPENSES shall be the obligation of the BOARD OF DIRECTORS pursuant to the BY-LAWS and subject to the following provisions:

A. SHARE OF THE COMMON EXPENSES: Each UNIT OWNER shall be liable for a proportionate share of the COMMON EXPENSES and shall be entitled to an undivided share of the COMMON SURPLUS, such shares being set forth in Exhibit "C". A UNIT OWNER, regardless of how title is acquired, including, without limitation a purchaser at a judicial sale, shall be liable for all ASSESSMENTS coming due while he is the owner of a UNIT. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid ASSESSMENTS against the latter for his share of the COMMON EXPENSES up to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

B. NON-WAIVER: The liability for ASSESSMENTS may not be avoided by waiver of the use or enjoyment of any COMMON ELEMENTS or LIMITED COMMON ELEMENTS or by abandonment of the UNIT for which the assessment is made.

C. INTEREST, APPLICATION OF PAYMENTS: ASSESSMENTS and installments on such ASSESSMENTS paid on or before 10 days after the date when due shall not bear interest, but all sums not paid on or before 10 days after the date when due shall bear interest at the highest rate permitted by the laws of the State of Florida, from the date when due until paid. All payments upon account shall be first applied to interest and then to the ASSESSMENT payment first due.

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D. LIEN FOR ASSESSMENTS: In accordance with the CONDOMINIUM ACT, the ASSOCIATION shall have a lien on each CONDOMINIUM PARCEL for any unpaid ASSESSMENTS, together with interest thereon against the owner of such CONDOMINIUM PARCEL. In addition to the lien provided by the CONDOMINIUM ACT, the ASSOCIATION shall have a lien on all tangible personal property located within the UNIT, except that such lien upon the aforesaid tangible personal property shall be subordinate to prior bona fide liens of record. Reasonable attorneys fees incurred by the ASSOCIATION incident to the collection of such ASSESSMENT or for the enforcement of a lien on a CONDOMINIUM PARCEL and/or on tangible personal property located within the UNIT, together with all sums advanced and paid by the ASSOCIATION for taxes and payment on account of superior mortgages, liens or encumbrances which may be required to be advanced by the ASSOCIATION in order to preserve and protect any such lien shall be payable by the UNIT OWNER and secured by such lien. The ASSOCIATION'S liens shall also include those sums advanced on behalf of each UNIT OWNER in payment of his obligation for use, charges and operation costs, likewise referred to as "COMMON EXPENSES."

Said lien shall be effective from and after the time of recording in the Public Records of Dade County, Florida of a Claim of Lien stating the description of the CONDOMINIUM PARCEL, the name of the record owner, the amount due and the date when due. Said lien shall continue in effect for a period of one year after such claim of lien has been recorded unless, within that time, an action to enforce such lien is commenced in a court of competent jurisdiction. If such action has been commenced, said lien shall continue in effect until all sums secured thereby shall have been fully paid. Such claims of lien shall be signed and verified by an Officer of the ASSOCIATION. Upon full payment, the party making payment shall be entitled to a recordable Satisfaction of Lien. All such liens shall be subordinate to the lien of an institutional mortgage recorded prior to the time of recording of the Claim of Lien.

E. COLLECTION AND FORECLOSURE: The BOARD OF DIRECTORS may take such action as it deems necessary to collect ASSESSMENTS of the ASSOCIATION by personal action or by enforcing and foreclosing its lien and may settle and compromise same if in the best interest of the ASSOCIATION. Said lien shall be effective as and in the manner provided for by the CONDOMINIUM ACT and shall have the priorities established by said ACT. The ASSOCIATION shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien

and to apply as a cash credit against its bid all sums due the ASSOCIATION covered by the lien enforced. In case of such foreclosure, the UNIT OWNER shall be required to pay a reasonable rental for the CONDOMINIUM PARCEL and the Plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect same from the UNIT OWNER or occupant.

F. LIABILITY OF MORTGAGEE, LIENOR OR JUDICIAL PURCHASER FOR ASSESSMENT: Notwithstanding anything to the contrary contained in this DECLARATION, where the mortgagee of a first mortgage of record or other purchaser of a UNIT obtains title to a CONDOMINIUM PARCEL as a result of foreclosure of the first mortgage or when the mortgagee of a first mortgage of record accepts a deed to said CONDOMINIUM PARCEL in lieu of foreclosure, such acquirer of title, his successors and assigns shall not be liable for the share of COMMON EXPENSES or ASSESSMENTS by the ASSOCIATION pertaining to such CONDOMINIUM PARCEL or chargeable to the former UNIT OWNER of such CONDOMINIUM PARCEL, which became due prior to the acquisition of title as a result of the foreclosure, or the acceptance of such deed in lieu of foreclosure, unless such 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 COMMON EXPENSES collectable from all of the UNIT OWNERS, including such acquirer of title, whether as a result of foreclosure or by acceptance of a deed to the PARCEL in lieu of foreclosure. The new UNIT OWNER, by virtue of the acquisition of such title, shall forthwith become liable for payment of the COMMON EXPENSES and such other expenses as may be chargeable to the owner of a UNIT hereunder.

G. ASSIGNMENT OF CLAIM AND LIEN RIGHTS: The ASSOCIATION, acting through its BOARD OF DIRECTORS, shall have the right to assign its claim and lien rights for the recovery of any unpaid assessment and any other monies owed to the ASSOCIATION, to any third party.

H. UNPAID ASSESSMENTS CERTIFICATE: Any UNIT OWNER shall have the right to require, from the ASSOCIATION, a certificate showing the amount of unpaid ASSESSMENTS against him with respect to his CONDOMINIUM PARCEL. The holder of a mortgage or other lien shall have the same right as to any CONDOMINIUM PARCEL upon which he has such a lien. Any person, other than the UNIT OWNER, who relies upon such certificate in purchasing or making a mortgage loan encumbering any UNIT shall be protected thereby.

I. WORKING CAPITAL OF ASSOCIATION: The funds represented by the payment of \$250.00 by the purchaser of each UNIT at the time of conveyance of the UNIT by the DEVELOPER, shall be a working capital fund of the ASSOCIATION and may be utilized for start-up expenses, COMMON EXPENSES paid or accrued prior to and subsequent to the commencement date of regular monthly installments for the payment of ASSESSMENTS, deficiencies and for any purpose for which the ASSOCIATION could levy an ASSESSMENT pursuant to this DECLARATION, including but not limited to the funding of deficits prior to the commencement of DEVELOPER's obligations to fund such deficits and the reimbursement of the DEVELOPER for certain expenses advanced by the DEVELOPER, including but not limited to prepaid utility deposits, premiums, rentals and other consideration paid by the DEVELOPER to such insurers, contractors and utility companies which shall be prorated as of the date of closing for each UNIT and, said funds shall not be set up as a reserve by the ASSOCIATION and are not expected to create a surplus.

ARTICLE XX

PURCHASE OF UNITS BY THE ASSOCIATION

The ASSOCIATION shall have the power to purchase UNITS subject to the following provisions:

A. DECISION: The decision of the ASSOCIATION to purchase a UNIT shall be made by the BOARD OF DIRECTORS without the necessity of approval by the membership of the ASSOCIATION, except as is hereinafter expressly provided for.

B. LIMITATION: If, at any time, the ASSOCIATION shall be the owner or agreed purchaser of two or more UNITS, it may not purchase any additional UNITS without the prior written approval of 75% of the members of the ASSOCIATION eligible to vote. A member whose UNIT is the subject matter of the proposed purchase shall be ineligible to vote thereon, provided however, that the limitations hereof shall not apply to UNITS to be purchased at public sale resulting from a foreclosure of the ASSOCIATION's lien for delinquent ASSESSMENTS where the bid of the ASSOCIATION does not exceed the aggregate of the amounts due by virtue of any and all senior or superior liens against the UNIT, plus the amount due the ASSOCIATION, nor shall the limitation of this Article apply to UNITS to be acquired by the ASSOCIATION in lieu of foreclosure of such liens if the consideration therefor does not exceed the cancellation of such lien and the assumption of any existing mortgage indebtedness encumbering the UNIT.

ARTICLE XXI

COMPLIANCE AND DEFAULT

Each UNIT OWNER shall be governed by and shall comply with the terms of this DECLARATION, the BY-LAWS of the ASSOCIATION and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time. Failure of UNIT OWNERS to comply therewith shall entitle the ASSOCIATION or other UNIT OWNERS to the following relief in addition to the remedies provided by the CONDOMINIUM ACT:

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A. NEGLIGENCE: A UNIT OWNER shall be liable and may be assessed by the ASSOCIATION for the expense of any maintenance, repair or replacement rendered necessary by his willful, intentional or negligent act or by that of any member of his family or his or their guests, invitees, employees, licensees or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the ASSOCIATION. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a UNIT or its appurtenances or of the COMMON ELEMENTS.

B. COSTS AND ATTORNEYS FEES: In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of the Declaration, By-Laws and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys fees as may be awarded by the Court.

C. NO WAIVER OF RIGHTS: The failure of the ASSOCIATION or any UNIT OWNER to enforce a covenant, restriction or other provision of this DECLARATION or any of the Exhibits attached hereto, shall not constitute a waiver of the right to do so thereafter.

ARTICLE XXII

AMENDMENT OF DECLARATION

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Except as otherwise provided herein, this DECLARATION may be amended in the following manner:

A. NOTICE: Notice of the subject matter of a proposed

amendment shall be included in the notice of any meeting at which a proposed amendment shall be considered.

B. RESOLUTION OF ADOPTION: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS or by the members of the ASSOCIATION. Directors and members not present in person or by proxy at the meeting considering the amendment, may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approval must be as follows:

i. By not less than 66 2/3% of the entire membership of the BOARD OF DIRECTORS and by not less than 66 2/3% of the votes of the entire membership of the ASSOCIATION; or

ii. By not less than 75% of the votes of the entire membership of the ASSOCIATION; or

iii. By an agreement executed and acknowledged by all UNIT OWNERS of the CONDOMINIUM in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Dade County, Florida.

C. RESOLUTION OF ADOPTION FOR ERRORS OR OMISSIONS NOT MATERIALLY ADVERSELY AFFECTING PROPERTY RIGHTS OF UNIT OWNERS: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS of the ASSOCIATION or by the members of the ASSOCIATION whenever it appears that there is an omission or error in this DECLARATION or any Exhibit attached hereto or any amendment hereto, as follows:

i. Such amendment shall be approved by not less than 50% of the votes of the entire membership of the BOARD OF DIRECTORS and by not less than 50% of the votes of the entire membership of the ASSOCIATION.

ii. Any amendment adopted pursuant to the provisions of this Article XXII, Paragraph C shall not materially adversely effect the property rights of UNIT OWNERS.

iii. Until the DEVELOPER has sold and conveyed all of the UNITS in the CONDOMINIUM, any amendment adopted pursuant to this Article XXII, Paragraph C must be approved and consented to in writing by the DEVELOPER.

D. PROVISIO: Provided, however, that no amendment shall discriminate against any UNIT OWNER nor against any UNIT or class of groups of UNITS unless the UNIT OWNERS so affected shall consent; and no amendment shall change any UNIT nor the share in the COMMON ELEMENTS appurtenant to it, nor increase the a UNIT OWNER's share of the COMMON EXPENSES unless the record owner of the UNIT concerned and all record owners of mortgages on such UNIT shall join in the execution of the amendment. Neither shall an amendment make any change in the Section entitled "INSURANCE" nor in the Section entitled "RECONSTRUCTION OR REPAIR AFTER CASUALTY" unless the record owners of all mortgages upon the CONDOMINIUM shall join in the execution of such amendment. No amendment shall be adopted without the consent and approval of the DEVELOPER so long as it shall own one or more UNITS in the CONDOMINIUM. No amendment shall make any change which would in any way affect any of the rights, reservations, privileges, powers and/or options herein provided in favor of or reserved to the DEVELOPER or any person who is an officer, stockholder or director of the DEVELOPER, or any corporation having some or all of its directors, officers or stockholders in common with the DEVELOPER, unless the DEVELOPER shall join in the execution of such amendment. No amendment shall make any change which would, in any way, affect any of the rights, reservations, privileges, powers and/or options herein provided in favor of or reserved to any Institutional First Mortgagee unless such Institutional First Mortgagee shall join in the execution of such amendment. In case of

condemnation or substantial loss to the UNITS or COMMON ELEMENTS of the CONDOMINIUM, the ASSOCIATION shall not be entitled to partition or subdivide any UNIT or to abandon, partition, subdivide, encumber, sell or transfer any of the COMMON ELEMENTS unless at least 66 2/3% of the INSTITUTIONAL MORTGAGEES (based upon the number of UNITS encumbered, i.e., if one INSTITUTIONAL MORTGAGEE shall hold 66 2/3% of the mortgages on the total number of UNITS in the CONDOMINIUM, then only the approval of said INSTITUTIONAL MORTGAGEE shall be necessary) and 66 2/3% of the UNIT OWNERS have given their prior written approval, except as provided in the CONDOMINIUM ACT as of the date hereof.

E. 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 formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Public Records of Dade County, Florida.

F. AMENDMENTS: The Article entitled "TERMINATION" cannot be amended without consent of all UNIT OWNERS and all record owners of mortgages upon CONDOMINIUM PARCELS.

ARTICLE XXIII

DEVELOPER'S UNITS AND PRIVILEGES

A. DEVELOPER: The DEVELOPER, at the time of filing of this DECLARATION, is the owner of all of the real property, individual UNITS and appurtenances comprising the CONDOMINIUM. Therefore, the DEVELOPER, until all of the UNITS have been sold and closed, shall be irrevocably empowered, notwithstanding anything herein to the contrary, to sell, lease or rent UNITS to any person approved by the DEVELOPER. Said DEVELOPER shall have the right to transact upon the CONDOMINIUM PROPERTY any business necessary to consummate the sale of UNITS, including but not limited to the right to maintain models, have signs, staff employees, maintain offices, use the COMMON ELEMENTS and show UNITS. Any sales office, signs, fixtures or furnishings or other tangible personal property belonging to the DEVELOPER shall not be considered COMMON ELEMENTS and shall remain the property of the DEVELOPER.

B. EXPENSES: After the commencement date of payment of monthly COMMON EXPENSES, in the event there are unsold UNITS, the DEVELOPER retains the right to be the owner of said unsold UNITS; however, for such time as the DEVELOPER continues to be a UNIT OWNER, the DEVELOPER shall be required to contribute only such sums to the COMMON EXPENSES as incurred and required during that period.

C. AMENDMENT: Notwithstanding anything herein to the contrary, the provisions of this Section shall not be subject to any amendment unless the DEVELOPER has sold all of the UNITS in the CONDOMINIUM.

ARTICLE XXIV

TERMINATION

The DECLARATION may be terminated in the following manner, in addition to the manner provided by the CONDOMINIUM ACT:

A. DESTRUCTION: In the event that it is determined, in the manner elsewhere herein provided, that the CONDOMINIUM buildings shall not be reconstructed because of major damage, the DECLARATION will be thereby terminated without agreement.

B. AGREEMENT: The CONDOMINIUM may be terminated by the approval, in writing, of all of the UNIT OWNERS therein and by all

record owners of mortgages thereon. If the proposed termination is submitted to a meeting of members of the ASSOCIATION, the notice of such meeting shall contain notice of the proposed termination and if the approval of the owners of not less than 75% of the COMMON ELEMENTS and of the record owners of all mortgages upon the UNITS are obtained in writing not later than 30 days from the date of such meeting, then the approving UNIT OWNERS shall have an option to buy all of the UNITS of the other UNIT OWNERS for the period ending on the 60th day after the day of such meeting. Such approval shall be irrevocable until the expiration of the option herein granted and if the option is exercised the approval shall be irrevocable. Such option shall be upon the following terms:

i. Exercise of Option: The option shall be exercised by delivery or mailing by certified mail to each of the named UNIT OWNERS to be purchased of an agreement to purchase, signed by the record owners of UNITS who will participate in the purchase. Each agreement shall indicate which UNITS will be purchased by each participating UNIT OWNER and shall provide for the purchase of all of the UNITS owned by UNIT OWNERS not approving the termination and the effect of said agreement shall be to create a separate contract between each seller and his purchaser.

ii. Price: The sale price for each UNIT shall be the fair market value determined by agreement between the seller and the purchaser, within 30 days from the delivery of mailing of such agreement and in the absence of such agreement as to price, it shall be determined by arbitration in accordance with the then existing Rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the UNIT, and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expenses of the arbitration shall be paid by the purchaser.

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

iv. Closing: The sale shall be closed within 30 days following the determination of the sale price.

C. CERTIFICATE: The termination of the CONDOMINIUM in either of the foregoing manners shall be evidenced by a certificate of the ASSOCIATION executed by the President and Secretary certifying as to the facts affecting the termination, which certificate shall become effective upon being recorded in the Public Records of Dade County, Florida.

D. SHARES OF OWNERS AFTER TERMINATION: After termination of this CONDOMINIUM, UNIT OWNERS shall own the CONDOMINIUM PROPERTY and all assets of the ASSOCIATION as tenants in common in undivided shares and their respective mortgages and liens shall have mortgages and liens upon the respective undivided shares of the UNIT OWNERS. Such undivided shares of the UNIT OWNERS shall be the same as the undivided shares in the COMMON ELEMENTS appurtenant to the Owners' UNITS prior to the termination.

E. AMENDMENTS: This Section concerning termination cannot be amended without consent of all UNIT OWNERS and all record owners of mortgages upon CONDOMINIUM PARCELS.

ARTICLE XXV

ASSIGNABILITY OF DEVELOPER'S RIGHTS

The rights and privileges reserved in this DECLARATION and the Exhibits attached hereto in favor of the DEVELOPER are assignable by the DEVELOPER to any party who may be hereafter designated by the DEVELOPER to have and exercise such rights:

ARTICLE ~~XXVI~~

SEVERABILITY

~~XXVII~~

The invalidity, in whole or in part, of any covenant or restriction or any Section, sub-Section, sentence, clause, phrase or word or other provisions of this DECLARATION, Exhibits thereto, the ARTICLES, BY-LAWS and Rules and Regulations of the ASSOCIATION shall not affect the validity of the remaining portions, which shall remain in full force and effect.

ARTICLE ~~XXVII~~ I

INVALIDITY

In the event any court shall hereafter determine that any provisions of this DECLARATION, as originally drafted or as amended, violates the rule against perpetuities or any other rule of law because of the duration of the period involved, the period specified in this DECLARATION shall not, thereby, become invalid but instead, shall be reduced to the maximum period allowed by such rule or rules of law and for such purpose measuring lives shall be those incorporators of the ASSOCIATION.

ARTICLE ~~XXVIII~~ XXX

INTERPRETATION AND GOVERNING LAW

The provisions of this DECLARATION shall be liberally construed to effectuate its purposes of creating a uniform plan for the operation of a Condominium in accordance with the laws made and provided therefore and shall be governed by and construed in accordance with the laws of the State of Florida.

ARTICLE XXIX

MISCELLANEOUS PROVISIONS

A. NOTICES: All notices to the ASSOCIATION required or desired hereunder or under the ARTICLES or the BY-LAWS shall be sent by certified mail, return receipt requested to the ASSOCIATION in care of its offices at the CONDOMINIUM or to such other address as the ASSOCIATION may hereinafter designate from time to time by notice, in writing, to all UNIT OWNERS. Except as provided specifically herein, all notices to any UNIT OWNER shall be sent by first class mail to the address of the UNIT that such UNIT OWNER owns or such other address as may have been designated by him from time to time, in writing, to the ASSOCIATION. All notices to mortgagees of UNITS shall be sent by first class mail to their respective addresses or such other address as may be designated by them from time to time, in writing, to the ASSOCIATION. All notices shall be deemed to have been given when mailed in a postage prepaid seal wrapper, except notices of a change of address which shall be deemed to have been given when received. Notwithstanding anything in this DECLARATION to the contrary, the ASSOCIATION shall not be responsible to any mortgagee or lienor of any UNIT under any of the provisions hereof and may assume the UNIT is free of any such mortgages or liens unless written notice of the existence of such mortgage or lien is received by the ASSOCIATION.

B. WAIVER: No provision contained in this DECLARATION shall be deemed to have been waived by reason of any failure to enforce same without regard to the number of violations or breaches thereof which may occur.

XXVI

Transfer of Control 5/90

XXVII

Notices of Action to 1st Lieutenant

5/90

C. RATIFICATION: Each UNIT OWNER, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise) and each occupant of a UNIT, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this DECLARATION, the ARTICLES, the BY-LAWS and the Rules and Regulations of the ASSOCIATION are fair and reasonable in all material respects.

D. GENDER; PLURALITY: Whenever the context so permits or requires, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all or no genders.

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E. CAPTIONS: The captions herein and in the Exhibits attached hereto and made a part hereof are only inserted as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or of any provision thereof.

IN WITNESS WHEREOF, the DEVELOPER, APD, INC., a Florida corporation, has caused the execution of this DECLARATION OF CONDOMINIUM this 27th day of June, 1989.

DEVELOPER:

APD, INC.,
a Florida corporation

By: [Signature], President

[Signature]
Mary J King

STATE OF FLORIDA
COUNTY OF DADE

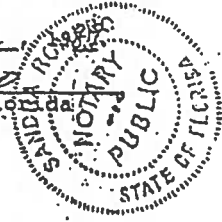
Before me personally appeared V.E. Lamberz, President of the DEVELOPER corporation, APD, INC., a Florida corporation, to me well known to me to be the person who executed the foregoing DECLARATION OF CONDOMINIUM and he acknowledged to and before me that he executed said document for the purposes therein expressed.

Sworn and subscribed this 27 day of June

[Signature]
Notary Public, State of Florida

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. JUNE 20, 1993
BONDED THRU GENERAL INS. UND.



OFF.
REC. 14165761421

EXHIBIT "A" TO DECLARATION OF CONDOMINIUM

FOR

BANYAN GARDENS, A CONDOMINIUM

LEGAL DESCRIPTION

Tract A of PARKER EAST GATE, according to the Plat thereof as recorded in Plat Book 127, Page 28 of the Public Records of Dade County, Florida.

EXHIBIT "B" TO
 DECLARATION OF CONDOMINIUM
 BANYAN GARDENS, A CONDOMINIUM
 IDENTIFICATION AND DESIGNATION OF UNIT BY NUMBER;
 DESCRIPTION OF UNIT

UNIT NO.	STREET ADDRESS	NO. BEDROOMS- BATHROOMS	SQUARE FOOTAGE
1	16200 S.W. 92 Avenue	3-2½	1548
2	16202 S.W. 92 Avenue	2-2½	1445
3	16204 S.W. 92 Avenue	2-2½	1445
4	16206 S.W. 92 Avenue	3-2½	1548
5	16208 S.W. 92 Avenue	3-2½	1667
6	16210 S.W. 92 Avenue	2-2½	1421
7	16212 S.W. 92 Avenue	2-2½	1421
8	16214 S.W. 92 Avenue	2-2½	1421
9	16216 S.W. 92 Avenue	3-2½	1667
10	16218 S.W. 92 Avenue	3-2½	1667
11	16220 S.W. 92 Avenue	2-2½	1421
12	16222 S.W. 92 Avenue	2-2½	1421
13	16224 S.W. 92 Avenue	2-2½	1421
14	16226 S.W. 92 Avenue	3-2½	1667
15	16228 S.W. 92 Avenue	3-2½	1667
16	16230 S.W. 92 Avenue	2-2½	1421
17	16232 S.W. 92 Avenue	2-2½	1421
18	16234 S.W. 92 Avenue	2-2½	1421
19	16236 S.W. 92 Avenue	3-2½	1667
20	16238 S.W. 92 Avenue	3-2½	1667
21	16240 S.W. 92 Avenue	2-2½	1421
22	16242 S.W. 92 Avenue	2-2½	1421
23	16244 S.W. 92 Avenue	2-2½	1421
24	16246 S.W. 92 Avenue	3-2½	1667

OFF. REC. 1416501423

EXHIBIT "C" TO
DECLARATION OF CONDOMINIUM OF BANYAN GARDENS,
A CONDOMINIUM

SHARE OF COMMON ELEMENTS, COMMON EXPENSES AND COMMON SURPLUS
APPURTENANT TO EACH UNIT EXPRESSED AS A PERCENTAGE

UNIT NUMBER	SHARE OF COMMON ELEMENTS
1	4.2558
2	3.9726
3	3.9726
4	4.2558
5	4.5830
6	3.9066
7	3.9066
8	3.9066
9	4.5830
10	4.5830
11	3.9066
12	3.9066
13	3.9066
14	4.5830
15	4.5830
16	3.9066
17	3.9066
18	3.9066
19	4.5830
20	4.5830
21	3.9066
22	3.9066
23	3.9066
24	4.5830

elsewhere herein provided, unless within 60 days after the casualty loss, the owners of 75% of the COMMON ELEMENTS agree in writing to such reconstruction or repair.

iii. Certificate: The Insurance Trustee may rely upon a certificate of the ASSOCIATION made by the President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. PLANS AND SPECIFICATIONS: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original CONDOMINIUM building, portions of which are attached hereto as Exhibits or, if not, then according to plans and specifications approved by the BOARD OF DIRECTORS of the ASSOCIATION and, if the damaged property is a CONDOMINIUM building, then by the owners of not less than 75% of the COMMON ELEMENTS, including the owners of all damaged UNITS, which approval shall not be unreasonably withheld.

C. RESPONSIBILITY: If the damage is only to those parts of one UNIT for which the responsibility of maintenance and repair is that of the UNIT OWNER, then the UNIT OWNER shall be responsible for reconstruction and repair after casualty loss. In all other instances, the responsibility of construction or repair after casualty loss shall be that of the ASSOCIATION.

D. ESTIMATES OF COSTS: Immediately after a casualty causing damage to property for which the ASSOCIATION has the responsibility of maintenance and repair, the ASSOCIATION shall obtain reliable and detailed estimates of the cost to repair or rebuild.

E. ASSESSMENTS: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the ASSOCIATION or, if at any time during reconstruction and repair, the funds for the payment of the costs thereof are insufficient, ASSESSMENTS shall be made against the UNIT OWNERS who own the damaged UNITS, and against all UNIT OWNERS in the case of damage to COMMON ELEMENTS, in sufficient amounts to provide funds to pay such estimated costs. Such ASSESSMENTS against the UNIT OWNERS for damage to UNITS shall be in proportion to the cost of reconstruction and repair of their respective UNITS. Such ASSESSMENTS on account of damage to COMMON ELEMENTS shall be in proportion to the UNIT OWNER's share in the COMMON ELEMENTS.

F. DEDUCTIBLE PROVISION: The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be a COMMON EXPENSE.

G. CONSTRUCTION FUNDS: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee, together with funds collected by the ASSOCIATION from ASSESSMENTS against UNIT OWNERS shall be disbursed in payment of such costs in the following manner:

i. ASSOCIATION: If costs of reconstruction and repair which are the responsibility of the ASSOCIATION are more than \$10,000.00, then the sums paid upon ASSESSMENTS to meet such costs shall be deposited by the ASSOCIATION with the Insurance Trustee. In all other cases, the ASSOCIATION shall hold the sums paid upon such ASSESSMENTS and disburse the same in payment of the costs of reconstruction and repair.

ii. Insurance Trustee: The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the ASSOCIATION from the collection of ASSESSMENTS against UNIT OWNERS on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

a. UNIT OWNER: The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the UNIT OWNER shall be paid by the Insurance Trustee to the UNIT OWNER or, if there is a mortgagee endorsement, then to the UNIT OWNER and his mortgagee, jointly.

b. ASSOCIATION - Lesser Damage: If the amount of the estimated cost of reconstruction and repair which is the responsibility of the ASSOCIATION is less than \$10,000.00, then the construction funds shall be disbursed in payment of such costs upon the order of the ASSOCIATION, provided however, that upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such funds shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

c. ASSOCIATION - Major Damage: If the amount of the estimated cost of reconstruction and repair, which is the responsibility of the ASSOCIATION, is equal to or more than \$10,000.00, then the construction funds shall be disbursed in payment of such costs in the manner required by the BOARD OF DIRECTORS of the ASSOCIATION and upon approval of an architect qualified to practice in the State of Florida and employed by the ASSOCIATION to supervise the work.

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

e. Certificate: Notwithstanding the provisions herein contained, the Insurance Trustee shall not be required to determine whether or not sums paid by UNIT OWNERS upon ASSESSMENTS shall be deposited by the ASSOCIATION with the Insurance Trustee nor to determine whether the disbursements from the construction fund are to be upon the order of the ASSOCIATION or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine the payee nor the amounts to be paid nor to determine whether surplus funds to be distributed are less than the ASSESSMENTS paid by UNIT OWNERS. Instead, the Insurance Trustee may rely upon a certificate of the ASSOCIATION made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to a UNIT OWNER and further, provided that when the ASSOCIATION or a mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction funds, so requires the approval of an architect named by the ASSOCIATION shall first be obtained by the ASSOCIATION upon disbursements in payment of costs of reconstruction and repair.

ARTICLE XIX

ASSESSMENTS

The making and collecting of ASSESSMENTS against UNIT OWNERS for COMMON EXPENSES shall be the obligation of the BOARD OF DIRECTORS pursuant to the BY-LAWS and subject to the following provisions:

A. SHARE OF THE COMMON EXPENSES: Each UNIT OWNER shall be liable for a proportionate share of the COMMON EXPENSES and shall be entitled to an undivided share of the COMMON SURPLUS, such shares being set forth in Exhibit "C". A UNIT OWNER, regardless of how title is acquired, including, without limitation a purchaser at a judicial sale, shall be liable for all ASSESSMENTS coming due while he is the owner of a UNIT. In a voluntary conveyance, the grantees shall be jointly and severally liable with the grantor for all unpaid ASSESSMENTS against the latter for his share of the COMMON EXPENSES up to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

B. NON-WAIVER: The liability for ASSESSMENTS may not be avoided by waiver of the use or enjoyment of any COMMON ELEMENTS or LIMITED COMMON ELEMENTS or by abandonment of the UNIT for which the assessment is made.

C. INTEREST, APPLICATION OF PAYMENTS: ~~ASSESSMENTS and installments on such ASSESSMENTS paid on or before 10 days after the date when due shall not bear interest, but all sums not paid on or before 10 days after the date when due shall bear interest at the highest rate permitted by the laws of the State of Florida, from the date when due until paid. All payments upon account shall be first applied to interest and then to the ASSESSMENT payment first due.~~

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D. LIEN FOR ASSESSMENTS: In accordance with the CONDOMINIUM ACT, the ASSOCIATION shall have a lien on each CONDOMINIUM PARCEL for any unpaid ASSESSMENTS, together with interest thereon against the owner of such CONDOMINIUM PARCEL. In addition to the lien provided by the CONDOMINIUM ACT, the ASSOCIATION shall have a lien on all tangible personal property located within the UNIT, except that such lien upon the aforesaid tangible personal property shall be subordinate to prior bona fide liens of record. Reasonable attorneys fees incurred by the ASSOCIATION incident to the collection of such ASSESSMENT or for the enforcement of a lien on a CONDOMINIUM PARCEL and/or on tangible personal property located within the UNIT, together with all sums advanced and paid by the ASSOCIATION for taxes and payment on account of superior mortgages, liens or encumbrances which may be required to be advanced by the ASSOCIATION in order to preserve and protect any such lien shall be payable by the UNIT OWNER and secured by such lien. The ASSOCIATION's liens shall also include those sums advanced on behalf of each UNIT OWNER in payment of his obligation for use, charges and operation costs, likewise referred to as "COMMON EXPENSES."

Said lien shall be effective from and after the time of recording in the Public Records of Dade County, Florida of a Claim of Lien stating the description of the CONDOMINIUM PARCEL, the name of the record owner, the amount due and the date when due. Said lien shall continue in effect for a period of one year after such claim of lien has been recorded unless, within that time, an action to enforce such lien is commenced in a court of competent jurisdiction. If such action has been commenced, said lien shall continue in effect until all sums secured thereby shall have been fully paid. Such claims of lien shall be signed and verified by an Officer of the ASSOCIATION. Upon full payment, the party making payment shall be entitled to a recordable Satisfaction of Lien. All such liens shall be subordinate to the lien of an institutional mortgage recorded prior to the time of recording of the Claim of Lien.

E. COLLECTION AND FORECLOSURE: The BOARD OF DIRECTORS may take such action as it deems necessary to collect ASSESSMENTS of the ASSOCIATION by personal action or by enforcing and foreclosing its lien and may settle and compromise same if in the best interest of the ASSOCIATION. Said lien shall be effective as and in the manner provided for by the CONDOMINIUM ACT and shall have the priorities established by said ACT. The ASSOCIATION shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien

and to apply as a cash credit against its bid all sums due the ASSOCIATION covered by the lien enforced. In case of such foreclosure, the UNIT OWNER shall be required to pay a reasonable rental for the CONDOMINIUM PARCEL and the Plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect same from the UNIT OWNER or occupant.

F. LIABILITY OF MORTGAGEE, LIENOR OR JUDICIAL PURCHASER FOR ASSESSMENT: Notwithstanding anything to the contrary contained in this DECLARATION, where the mortgagee of a first mortgage of record or other purchaser of a UNIT obtains title to a CONDOMINIUM PARCEL as a result of foreclosure of the first mortgage or when the mortgagee of a first mortgage of record accepts a deed to said CONDOMINIUM PARCEL in lieu of foreclosure, such acquirer of title, his successors and assigns shall not be liable for the share of COMMON EXPENSES or ASSESSMENTS by the ASSOCIATION pertaining to such CONDOMINIUM PARCEL or chargeable to the former UNIT OWNER of such CONDOMINIUM PARCEL, which became due prior to the acquisition of title as a result of the foreclosure, or the acceptance of such deed in lieu of foreclosure, unless such 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 COMMON EXPENSES collectable from all of the UNIT OWNERS, including such acquirer of title, whether as a result of foreclosure or by acceptance of a deed to the PARCEL in lieu of foreclosure. The new UNIT OWNER, by virtue of the acquisition of such title, shall forthwith become liable for payment of the COMMON EXPENSES and such other expenses as may be chargeable to the owner of a UNIT hereunder.

G. ASSIGNMENT OF CLAIM AND LIEN RIGHTS: The ASSOCIATION, acting through its BOARD OF DIRECTORS, shall have the right to assign its claim and lien rights for the recovery of any unpaid assessment and any other monies owed to the ASSOCIATION, to any third party.

H. UNPAID ASSESSMENTS CERTIFICATE: Any UNIT OWNER shall have the right to require, from the ASSOCIATION, a certificate showing the amount of unpaid ASSESSMENTS against him with respect to his CONDOMINIUM PARCEL. The holder of a mortgage or other lien shall have the same right as to any CONDOMINIUM PARCEL upon which he has such a lien. Any person, other than the UNIT OWNER, who relies upon such certificate in purchasing or making a mortgage loan encumbering any UNIT shall be protected thereby.

I. WORKING CAPITAL OF ASSOCIATION: The funds represented by the payment of \$250.00 by the purchaser of each UNIT at the time of conveyance of the UNIT by the DEVELOPER, shall be a working capital fund of the ASSOCIATION and may be utilized for start-up expenses, COMMON EXPENSES paid or accrued prior to and subsequent to the commencement date of regular monthly installments for the payment of ASSESSMENTS, deficiencies and for any purpose for which the ASSOCIATION could levy an ASSESSMENT pursuant to this DECLARATION, including but not limited to the funding of deficits prior to the commencement of DEVELOPER's obligations to fund such deficits and the reimbursement of the DEVELOPER for certain expenses advanced by the DEVELOPER, including but not limited to prepaid utility deposits, premiums, rentals and other consideration paid by the DEVELOPER to such insurers, contractors and utility companies which shall be prorated as of the date of closing for each UNIT and, said funds shall not be set up as a reserve by the ASSOCIATION and are not expected to create a surplus.

ARTICLE XX

PURCHASE OF UNITS BY THE ASSOCIATION

The ASSOCIATION shall have the power to purchase UNITS subject to the following provisions:

A. DECISION: The decision of the ASSOCIATION to purchase a UNIT shall be made by the BOARD OF DIRECTORS without the necessity of approval by the membership of the ASSOCIATION, except as is hereinafter expressly provided for.

B. LIMITATION: If, at any time, the ASSOCIATION shall be the owner or agreed purchaser of two or more UNITS, it may not purchase any additional UNITS without the prior written approval of 75% of the members of the ASSOCIATION eligible to vote. A member whose UNIT is the subject matter of the proposed purchase shall be ineligible to vote thereon, provided however, that the limitations hereof shall not apply to UNITS to be purchased at public sale resulting from a foreclosure of the ASSOCIATION's lien for delinquent ASSESSMENTS where the bid of the ASSOCIATION does not exceed the aggregate of the amounts due by virtue of any and all senior or superior liens against the UNIT, plus the amount due the ASSOCIATION, nor shall the limitation of this Article apply to UNITS to be acquired by the ASSOCIATION in lieu of foreclosure of such liens if the consideration therefor does not exceed the cancellation of such lien and the assumption of any existing mortgage indebtedness encumbering the UNIT.

ARTICLE XXI

COMPLIANCE AND DEFAULT

Each UNIT OWNER shall be governed by and shall comply with the terms of this DECLARATION, the BY-LAWS of the ASSOCIATION and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time. Failure of UNIT OWNERS to comply therewith shall entitle the ASSOCIATION or other UNIT OWNERS to the following relief in addition to the remedies provided by the CONDOMINIUM ACT:

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A. NEGLIGENCE: A UNIT OWNER shall be liable and may be assessed by the ASSOCIATION for the expense of any maintenance, repair or replacement rendered necessary by his willful, intentional or negligent act or by that of any member of his family or his or their guests, invitees, employees, licensees or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the ASSOCIATION. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a UNIT or its appurtenances or of the COMMON ELEMENTS.

B. COSTS AND ATTORNEYS FEES: In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of the Declaration, By-Laws and the Rules and Regulations adopted pursuant thereto and said documents and Rules and Regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys fees as may be awarded by the Court.

C. NO WAIVER OF RIGHTS: The failure of the ASSOCIATION or any UNIT OWNER to enforce a covenant, restriction or other provision of this DECLARATION or any of the Exhibits attached hereto, shall not constitute a waiver of the right to do so thereafter.

ARTICLE XXII

AMENDMENT OF DECLARATION

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Except as otherwise provided herein, this DECLARATION may be amended in the following manner:

A. NOTICE: Notice of the subject matter of a proposed

amendment shall be included in the notice of any meeting at which a proposed amendment shall be considered.

B. RESOLUTION OF ADOPTION: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS or by the members of the ASSOCIATION. Directors and members not present in person or by proxy at the meeting considering the amendment, may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approval must be as follows:

i. By not less than 66 2/3% of the entire membership of the BOARD OF DIRECTORS and by not less than 66 2/3% of the votes of the entire membership of the ASSOCIATION; or

ii. By not less than 75% of the votes of the entire membership of the ASSOCIATION; or

iii. By an agreement executed and acknowledged by all UNIT OWNERS of the CONDOMINIUM in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Dade County, Florida.

C. RESOLUTION OF ADOPTION FOR ERRORS OR OMISSIONS NOT MATERIALLY ADVERSELY AFFECTING PROPERTY RIGHTS OF UNIT OWNERS: A resolution adopting a proposed amendment may be proposed by either the BOARD OF DIRECTORS of the ASSOCIATION or by the members of the ASSOCIATION whenever it appears that there is an omission or error in this DECLARATION or any Exhibit attached hereto or any amendment hereto, as follows:

i. Such amendment shall be approved by not less than 50% of the votes of the entire membership of the BOARD OF DIRECTORS and by not less than 50% of the votes of the entire membership of the ASSOCIATION.

ii. Any amendment adopted pursuant to the provisions of this Article XXII, Paragraph C shall not materially adversely effect the property rights of UNIT OWNERS.

iii. Until the DEVELOPER has sold and conveyed all of the UNITS in the CONDOMINIUM, any amendment adopted pursuant to this Article XXII, Paragraph C must be approved and consented to in writing by the DEVELOPER.

D. PROVISIO: Provided, however, that no amendment shall discriminate against any UNIT OWNER nor against any UNIT or class of groups of UNITS unless the UNIT OWNERS so affected shall consent; and no amendment shall change any UNIT nor the share in the COMMON ELEMENTS appurtenant to it, nor increase the a UNIT OWNER's share of the COMMON EXPENSES unless the record owner of the UNIT concerned and all record owners of mortgages on such UNIT shall join in the execution of the amendment. Neither shall an amendment make any change in the Section entitled "INSURANCE" nor in the Section entitled "RECONSTRUCTION OR REPAIR AFTER CASUALTY" unless the record owners of all mortgages upon the CONDOMINIUM shall join in the execution of such amendment. No amendment shall be adopted without the consent and approval of the DEVELOPER so long as it shall own one or more UNITS in the CONDOMINIUM. No amendment shall make any change which would in any way affect any of the rights, reservations, privileges, powers and/or options herein provided in favor of or reserved to the DEVELOPER or any person who is an officer, stockholder or director of the DEVELOPER, or any corporation having some or all of its directors, officers or stockholders in common with the DEVELOPER, unless the DEVELOPER shall join in the execution of such amendment. No amendment shall make any change which would, in any way, affect any of the rights, reservations, privileges, powers and/or options herein provided in favor of or reserved to any Institutional First Mortgagee unless such Institutional First Mortgagee shall join in the execution of such amendment. In case of

condemnation or substantial loss to the UNITS or COMMON ELEMENTS of the CONDOMINIUM, the ASSOCIATION shall not be entitled to partition or subdivide any UNIT or to abandon, partition, subdivide, encumber, sell or transfer any of the COMMON ELEMENTS unless at least 66 2/3% of the INSTITUTIONAL MORTGAGEES (based upon the number of UNITS encumbered, i.e., if one INSTITUTIONAL MORTGAGEE shall hold 66 2/3% of the mortgages on the total number of UNITS in the CONDOMINIUM, then only the approval of said INSTITUTIONAL MORTGAGEE shall be necessary) and 66 2/3% of the UNIT OWNERS have given their prior written approval, except as provided in the CONDOMINIUM ACT as of the date hereof.

E. 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 formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Public Records of Dade County, Florida.

F. AMENDMENTS: The Article entitled "TERMINATION" cannot be amended without consent of all UNIT OWNERS and all record owners of mortgages upon CONDOMINIUM PARCELS.

ARTICLE XXIII

DEVELOPER'S UNITS AND PRIVILEGES

A. DEVELOPER: The DEVELOPER, at the time of filing of this DECLARATION, is the owner of all of the real property, individual UNITS and appurtenances comprising the CONDOMINIUM. Therefore, the DEVELOPER, until all of the UNITS have been sold and closed, shall be irrevocably empowered, notwithstanding anything herein to the contrary, to sell, lease or rent UNITS to any person approved by the DEVELOPER. Said DEVELOPER shall have the right to transact upon the CONDOMINIUM PROPERTY any business necessary to consummate the sale of UNITS, including but not limited to the right to maintain models, have signs, staff employees, maintain offices, use the COMMON ELEMENTS and show UNITS. Any sales office, signs, fixtures or furnishings or other tangible personal property belonging to the DEVELOPER shall not be considered COMMON ELEMENTS and shall remain the property of the DEVELOPER.

B. EXPENSES: After the commencement date of payment of monthly COMMON EXPENSES, in the event there are unsold UNITS, the DEVELOPER retains the right to be the owner of said unsold UNITS; however, for such time as the DEVELOPER continues to be a UNIT OWNER, the DEVELOPER shall be required to contribute only such sums to the COMMON EXPENSES as incurred and required during that period.

C. AMENDMENT: Notwithstanding anything herein to the contrary, the provisions of this Section shall not be subject to any amendment unless the DEVELOPER has sold all of the UNITS in the CONDOMINIUM.

ARTICLE XXIV

TERMINATION

The DECLARATION may be terminated in the following manner, in addition to the manner provided by the CONDOMINIUM ACT:

A. DESTRUCTION: In the event that it is determined, in the manner elsewhere herein provided, that the CONDOMINIUM buildings shall not be reconstructed because of major damage, the DECLARATION will be thereby terminated without agreement.

B. AGREEMENT: The CONDOMINIUM may be terminated by the approval, in writing, of all of the UNIT OWNERS therein and by all

record owners of mortgages thereon. If the proposed termination is submitted to a meeting of members of the ASSOCIATION, the notice of such meeting shall contain notice of the proposed termination and if the approval of the owners of not less than 75% of the COMMON ELEMENTS and of the record owners of all mortgages upon the UNITS are obtained in writing not later than 30 days from the date of such meeting, then the approving UNIT OWNERS shall have an option to buy all of the UNITS of the other UNIT OWNERS for the period ending on the 60th day after the day of such meeting. Such approval shall be irrevocable until the expiration of the option herein granted and if the option is exercised the approval shall be irrevocable. Such option shall be upon the following terms:

i. **Exercise of Option:** The option shall be exercised by delivery or mailing by certified mail to each of the named UNIT OWNERS to be purchased of an agreement to purchase, signed by the record owners of UNITS who will participate in the purchase. Each agreement shall indicate which UNITS will be purchased by each participating UNIT OWNER and shall provide for the purchase of all of the UNITS owned by UNIT OWNERS not approving the termination and the effect of said agreement shall be to create a separate contract between each seller and his purchaser.

ii. **Price:** The sale price for each UNIT shall be the fair market value determined by agreement between the seller and the purchaser, within 30 days from the delivery of mailing of such agreement and in the absence of such agreement as to price, it shall be determined by arbitration in accordance with the then existing Rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the UNIT, and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expenses of the arbitration shall be paid by the purchaser.

iii. **Payment:** The purchase price shall be paid in cash.

iv. **Closing:** The sale shall be closed within 30 days following the determination of the sale price.

C. **CERTIFICATE:** The termination of the CONDOMINIUM in either of the foregoing manners shall be evidenced by a certificate of the ASSOCIATION executed by the President and Secretary certifying as to the facts affecting the termination, which certificate shall become effective upon being recorded in the Public Records of Dade County, Florida.

D. **SHARES OF OWNERS AFTER TERMINATION:** After termination of this CONDOMINIUM, UNIT OWNERS shall own the CONDOMINIUM PROPERTY and all assets of the ASSOCIATION as tenants in common in undivided shares and their respective mortgages and liens shall have mortgages and liens upon the respective undivided shares of the UNIT OWNERS. Such undivided shares of the UNIT OWNERS shall be the same as the undivided shares in the COMMON ELEMENTS appurtenant to the Owners' UNITS prior to the termination.

E. **AMENDMENTS:** This Section concerning termination cannot be amended without consent of all UNIT OWNERS and all record owners of mortgages upon CONDOMINIUM PARCELS.

ARTICLE XXIV

ASSIGNABILITY OF DEVELOPER'S RIGHTS

The rights and privileges reserved in this DECLARATION and the Exhibits attached hereto in favor of the DEVELOPER are assignable by the DEVELOPER to any party who may be hereafter designated by the DEVELOPER to have and exercise such rights.

ARTICLE XXVI

SEVERABILITY

~~XXVII~~

The invalidity, in whole or in part, of any covenant or restriction or any Section, sub-Section, sentence, clause, phrase or word or other provisions of this DECLARATION, Exhibits thereto, the ARTICLES, BY-LAWS and Rules and Regulations of the ASSOCIATION shall not affect the validity of the remaining portions, which shall remain in full force and effect.

ARTICLE XXVII I

INVALIDITY

In the event any court shall hereafter determine that any provisions of this DECLARATION, as originally drafted or as amended, violates the rule against perpetuities or any other rule of law because of the duration of the period involved, the period specified in this DECLARATION shall not, thereby, become invalid but instead, shall be reduced to the maximum period allowed by such rule or rules of law and for such purpose measuring lives shall be those Incorporators of the ASSOCIATION.

ARTICLE XXVIII

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INTERPRETATION AND GOVERNING LAW

The provisions of this DECLARATION shall be liberally construed to effectuate its purposes of creating a uniform plan for the operation of a Condominium in accordance with the laws made and provided therefore and shall be governed by and construed in accordance with the laws of the State of Florida.

ARTICLE XXIX

MISCELLANEOUS PROVISIONS

A. NOTICES: All notices to the ASSOCIATION required or desired hereunder or under the ARTICLES or the BY-LAWS shall be sent by certified mail, return receipt requested to the ASSOCIATION in care of its offices at the CONDOMINIUM or to such other address as the ASSOCIATION may hereinafter designate from time to time by notice, in writing, to all UNIT OWNERS. Except as provided specifically herein, all notices to any UNIT OWNER shall be sent by first class mail to the address of the UNIT that such UNIT OWNER owns or such other address as may have been designated by him from time to time, in writing, to the ASSOCIATION. All notices to mortgagees of UNITS shall be sent by first class mail to their respective addresses or such other address as may be designated by them from time to time, in writing, to the ASSOCIATION. All notices shall be deemed to have been given when mailed in a postage prepaid seal wrapper, except notices of a change of address which shall be deemed to have been given when received. Notwithstanding anything in this DECLARATION to the contrary, the ASSOCIATION shall not be responsible to any mortgagee or lienor of any UNIT under any of the provisions hereof and may assume the UNIT is free of any such mortgages or liens unless written notice of the existence of such mortgage or lien is received by the ASSOCIATION.

B. WAIVER: No provision contained in this DECLARATION shall be deemed to have been waived by reason of any failure to enforce same without regard to the number of violations or breaches thereof which may occur.

XXVI

Transfer
of
Control
5/90

XXVII

Notices of
Action to
st. liendholder

5/90

C. RATIFICATION: Each UNIT OWNER, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise) and each occupant of a UNIT, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this DECLARATION, the ARTICLES, the BY-LAWS and the Rules and Regulations of the ASSOCIATION are fair and reasonable in all material respects.

D. GENDER; PLURALITY: Whenever the context so permits or requires, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all or no genders.

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E. CAPTIONS: The captions herein and in the Exhibits attached hereto and made a part hereof are only inserted as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or of any provision thereof.

IN WITNESS WHEREOF, the DEVELOPER, APD, I.C., a Florida corporation, has caused the execution of this DECLARATION OF CONDOMINIUM, this 27th day of June, 1989.

DEVELOPER:

APD., INC.,
a Florida corporation

By: [Signature], President

[Signature]
Mary J. King

STATE OF FLORIDA
COUNTY OF DADE

Before me personally appeared V.E. Lambert, President of the DEVELOPER corporation, APD, INC., a Florida corporation, to me well known to me to be the person who executed the foregoing DECLARATION OF CONDOMINIUM and he acknowledged to and before me that he executed said document for the purposes therein expressed.

Sworn and subscribed this 27 day of June

[Signature]
Notary Public, State of Florida



My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. JUNE 20, 1993
BONDED THRU GENERAL INS. UND.

OFF. REC. 14165M1421

EXHIBIT "A" TO DECLARATION OF CONDOMINIUM
FOR
BANYAN GARDENS, A CONDOMINIUM

LEGAL DESCRIPTION

Tract A of PARKER EAST GATE, according to the Plat thereof as recorded in Plat Book 127, Page 28 of the Public Records of Dade County, Florida.

EXHIBIT "B" TO
 DECLARATION OF CONDOMINIUM
 BANYAN GARDENS, A CONDOMINIUM
 IDENTIFICATION AND DESIGNATION OF UNIT BY NUMBER;
 DESCRIPTION OF UNIT

UNIT NO.	STREET ADDRESS	NO. BEDROOMS- BATHROOMS	SQUARE FOOTAGE
1	16200 S.W. 92 Avenue	3-2½	1548
2	16202 S.W. 92 Avenue	2-2½	1445
3	16204 S.W. 92 Avenue	2-2½	1445
4	16206 S.W. 92 Avenue	3-2½	1548
5	16208 S.W. 92 Avenue	3-2½	1667
6	16210 S.W. 92 Avenue	2-2½	1421
7	16212 S.W. 92 Avenue	2-2½	1421
8	16214 S.W. 92 Avenue	2-2½	1421
9	16216 S.W. 92 Avenue	3-2½	1667
10	16218 S.W. 92 Avenue	3-2½	1667
11	16220 S.W. 92 Avenue	2-2½	1421
12	16222 S.W. 92 Avenue	2-2½	1421
13	16224 S.W. 92 Avenue	2-2½	1421
14	16226 S.W. 92 Avenue	3-2½	1667
15	16228 S.W. 92 Avenue	3-2½	1667
16	16230 S.W. 92 Avenue	2-2½	1421
17	16232 S.W. 92 Avenue	2-2½	1421
18	16234 S.W. 92 Avenue	2-2½	1421
19	16236 S.W. 92 Avenue	3-2½	1667
20	16238 S.W. 92 Avenue	3-2½	1667
21	16240 S.W. 92 Avenue	2-2½	1421
22	16242 S.W. 92 Avenue	2-2½	1421
23	16244 S.W. 92 Avenue	2-2½	1421
24	16246 S.W. 92 Avenue	3-2½	1667

OPT. REC. 1416501423

EXHIBIT "C" TO
DECLARATION OF CONDOMINIUM OF BANYAN GARDENS,
A CONDOMINIUM

SHARE OF COMMON ELEMENTS, COMMON EXPENSES AND COMMON SURPLUS
APPURTENANT TO EACH UNIT EXPRESSED AS A PERCENTAGE

UNIT NUMBER	SHARE OF COMMON ELEMENTS
1	4.2558
2	3.9726
3	3.9726
4	4.2558
5	4.5830
6	3.9066
7	3.9066
8	3.9066
9	4.5830
10	4.5830
11	3.9066
12	3.9066
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14	4.5830
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23	3.9066
24	4.5830

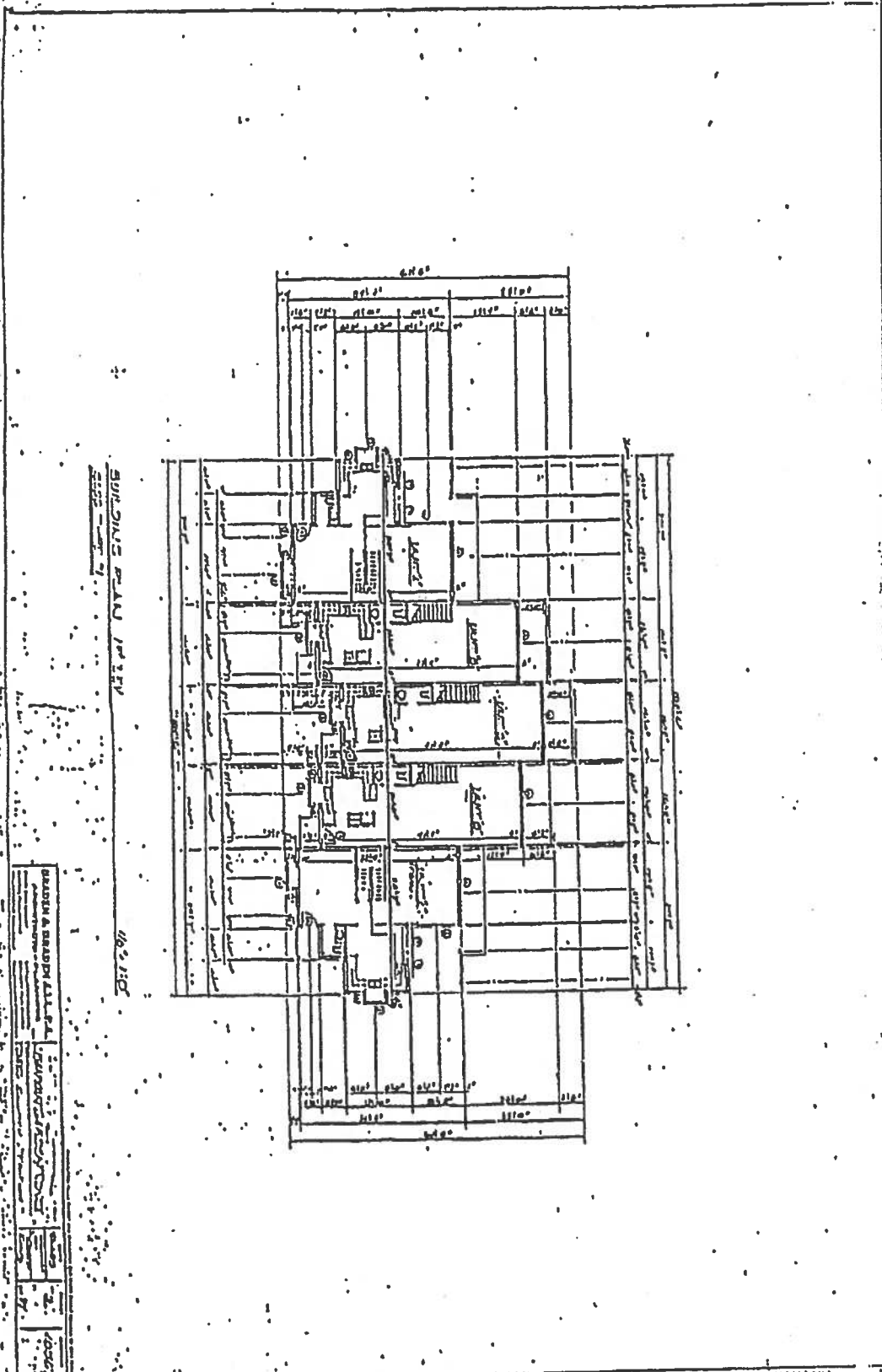
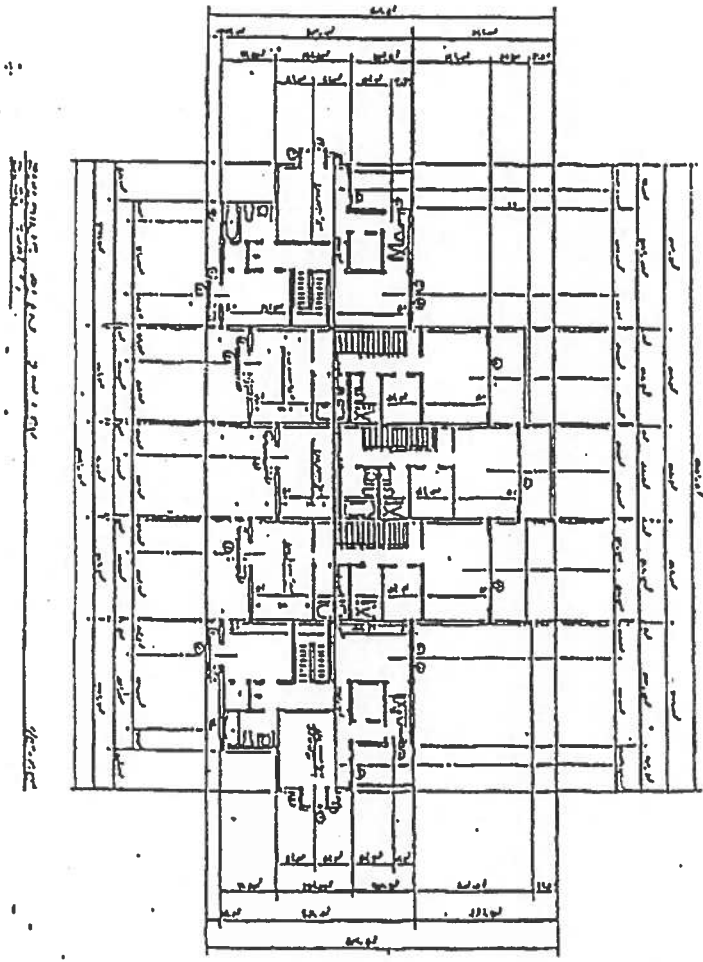


EXHIBIT "E" TO DECLARATION OF CONDOMINIUM OF BANYAN GARDENS, A CONDOMINIUM
 ELEVATIONS/FLOOR PLANS - BUILDING TYPE 1 (UNITS 10 - 24)
 Page 2 of 3 Pages



9007
E
CNSO ARCHITECTURE
TEL: 416 491 7100



DATE	1/11/65
BY	W. J. H. B. & M. J. H. B.
PROJECT	CONDOMINIUM BUILDING
NO.	10-24

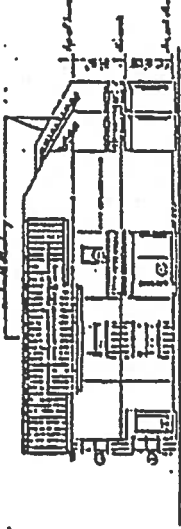
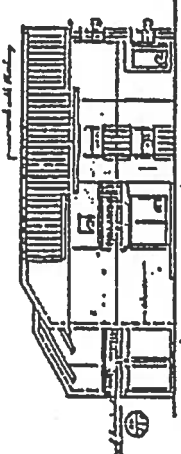
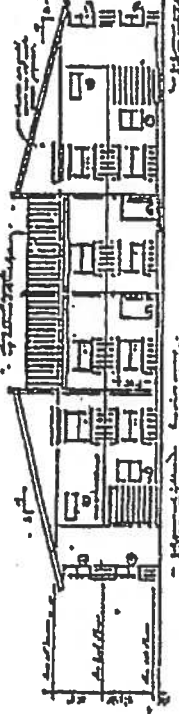
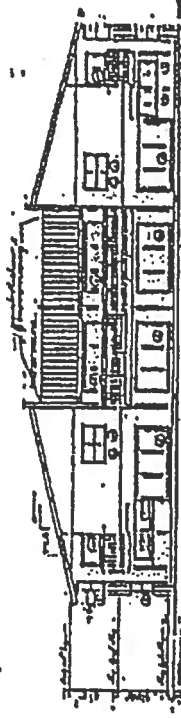


EXHIBIT "F" TO DECLARATION OF CONDOMINIUM OF BANYAN GARDENS, A CONDOMINIUM
ELEVATIONS/FLOOR PLANS - BUILDING TYPE 2 - UNITS 1 - 4
Page 1 of 2 Pages

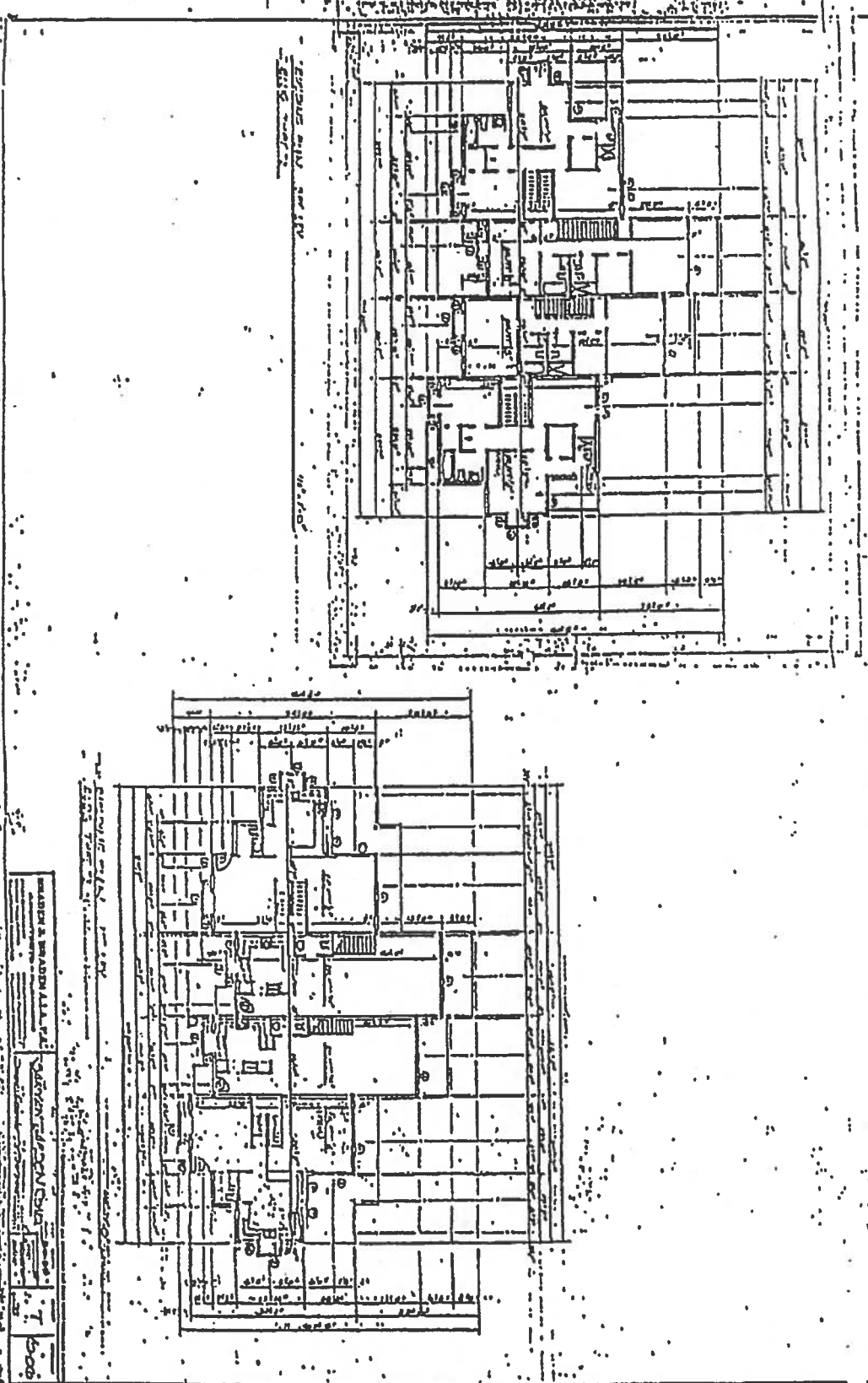
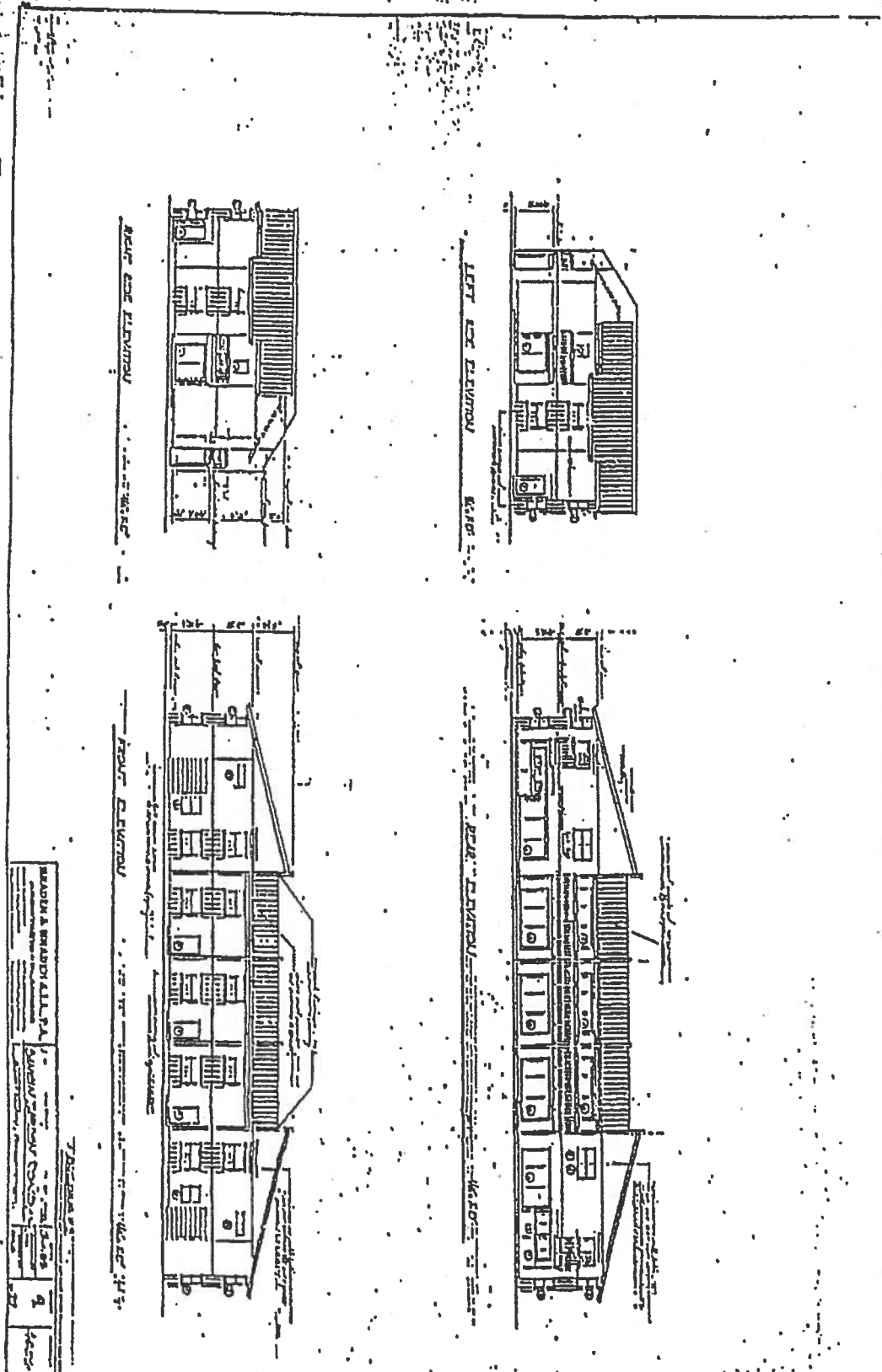


EXHIBIT "F" TO DECLARATION OF CONDOMINIUM OF "DARYAN GARDENS, A CONDOMINIUM
 ELEVATIONS/FLOOR PLANS - BUILDING TYPE 2 - (UNITS 1 - 4)
 Page 2 of 2 Pages



DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: 3-2-04
 SHEET NO. 4
 TOTAL SHEETS: 4

EXHIBIT "C" TO DECLARATION OF CONDOMINIUM OF BANYAN GARDENS, A CONDOMINIUM
 ELEVATIONS/FLOOR PLANS - BUILDING TYPE 3 (UNITS 5 - 9)
 Page 1 of 3 Pages

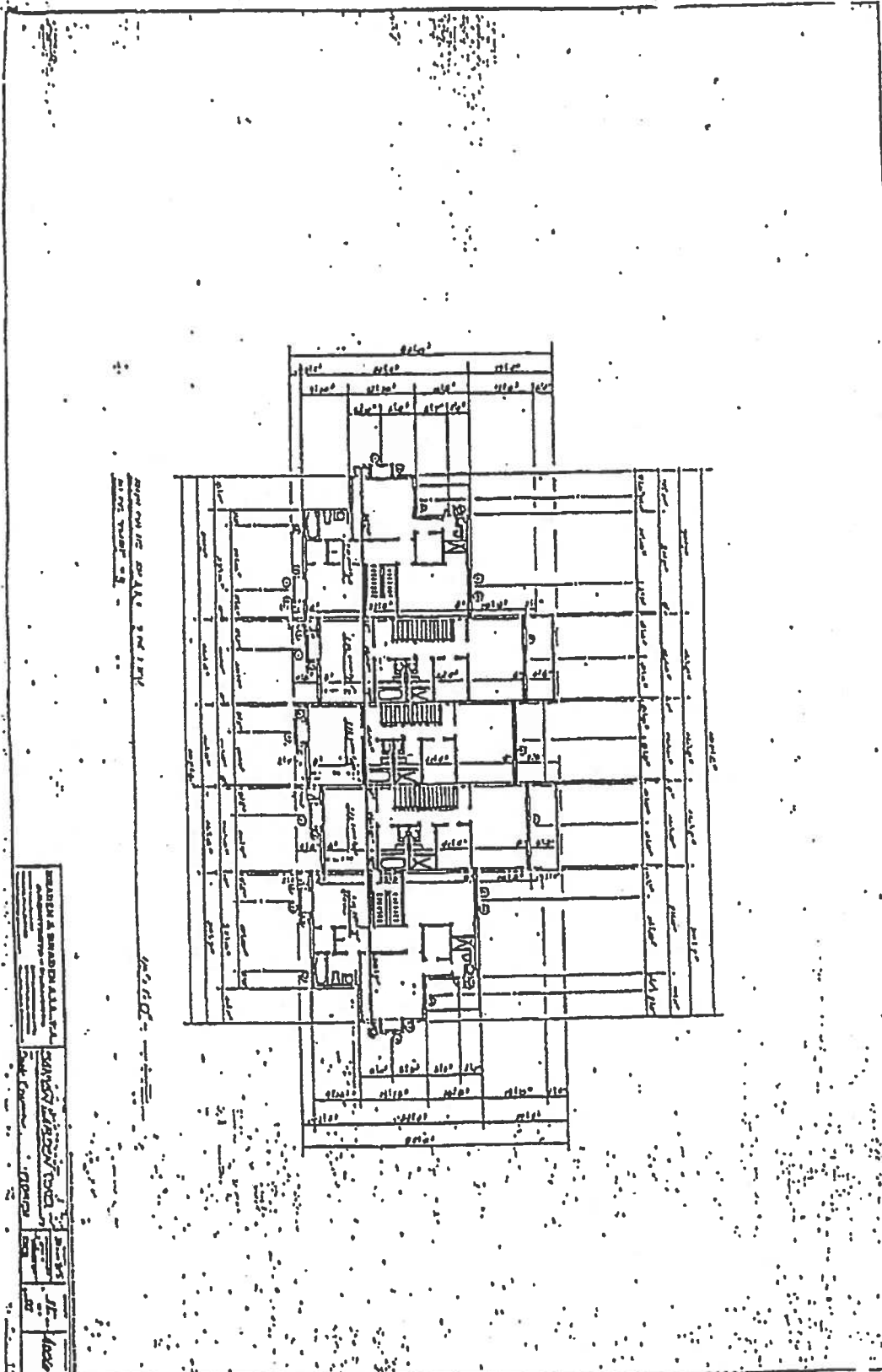
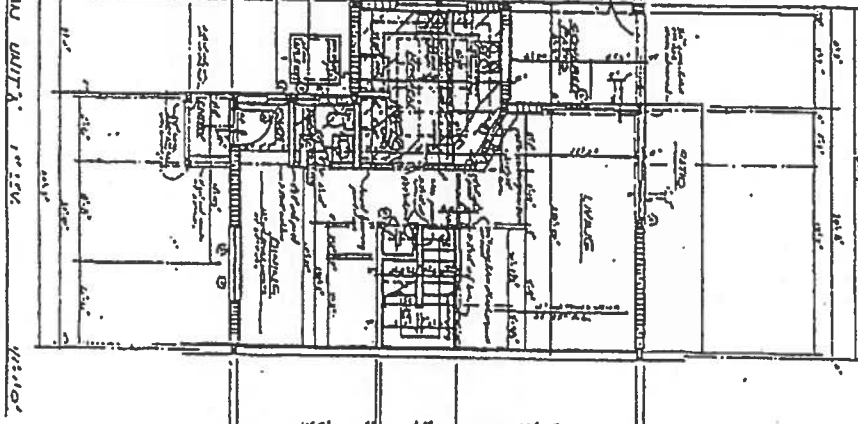
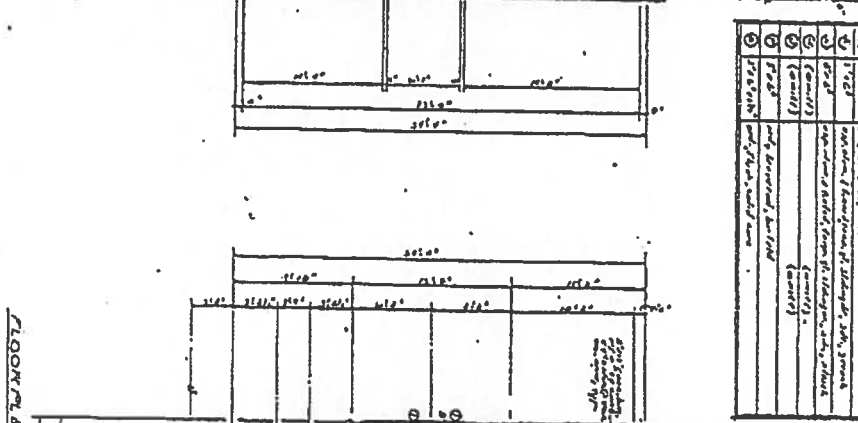
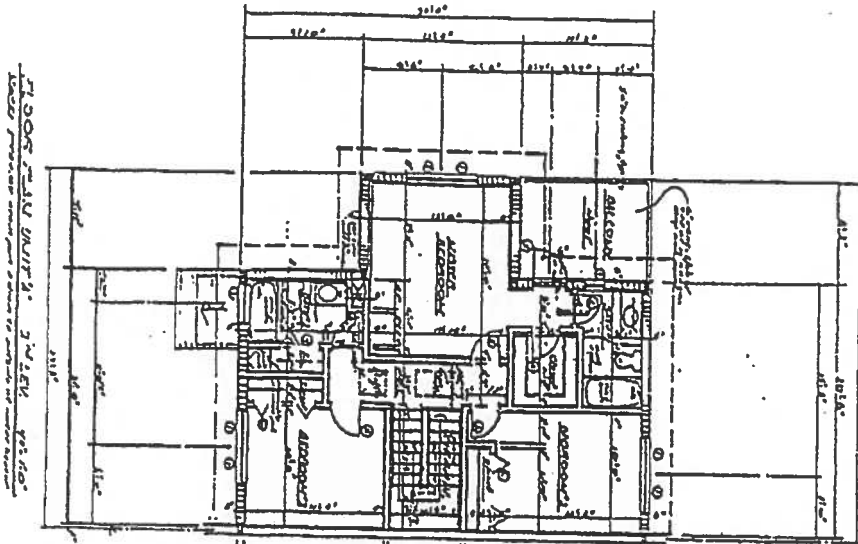


EXHIBIT "G" TO DECLARATION OF CONDOMINIUM OF BANYAN GARDENS, A CONDOMINIUM
 ELEVATIONS/FLOOR PLANS - BUILDING TYPE 3 (UNITS 5 - 9)
 Page 3 of 3 Pages

OFF. 14165PG1433
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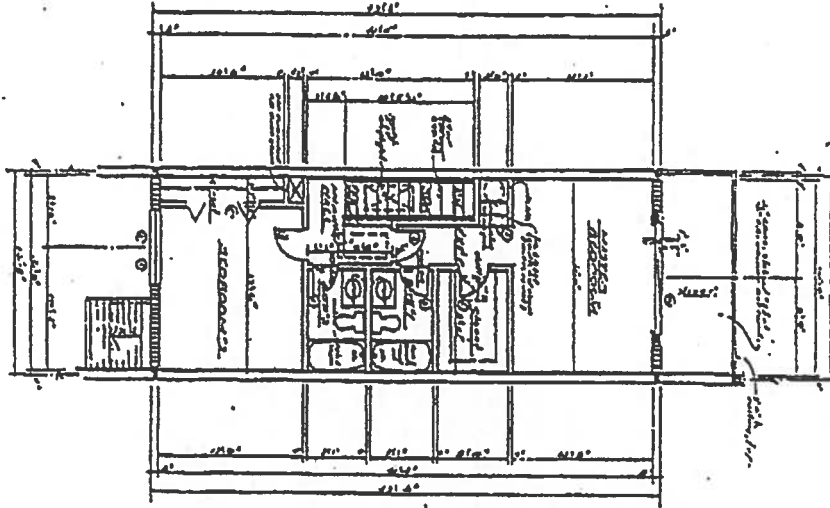
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GARCIA • PERRON • ARCHITECTS
 OAK PLAZA PROFESSIONAL CENTER
 4326 S.W. 31 STREET SUITE 511-B
 MIAMI FLORIDA 33135
 305-877-8277
 305-877-8254

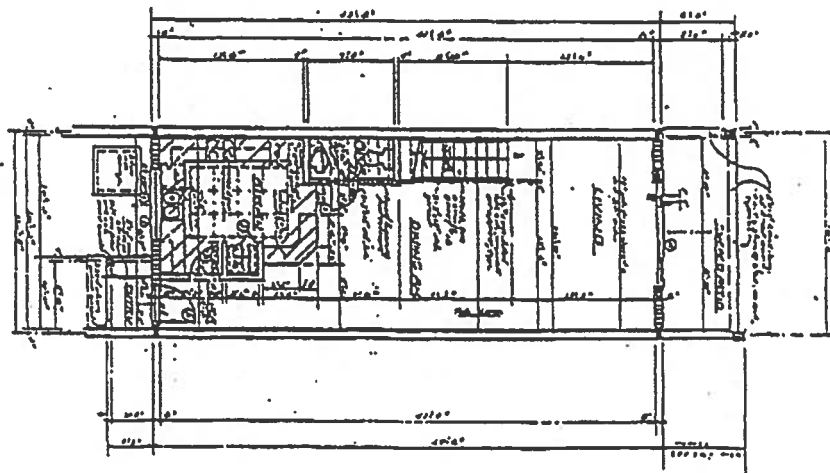
Approved For:
FIRST HILL TOWNHOMES
 Dade County, Florida

EXHIBIT H TO DECLARATION OF CONDOMINIUM OF BANYAN GARDENS, A CONDOMINIUM.

OFF. REC. 14165761434



FLOOR PLAN UNIT 05 - 1st Level



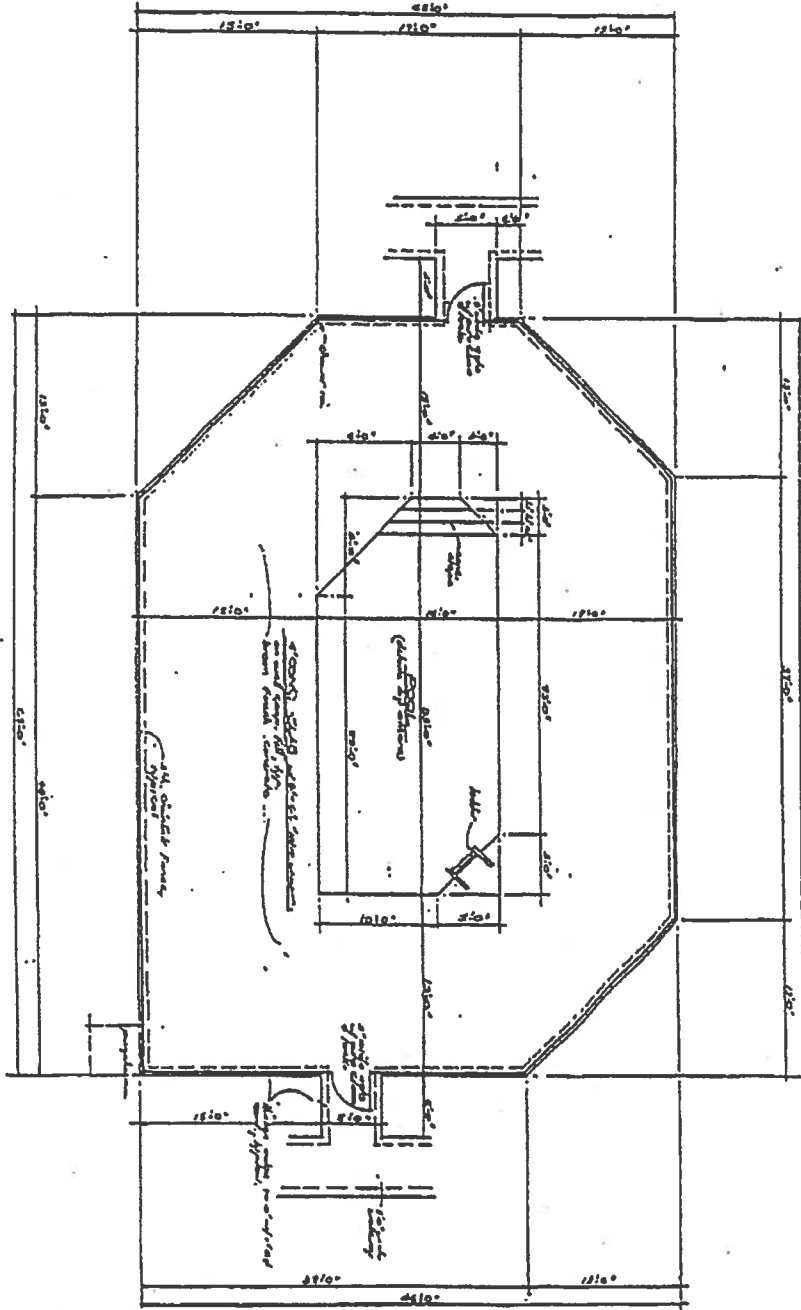
FLOOR PLAN UNIT 05 - 2nd Level

	GARCIA · PERRON · ARCHITECTS		809-8787 858-8784	
	OAK PLAZA PROFESSIONAL CENTER 8225 S.W. 32 STREET - SUITE 611-8 MIAMI FLORIDA		EAST HILL TOWNHOMES Dade County, Florida	

EXHIBIT I TO DECLARATION OF CONDOMINIUM OF BANYAN GARDENS, A CONDOMINIUM.

OFF. REC. 1416501435

FLOOR PLAN



	GARCIA · PERRON · ARCHITECTS		<i>Arch and Inter. Des.</i>	
	DOR PLAZA PROFESSIONAL CENTER		EAST HILL	
	8328 S.W. 82 STREET MIAMI	SUITE 411-B FLORIDA	888-6787 305-6784	Orange County, Florida

EXHIBIT J TO DECLARATION OF CONDOMINIUM OF BANYAN GARDENS, A CONDOMINIUM.

EXHIBIT "K"
TO
DECLARATION OF CONDOMINIUM OF BANYAN GARDENS
ESTIMATED ANNUAL OPERATING BUDGET AND MONTHLY MAINTENANCE
BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION (24 UNITS)
FOR ONE YEAR PERIOD BEGINNING JULY, 1989

ASSOCIATION EXPENSES	MONTHLY	ANNUALLY
A. Administration of the Association	200.00	2,400.00
1. Accounting and Legal	60.00	720.00
B. Management Fees	N/A	N/A
C. Maintenance		
1. Pool Maintenance	150.00	1,800.00
2. Landscape Maintenance	200.00	2,400.00
3. Janitorial	60.00	720.00
D. Rent for Recreational and other Commonly Used Facilities	N/A	N/A
E. Taxes upon Association property	10.00	120.00
F. Taxes upon leased areas	N/A	N/A
G. Insurance	450.00	5,400.00
H. Security provisions	N/A	N/A
I. Other expenses		
1. Water and Sewer	50.00	600.00
2. Electricity (common areas)	150.00	1,800.00
3. Miscellaneous/Contingencies	120.00	1,440.00
J. Operating Capital	10.00	120.00
K. Fla. Div. Condos Annual Rpt.	2.00	24.00
L. RESERVES:		
Swimming Pool Surface	25.00	300.00
Estimated Life: 5 years Remaining 5 years		
Replacement - \$1,500.00		
Pavement	7.00	84.00
Estimated Life: 30 years Remaining 30 years		
Replacement - \$2,500.00		
Painting	125.00	1,500.00
Estimated Life: 5 years Remaining 5 years		
Replacement - \$7,500.00		
Roof	50.00	600.00
Estimated Life: 30 years Remaining 30 years		
Replacement - \$10,000.00		
TOTAL ESTIMATED MAINTENANCE	\$1,669.00	\$20,028.00
Per Unit (24 units)	\$ 69.54	\$ 834.50

OFF. REC. 14165PG1437

THIS INSTRUMENT PREPARED BY:
James R. Sloto, Esq.
Mishan, Sloto, Hoffman &
Greenberg, P.A.
200 S. Biscayne Boulevard
2350 S.E. Financial Center
Miami, Florida 33131

SPECIAL WARRANTY DEED

THIS INDENTURE made the ___ day of _____, 19___,
by APD, Inc., a Florida corporation, hereinafter called the
Grantor, to _____,

whose post office address is _____,
hereinafter called Grantee;

WITNESSETH: That the Grantor, for and in consideration of the
sum of \$10.00 and other valuable considerations receipt whereof is
hereby acknowledged, hereby grants, bargains, sells, aliens,
remises, releases, conveys and confirms unto the grantee, all that
certain land situated in Dade County, Florida, to-wit:

Unit _____ of BANYAN GARDENS, A CONDOMINIUM, according to
the Declaration thereof recorded in Official Records Book
_____, Page _____, of the Public Records of Dade
County, Florida, together with any amendments thereto and
together with all appurtenances thereto including an
undivided interest in the Common Elements and the Limited
Common Elements of said Condominium as set forth in the
above described Declaration and amendments, if any.

SUBJECT TO:

1. Taxes and assessments for the year 19__ and subsequent years.
2. Conditions, restrictions, limitations and easements of record.
3. Laws, zoning laws, regulations or ordinances effecting the subject real property.
4. The Declaration of Condominium and Exhibits attached thereto, including the Articles of Incorporation and By-Laws of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. and any and all amendments to said Declaration.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the above granted, bargained and described premises, with the appurtenances, unto the said Grantee and Grantee's heirs and assigns, to Grantee's own proper use, benefit and behoof, forever.

AND the Grantor does covenant, promise and agree to and with the said Grantee and Grantee's heirs and assigns, that the said Grantor, at the time of the ensealing and delivery of these presents, is lawfully seized of and in all and singular the above granted, bargained and described premises, with the appurtenances, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. And the said Grantee and Grantee's heirs, and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said Grantor or Grantor's heirs or assigns, or of any other person or persons lawfully claiming or to claim the same by, through and under the Grantor herein.

_____ L

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

APD, INC., a Florida corporation

By: _____, President

STATE OF FLORIDA

COUNTY OF DADE

Before me personally appeared _____, President of APD, Inc., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed same.

Witness my hand and seal this _____ day of _____, 19____.

My Commission Expires: _____ Notary Public, State of Florida

ACKNOWLEDGMENT AND ACCEPTANCE BY GRANTEE

Grantee(s) acknowledges that he has read the Declaration of Condominium and All Exhibits attached thereto, the Articles of Incorporation and the By-Laws described in the foregoing Special Warranty Deed, understands that each and every provision of the foregoing document is fair and reasonable, is made for the benefit of all Owners of the Condominium and is essential to the successful operation and management of the subject Condominium Development; Grantee(s) covenants for himself, his heirs, successors and assigns forever, to abide by each and every provision of said Declaration and every Exhibit attached thereto and made a part thereof.

Signed, sealed and delivered in the presence of: GRANTEE: _____

STATE OF FLORIDA

COUNTY OF DADE

Before me personally appeared _____, to me well known and known to me to be the person(s) described in the foregoing instrument as Grantee(s) and he acknowledged to and before me that he executed said document for the purposes therein expressed.

Sworn and subscribed this _____ day of _____, 19____.

My Commission Expires: _____ Notary Public, State of Florida

ASSIGNMENT OF USE OF PARKING SPACE

WHEREAS, the undersigned has acquired Unit _____ in BANYAN GARDENS, A CONDOMINIUM, and has been assigned the use of the parking space or spaces described below, in accordance with the provisions relating thereto in the Declaration of Condominium recorded in Official Records Book _____, Page _____ of the Public Records of Dade County, Florida.

NOW, THEREFORE, it is agreed as follows:

- 1. Effective herewith, there is assigned to the undersigned the use of parking space number _____.
- 2. This Assignment of Use of Parking Space is for the exclusive use of the Unit. The parking space shall be maintained, occupied and transferred only in accordance with the provisions of the Declaration of Condominium referred to above.
- 3. This Agreement shall be noted in the book maintained by the BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. for such purpose.

DATED this _____ day of _____, 19____.

BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

By: _____ Officer

By: _____ Officer

(Corporate Seal)

Owner of above described Unit _____

Owner of above described Unit _____

THIS INSTRUMENT MAY NOT BE RECORDED

 M

ARTICLES OF INCORPORATION
OF
BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.
a Florida corporation not for profit

FILED
MAR 20 1976
TALLAHASSEE, FLORIDA

In order to form a corporation under and in accordance with the provisions and the laws of the State of Florida, for the formation of corporations not for profit, we, the undersigned, hereby associate ourselves into a corporation for the purposes and the powers hereinafter mentioned and, to that end, we do by these Articles of Incorporation ("Articles") set forth the following:

DEFINITIONS

All terms shall have the meanings set forth in the "Act" (as hereinafter defined) and for clarification, the following terms shall have the following meanings:

A. "BANYAN GARDENS, A CONDOMINIUM" means the planned residential condominium complex to be developed by the "Developer" upon a portion of certain real property, more fully described in the "Declaration" (as such terms are hereinafter defined).

B. "Developer" means APD, INC., a Florida corporation, its successors and assigns. An "Owner" shall not, solely by the purchase of "Unit" (as such terms are hereinafter defined) be deemed a successor or assign of Developer or of the rights of Developer under a Declaration unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or, any other instrument executed by Developer.

C. "Act" means the Condominium Act, Chapter 718, Florida Statutes, 1976, as amended to the date of filing of these Articles with the secretary of State of the State of Florida.

D. "Condominium Documents" mean, in the aggregate, the Declaration, these Articles, "By-Laws" (as hereinafter defined) and Rules and Regulations adopted by the "Association" (as hereinafter defined) and all of the instruments and documents referred to therein and executed in connection with "BANYAN GARDENS, A CONDOMINIUM".

E. "Declaration" means a Declaration of Condominium which is the documents by which the Developer submits all or a portion of the development to condominium ownership.

EXHIBIT N

B. PURPOSE OF THE ASSOCIATION: The purpose for which this Association is organized is the operation and management of residential condominium buildings known as BANYAN GARDENS, A CONDOMINIUM, which may be established in accordance with the Act; and further, to undertake the performance of and to carry out the acts and duties incident to the administration and operation of the BANYAN GARDENS, A CONDOMINIUM, in accordance with the terms, provisions, conditions and authorizations contained in these Articles and which may be contained in the Declaration recorded amongst the Public Records of Dade County, Florida; and to own, operate, lease, sell, trade and otherwise deal with such property, whether real or personal, as may be necessary or convenient in the administration of BANYAN GARDENS, A CONDOMINIUM.

ARTICLE III

POWERS

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

A. The Association shall have all of the common law and statutory powers of a corporation not for profit, which are not in conflict with the terms of the Condominium Documents and the Act.

B. The Association shall have all of the powers of condominium associations under and pursuant to the Act, and shall have all of the powers reasonably necessary to implement the purposes of the Association, including but not limited to the following:

1. To make, establish and enforce reasonable rules and regulations governing the use of Units, Common Elements and Condominium Property;

2. To make, levy and collect assessments against Owners to provide the funds to pay for Common Expenses of BANYAN GARDENS, A CONDOMINIUM, as is provided in the Condominium Documents and the Act and to use and expend the proceeds of assessments in the exercise of the powers and duties of the Association;

3. To maintain, repair, replace and operate the Condominium Property, specifically including all portions of the Condominium Property to which the Association has the right and power to maintain, repair, replace and operate in accordance with the Condominium Documents and the Act;

4. To reconstruct improvements within the Condominium Property in the event of casualty or other loss; and

5. To employ personnel, retain independent contractors and professional personnel and enter into service contracts to provide for the maintenance, operation and management of the Condominium Property and to enter into any other agreements consistent with the purposes of the Association, including but not limited to agreements as to the management of BANYAN GARDENS, A CONDOMINIUM; and

6. To enforce, by legal means, the provisions of the Declaration, the By-Laws, the Rules and Regulations of the Association and all documents referred to in the Condominium Documents.

ARTICLE IV

MEMBERS

A. The qualifications of members, the manner of their admission to membership, the termination of such membership and voting by members shall be as follows:

1. Each Owner of a Unit in the condominium shall be a member of this Association and no other persons or entity shall be entitled to membership.

2. Membership shall be established by the acquisition of ownership of fee title to or fee interest in a Unit in the condominium, whether by conveyance, devise, judicial decree or other instrument, which instrument shall designate the Unit affect thereby and by the recording of such instrument of conveyance amongst the Public Records of Dade County, Florida. The person designated in such instrument shall become a member of the Association upon such acquisition and the membership of the prior owner as to the Unit designated shall be terminated. The new Owner shall deliver to the Association a true copy of such instrument of acquisition of title.

3. The share of a member in funds and assets of the Association and membership in this Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit.

B. Until the property is submitted to condominium ownership by the recordation of the Declaration, the membership of this Association shall be composed of the Board of Directors of the Association ("Board") and in the event of the resignation or termination of membership by voluntary agreement by any such Board Member, then the remaining Board Members may nominate and designate a successor Board Member. Each of these Board Members and their successors shall be entitled to cast one (1) vote on all matters upon which the membership shall be entitled to vote. Once the property is submitted to condominium ownership by the recordation of

OFF. REC. 1416501444

the Declaration, the Developer, as the Owner of each Unit, shall exercise membership rights of each Unit until the establishment of new ownership as provided in Sub-Paragraph A(2) of this Article.

ARTICLE V

TERM

The term for which this Association is to exist shall be perpetual.

ARTICLE VI

INCORPORATOR

The name and street address of the Incorporator to these Articles is as follows:

APD, Inc.
3001 Ponce de Leon Blvd.
Coral Gables, Florida 33134

ARTICLE VII

OFFICERS

A. The affairs of the Association shall be managed by the President of the Association, assisted by one or several Vice Presidents, the Secretary and the Treasurer and, if any, by the Assistant Secretary and Assistant Treasurer, subject to the directions of the Board.

B. The Board shall elect the President, a Vice President, a Secretary and a Treasurer and as many other Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. Such officers shall be elected annually by the Board at the first meeting of the Board following the "Annual Members Meeting" (as described in the By-Laws), provided however such officers may be removed by the Board and other persons may be elected by the Board as such officers in the manner provided in the By-Laws. The President shall be elected from amongst the membership of the Board but no other officer need be a member of the Board. The same person may hold two offices, the duties of which are not incompatible, provided however the office of the President and a Vice President shall not be held by the same person nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

OFF. REC. 14165761445

ARTICLE VIII

INITIAL OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	John V. Raisbeck
Vice President	Daisy Ventura
Secretary	Daisy Ventura
Treasurer	John V. Raisbeck

ARTICLE IX

BOARD OF DIRECTORS

A. The number of members of the first Board ("First Board") shall be three (3). The number of members of the Board ("Directors") elected subsequent to the First Board shall be hereinafter provided.

B. The names and street address of the persons who are to serve as the First Board are as follows:

John V. Raisbeck

Daisy Ventura

V. E. Lambert

all at:

3001 Ponce de Leon Blvd.
Coral Gables, Florida
33134

The Developer reserves the right to designate successor Directors to serve on the First Board for so long as the First Board is to serve, as hereinafter provided.

C. Upon the conveyance by Developer to Owners other than Developer ("Purchaser Members") of 15% or more of the Units in the condominium, the Purchaser Members shall be entitled to elect one (1) member of a Board which is the equivalent of one-third (1/3) of the Board, such election shall take place at a special meeting of the member to be called by the Board for such purpose ("Initial Election Meeting"). The Developer shall designate two (2) Directors of the Board at the Initial Election Meeting so that the Board shall consist of a total of three (3) Directors. The one Director to be so elected by the Purchaser Members and the two Directors to be designated by Developer are hereinafter collectively referred to as the "Initial Elected Board" and shall succeed the First Board upon their election and qualification.

Subject to the provisions of Paragraph D of this Article IX, the Initial Elected Board shall serve until the next Annual Members Meeting, whereupon the Directors shall be designated and elected in the same manner as the Initial Elected Board. The Directors shall continue to be so designated and elected at each subsequent Annual Members Meeting until such time as the Purchaser Members are entitled to elect not less than a majority of the Directors on the Board as hereinafter provided. Developer reserves the right to designate successor Directors in the event of a vacancy, for whatever reason, among the two Directors on the Initial Elected Board Developer has designated pursuant to this Paragraph C.

D. Purchaser Members are entitled to elect not less than a majority of the Board upon the happening of any of the following events, whichever shall first occur:

1. Three (3) years after sales by Developer of 50% of the total Units contemplated to be contained in the condominium have been conveyed to purchasers, which conveyance shall be evidenced by the recording of instruments of conveyance of Units to each of such Purchaser Members amongst the Public Records of Dade County, Florida, or

2. Three (3) months after sales by Developer of 90% of the total Units contemplated to be contained in the condominium have been conveyed to purchasers, which conveyances shall be evidenced by the recording of instruments of conveyance of Units to each of such Purchaser Members amongst the Public Records of Dade County, Florida; or

3. When all of the Units contemplated to be contained in the condominium have been completed (as evidenced by the issuance of Certificates of Occupancy for each of same by the appropriate governmental unit) and some have been sold and none of the others are being offered for sale by Developer in the ordinary course of business; or

4. When some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by Developer in ordinary course of business.

E. The election of not less than a majority of Directors by the Purchaser Members shall occur at a special meeting of the membership to be called by the Board for such purpose ("Majority Election Meeting").

F. At the Majority Election Meeting, the membership of the Association shall elect two (2) Directors and the Developer, until the "Developer's resignation event" (as the term is defined in Paragraph I of this Article IX) shall be entitled to designate one Director. Developer reserves the right, until the Developer's Resignation Event, to name the successor, if any, to any Director it

has so designated. After the Developer's Resignation Event, the Director previously designated by the Developer shall be elected by a majority vote of the membership of the Association.

G. The Board shall continue to be so designated and elected as described in Paragraph F above, at each subsequent Annual Members Meeting until the Annual Members Meeting following the Developer's Resignation Event.

H. 1. The Initial Election Meeting and the Majority Election Meeting shall be called by the Association through its Board within sixty (60) days after the Purchaser Members are entitled to elect a Director or the majority of Directors as the case may be. A notice of such meeting shall be forwarded to all members in accordance with the By-Laws, provided however that the members shall be given at least 30 but not more than 40 days notice of such meeting. The notice shall also specify the number of Directors who shall be elected by the Purchaser Members and the remaining number of Directors designated by Developer.

2. After the Developer's Resignation Event, the number of Directors on the Board may be enlarged at the discretion of the Board provided that notice of the number of directors to be selected is included in the notice of all meetings of the Board at which Directors are to be elected, provided however that the Board may not, at any time, consist of more than five (5) Directors.

I. Upon the earlier to occur of the following events ("Developer's Resignation Event"), the Developer shall cause all of its designated Directors to resign:

a. When the Developer no longer holds at least 5% of the Units for sale in the ordinary course of business; or

b. Or Developer causes the voluntary resignation of all of the Directors designated it.

Upon the Developer's Resignation Event, the Directors elected by Purchaser Members shall elect a successor Director to fill the vacancy caused by the resignation or removal of the Developer's designated Director. The successor Director shall serve until the next Annual Members Meeting and until his successor is elected and qualified.

J. At each Annual Members Meeting held subsequent to the year in which the Developer's Resignation Event occurs, all of the Directors shall be elected by the membership.

K. The resignation of a Director who has been elected or designated by the Developer and the resignation of an officer of the Association who has been elected by the First Board or the Initial Elected Board shall remise, release, acquit, satisfy and

OFF. REC. 14165W1448

forever discharge such officer or Director of and from any and all manner of action and actions, cause and causes of actions, suits, debts, dues, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claim and demands whatsoever, in law or in equity, which the Association or Purchaser Members had, now have or which any personal representative, successor, heir or assign of the Association or Purchaser Members hereafter can, shall or may have against said officer or Director, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of such resignation.

ARTICLE X

INDEMNIFICATION

Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys fees reasonably incurred by or imposed upon him in connection with the proceeding to which he may become involved by reason of his being or having been a Director or officer of the Association, or any settlement thereof, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases where the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, provided however that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all right of indemnification to which such Director or officer may be entitled, whether by statute or common law.

ARTICLE XI

BY-LAWS

The By-Laws of the Association shall be adopted by the First Board and thereafter may be altered, amended or rescinded by the affirmative vote of not less than a majority of the members present at an Annual Members Meeting or a special meeting of the membership and the affirmative approval of a majority of the Board at a regular or special meeting of the Board.

ARTICLE XII

AMENDMENTS

A. Prior to the recordation in the public records of the Declaration, these Articles may be amended by an instrument, in writing, signed by all members of the Board stating the Article number and the content of the amendment and filed in the office of

the Secretary of State of Florida with a certified copy of each such amendment attached to these Articles upon its recordation with a Declaration.

B. After the recordation of the Declaration, these Articles may be amended in the following manner:

1. The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members which may be either the Annual Members Meeting or a special meeting. Any number of amendments may be submitted to the members and voted upon by them at one meeting.
2. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member within the time and in the manner provided in the By-Laws for the giving of notice of meetings of members.
3. At such meeting, a vote of the members shall be taken on the proposed amendments. The proposed amendments shall be adopted upon receiving the affirmative vote of the majority of the votes of all Members entitled to vote thereon.
4. An amendment may be adopted by a written statement signed by all Directors and all Members setting forth their intention that an amendment to the Articles be adopted.
5. No amendment may be made to these Articles which shall, in any manner, reduce, amend, affect or modify the provisions and obligations set forth in the Declaration.
6. A copy of each amendment shall be certified by the Secretary of State of Florida and filed amongst the Public Records of Dade County, Florida.
7. Notwithstanding the foregoing provisions of this Article XII, there shall be no amendment to these Articles which shall abridge, amend, alter or prejudice the rights of the Developer under the Condominium Documents, including the right of the Developer to designate and select members of the First Board as provided in Article IX hereof, without the prior written consent thereto by the Developer.

ARTICLE XIII

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial Registered Office of the Association is 3001 Ponce de Leon Blvd., Coral Gables, Florida 33134 and the initial Registered Agent of the Association at that address shall be John V. Raisbeck.

OTT. REC. 1416501450

IN WITNESS WHEREOF, the Incorporator has hereunto affixed his signature this 17th day of February, 1989.

APD, INC.

By: John V. Raisbeck
JOHN V. RAISBECK,
Vice President

STATE OF FLORIDA
COUNTY OF DADE

Before me personally appeared John V. Raisbeck, as President of APD, Inc. and he executed the foregoing Articles of Incorporation as Incorporator and he acknowledged to and before me that he executed said document for the purposes therein expressed.

Sworn to and subscribed this 17 day of FEBRUARY 1989.

James M. [Signature]
Notary Public, State of Florida

My commission expires: NOTARY PUBLIC STATE OF FLORIDA BY COMMISSION EXP. ETC 20, 1994 EXPIRES THIS GENERAL 1st, 1990.

ACCEPTANCE OF REGISTERED AGENT

The undersigned hereby accepts the designation of Registered Agent of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., as declared in Article XIII of these Articles.

John V. Raisbeck
JOHN V. RAISBECK

416571451

State of Florida



Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., a corporation organized under the Laws of the State of Florida, filed on February 20, 1989, as shown by the records of this office.

The document number of this corporation is N30775.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
20th day of February, 1989.



CR25022 (6-88)

Jim Smith

Jim Smith
Secretary of State

February 20

OFF: 16772 Pr 4389
RE:

95R180847 1995 MAY 08 14:29

AMENDMENT TO THE BY-LAWS
OF BANYAN GARDENS, A CONDOMINIUM

By vote of the Board of Directors and members of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., a Condominium, the By-Laws of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. recorded in Official Records Book 14165, at Pages 1452 through 1478, of the Public Records of Dade County, Florida, is hereby amended in the following respects:

1. SECTION 7.06 of ARTICLE VII is hereby deleted in its entirety, and the following provision is inserted in lieu thereof:

7.06 COLLECTION - INTEREST, ADMINISTRATIVE FEE, AND APPLICATION OF PAYMENTS:

Any assessment or installment thereof not paid within 10 days after the date it shall become due, shall be delinquent and bear interest at the rate of 18% per annum until paid. In addition to such interest, an administrative late fee shall be charged in an amount not to exceed the greater of \$25.00 or 5% of each installment of the assessment, for each delinquent installment that the payment is late. All assessment payments shall be applied first to any interest, then to any administrative late fees, then to the principal amount of the assessment payment due.

15.00

OFF. REC. 16772-4390

CERTIFICATION

The foregoing was duly adopted by the Board of Directors and members of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., as an Amendment to the By-Laws of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. in accordance with SECTION 21.02(a.) of ARTICLE XXI of said By-Laws.

DATED this 28th day of April, 1995 at Miami, Florida.

BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

ATTEST Claudette Daniels-Catanesi BY: Jay G. Kolman
CLAUDETTE DANIELS-CATANESE, JAY G. KOLMAN, PRESIDENT
SECRETARY

STATE OF FLORIDA)
COUNTY OF DADE)

BEFORE ME, the undersigned authority, appeared JAY G. KOLMAN who is personally known to me and who executed the foregoing instrument as the President of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., and he acknowledged to and before me that he executed said instrument on behalf of and in the name of said corporation as such officer, that it was affixed thereto by due and regular corporate authority, that he is duly authorized by said corporation to execute said instrument, and that said instrument is the free act and deed of said corporation.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my seal this 28 day of April, 1995.

Graciela Lopez
Notary Public, State of Florida

My Commission Expires:




GRACIELA LOPEZ
My Commission CC122134
Expires Nov. 29, 1997
Bonded by ANS
800-452-5878

STATE OF FLORIDA)
)
COUNTY OF DADE)

BEFORE ME, the undersigned authority, appeared CLAUDETTE DANIELS-CATANESE who is personally known to me and who executed the foregoing instrument as the Secretary of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., and she acknowledged to and before me that she executed said instrument on behalf of and in the name of said corporation as such officer, that it was affixed thereto by due and regular corporate authority; that she is duly authorized by said corporation to execute said instrument, and that said instrument is the free act and deed of said corporation.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my seal this 29th day of APRIL, 1995.

SHEELA JOSEPH
Notary Public, State of Florida
My Comm. expires Oct 24, 1998
No. CC415550


Notary Public, State of Florida

My Commission Expires:

This Instrument Was Prepared By:

Jay G. Kolman, Esq,
P.O. Box 570171
Miami, Florida 22257-0171

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD NUMBER
HARVEY RUVIN;
Clerk of Circuit & County
Courts

BY-LAWS
OF
BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

ARTICLE I

IDENTITY

These are the By-Laws of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., (the "Association"), a corporation not for profit, organized and existing under the laws of the State of Florida, organized for the purpose of administering that certain condominium located in Dade County, Florida and known as BANYAN GARDENS, A CONDOMINIUM (the "Condominium").

1.1 PRINCIPAL OFFICE: The principal office of the Association shall be APD, Inc., 3001 Ponce de Leon Blvd., Coral Gables, Florida 33134 or, at such other place as may be designated by the Board of Directors.

1.2 FISCAL YEAR: The fiscal year of the Association shall be the calendar year.

1.3 SEAL: The seal of the Association shall bear the name of the corporation, the word "Florida", the words "corporation not for profit" and the year of incorporation.

1.4 DEFINITIONS: For convenience, these By-Laws shall be referred to as the "By-Laws"; the Articles of Incorporation of the Association as the "Articles"; the Declaration of Condominium for the condominium as the "Declaration". The other terms used in these By-Laws shall have the same definitions and meanings as those set forth in Chapter 718 of the Florida Statutes, the Condominium Act ("Act"), as well as those set forth in the Declaration and the Articles unless provided to the contrary in these By-Laws or, unless the context otherwise requires.

ARTICLE II

MEETINGS OF MEMBERS AND VOTING

2.1 ANNUAL MEETING: The Annual Meeting of the members shall be held on the date and at the place and time as determined by the Board of Directors from time to time, provided that there shall be an Annual Meeting every calendar year and no later than 13 months after the last Annual Meeting. The purpose of the meeting shall be to elect directors and to transact business authorized to be transacted by the members.

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2.2 SPECIAL MEETINGS: Special meetings of the members shall be held at such places as provided for Annual Meetings and may be called by the President or by a majority of the Board of Directors of the Association and must be called by the President or Secretary upon receipt of a written request from at least one-third (1/3) of the members of the Association entitled to vote at the meeting. Requests for a meeting by the members shall state the purpose for the meeting and business conducted at any such special meeting shall be limited the matters stated in the notice. The provisions of this Section, as applicable, shall be modified by the provisions of F.S. 118.112(2)(f) concerning budget meetings; F.S. 718.112(2)(g) concerning recall; F.S. 718.112 (2)(k) concerning budget reserves; and F.S. 718.301(1) and (2) concerning election of directors by unit owners other than the Developer.

2.3 NOTICE OF ANNUAL MEETING: Written notice of the Annual Meeting shall be mailed to each unit owner at least 14 days and not more than 60 days before the Annual Meeting. A copy of the notice shall be posted in a conspicuous place on the condominium property at least 14 days before the Annual Meeting. The post office certificate of mailing shall be retained as proof of the mailing. Unit owners may waive notice of the Annual Meeting. The notice shall state the time and place of the meeting of members to take place within the State of Florida and the object for which the meeting is called. The notice shall be signed by an officer of the Association. If an Annual Meeting is one which by express provision of the Act or "Condominium Documents" there is permitted or required a greater or lesser amount of time for the mailing or posting of notice than is required or permitted by the provisions of this Section, then the aforesaid express provision shall govern. Any waiver of notice of the Annual Meeting by any unit owner shall be made in writing.

2.4 NOTICE OF SPECIAL MEETING, GENERALLY: Except as modified by the specific requirements for special kinds of members meetings, as set forth in these By-Laws, notice of Special Meetings generally shall be in writing, shall state the place, day and hour of the meeting and the purpose or purposes for which the meeting is called. The notice shall be delivered to each member entitled to vote at the meeting, not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally or by first class mail, by or at the direction of the President, the Secretary or the officer or persons calling the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at his address as it appears in the records of the Association, with postage prepaid. Payment of postage for a notice of any special meeting, by whomever called, shall be an obligation of the Association.

REC. 1416581454

2.5 NOTICE OF BUDGET MEETING: The Board of Directors shall mail a notice and a copy of the proposed annual budget ("Annual Budget") to the unit owners not less than thirty (30) days before the meeting at which the Board will consider the Annual Budget.

2.6 NOTICE OF MEETING TO CONSIDER EXCESSIVE BUDGET: If an Annual Budget adopted by the Board of Directors requires assessment against the unit owners for any calendar year exceeding 115% of the assessment for the preceding calendar year, the Board, upon written application of 10% of the unit owners to the Board, shall call a special meeting of the unit owners within thirty (30) days or not less than ten (10) days written notice to each unit owner.

2.7 NOTICE OF MEETING TO CONSIDER RECALL OF BOARD MEMBERS: A special meeting of the unit owners to recall a member or members of the Board of Directors may be called by 10% of the unit owners, giving notice of the meeting as required for a meeting of unit owners, stating the purpose of the meeting.

10% = 3 unit own.

2.8 NOTICE OF MEETING TO ELECT NON-DEVELOPER DIRECTORS: Notice of a meeting to elect a Director or Directors from the unit owners other than the Developer shall be given not less than thirty (30) days nor more than forty (40) days prior to the date of the meeting. The meeting may be called and notice given by any unit owner if the Association fails to do so.

2.9 QUORUM: A quorum at meetings of members shall consist of persons entitled to cast, either in person or by proxy, a majority of the votes of the entire membership. Absentee ballots alone may not be counted in determining a quorum.

2.10 VOTING: (A) **NUMBER OF VOTES:** In any meeting of members, the owners of units shall be entitled to cast one (1) vote for each unit owned. The vote of a condominium unit shall not be divisible.

(B) **MAJORITY VOTE:** The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum is present shall be binding upon all unit owners for all purposes unless the Act, the Declaration, the Articles or these By-Laws require a larger percentage of vote, in which case that larger percentage shall control.

2.11 DESIGNATION OF VOTING MEMBER: Persons or entities shall become members of the Association on the acquisition of fee title to a unit in the condominium, after approval of the acquisition in the manner provided in the Declaration. Membership shall be terminated when a person or entity no longer owns a unit in the condominium. If a unit is owned by more than one natural person, any record owner of the unit may vote in person or by proxy,

provided there shall be no more than one vote per unit in any case. In the case of conflict among the owners of the unit, the vote for that unit shall not be counted as to the matter under consideration in which the conflict arose, whether the conflict appears by vote or in person or by proxy. Ballots may be cast for units owned by corporations or partnerships by a President, Vice President, Partner or any other person designated in a written certificate filed with the secretary of the Association and signed by a President or Vice President (if the owner is a corporation) or by a partner (if the owner is a partnership).

2.12 PROXIES; POWERS OF ATTORNEY: Votes may be cast in person or by proxy. Each proxy shall set forth specifically the name of the person voting by proxy and the name of the person authorized to vote the proxy for him. Each proxy shall contain the date, time and place of the meeting for which the proxy is given. If the proxy is a limited proxy, it shall set forth those items that the holder of the proxy may vote and the manner in which the vote is to be cast. The proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings. No proxy shall be valid for a period longer than ninety days after the date of the first meeting for which it shall be given and it may be revoked at any time at the discretion of the unit owner executing it. The proxy shall be signed by the unit owner or owners (if more than one) or by the appropriate officer or partner of the corporation or partnership or the other designated signatory as set forth in Paragraph 2.11 above, or the duly authorized attorney-in-fact of such person or persons, provided however that a written power of attorney shall have been previously filed with the Secretary of the Association. The proxy shall be filed with the Secretary before or at the meeting for which the proxy is given.

2.13 ADJOURNED MEETINGS: If any meeting of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present. The time and place to which the meeting is adjourned shall be announced at the meeting at which the adjournment is taken and a notice shall be posted in a conspicuous place on the condominium property as soon thereafter as may be practical, stating the time and place to which the meeting is adjourned.

2.14 WAIVER OF NOTICE: Unit owners may waive their right to receive notice of any meeting, whether annual or special. To be effective, any such waiver shall be made in writing and executed by every unit owner waiving such right. The waiver shall be filed with the Secretary of the Association either before, at or after the meeting for which the waiver is given.

2.15 ACTION BY MEMBERS WITHOUT A MEETING: Unit owners may take action by written instrument without a meeting, as long as written notice of such action is given to the unit owners in the

manner prescribed elsewhere in these By-Laws, unless such notice is waived as provided elsewhere in these By-Laws. The decision of a majority of the unit owners, or a larger percentage vote as may otherwise be required by the Act, the Declaration, the Articles of these By-Laws (the decision to be evidence by written response to be solicited in the notice) shall be binding on the membership, provided a written response is submitted by a quorum of the membership, provided a written response is submitted by a quorum of the members as elsewhere herein defined. The notice shall set forth a time period within which such responses must be made by the members.

2.16 MINUTES OF MEETINGS: The minutes of all meetings of unit owners shall be kept in a minute book available for inspection by unit owners or their authorized representatives and members of the Board of Directors at any reasonable time. The minutes shall be retained by the Association for a period of not less than seven (7) years. Unit owners and their authorized representatives shall have the right to make hand written notations from the minutes or, photocopies thereof (such photocopies, if any, to be made at the expense of the unit owner requesting same).

2.17 ACTIONS REQUIRING SPECIFIC VOTES OF UNIT OWNERS: The following actions shall require approval by the unit owners and may not be taken by the Board of Directors acting alone without such approval:

(A) Amendments to the Declaration, except those made by the Developer for the purpose of adding a phase to the condominium and recording a surveyor's certificate.

(B) Merger of two or more independent condominiums to form a single condominium.

(C) Purchase of a land or recreation lease or the exercise of any option to purchase any such lease.

(D) Cancellation of certain grants or reservations made in the Declaration, a lease or other document in any contract made by the Association prior to the transfer of control of the Association from the Developer to unit owners other than the Developer.

(E) Recall of any member of the Board of Directors.

(F) Any determination eliminating the requirement to provide for reserves or any provision requiring less than adequate reserves.

(G) Any other matters contained in the Declaration, the Articles or these By-Laws specifically requiring a vote of the members.

ARTICLE III

DIRECTORS

3.1 NUMBER OF QUALIFICATIONS: The affairs of the Association shall be managed initially by a board of three (3) directors selected by the Developer. When unit owners, other than the Developer, are entitled to elect a majority of the directors, the Board shall be composed of any odd number of directors that the unit owners may decide, provided however the number of directors shall never be less than three (3). Other than those selected by the Developer, directors must be either unit owners, tenants residing in the condominium, officers of a corporate unit owner or partners of a partnership unit owner. No directors, other than those selected by the Developer, shall continue to serve on the board in the event he shall cease to meet the qualifications set forth in this Paragraph.

3.2 ELECTION OF DIRECTORS: Directors shall be elected at the annual meeting of members by a plurality of the votes cast. Each voter shall be entitled to cast votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. Not less than sixty (60) days prior to the annual meeting of the members, a nominating committee consisting of five (5) members shall be appointed by the Board of Directors and the committee shall nominate one person for each directorship to be filled. Nominations for additional directorships created at the meeting shall be made from the floor. Other nominations may also be made from the floor.

3.3 TERM: Each director's term of 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 Paragraph 3.5. The members, however, at any annual meeting after the Developer has relinquished control of the Association and in order to provide a continuity of experience, may vote to create classes of directorships having a term of one, two or three years to provide for a system of staggered terms among the directors.

3.4 VACANCIES: Except as to vacancies resulting from removal of directors by members, vacancies on the Board of Directors occurring between annual meetings of members shall be filled by a majority vote of the remaining directors. Any director elected to fill a vacancy shall hold office only until the next election of directors by the members, irrespective of the length of the remaining term of the vacating director.

3.5 REMOVAL: Any director, except those selected 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 unit owners. A special meeting of the unit owners to recall a member or members of the Board of Directors may be called by 10% of the unit owners giving notice of the meeting as required in these By-Laws. The notice shall state the purpose of the meeting. Any vacancy on the Board of Directors thus created shall be filled by the members of the Association at the same meeting. If more than one director is subject to recall, there shall be a separate vote on the question to remove each director.

3 OWNERS

3.6 DISQUALIFICATION AND RESIGNATION: Any director may resign at any time by delivering a written notice of resignation to the Association, addressed to the Secretary. The resignation shall take effect upon receipt of such notice by the Secretary unless the effective date of resignation is set forth in the notice. Any board member elected by the unit owners who is absent for more than three consecutive regular meetings of the board, unless excused by resolution of the Board, shall be deemed to have resigned from the Board of Directors, automatically, effective when accepted by the board. Any board member more than thirty (30) days delinquent in the payment of an assessment shall be deemed to have resigned from the board effective when the resignation is accepted by the Board of Directors.

3.7 ORGANIZATIONAL MEETING: The organizational meeting of a newly elected Board of Directors shall be held within ten (10) days of the directors' election at a place and time that shall be fixed by the directors at the meeting at which they were elected and without further notice, except notice to unit owners as required by Florida Statute 718.112(2)(c).

3.8 REGULAR MEETINGS: The Board of Directors may establish a schedule of regular meetings to be held at a time and place as a majority of them shall determine from time to time. Notice of regular meetings however, shall be given to each director, personally or by mail, telephone or telegraph at least three (3) days prior to the day named for the meeting and a notice of each meeting shall be posted conspicuously on the condominium property at least 48 hours prior to the meeting, unless the meeting shall have been called on an emergency basis.

3.9 SPECIAL MEETINGS: Special meetings of the Board of Directors may be called by the President and in his absence, by the Vice President and must be called by the Secretary at the written request of one-third (1/3) of the directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph. The notice shall state the time, place and purpose of the meeting and shall be transmitted not less than three (3) days prior to the date of the meeting. A copy of the notice of any special meeting shall be posted conspicuously on the condominium property at least 48 hours prior to the meeting unless the meeting shall have been called on an emergency basis.

3.10 WAIVER OF NOTICE: Any director may waive notice of a meeting before, at or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by any director at a meeting shall constitute a waiver of notice of the meeting, except when his attendance is for the express purpose of objecting, at the beginning of the meeting, to the conduct of any business at the meeting because such meeting has not been called in accordance with these By-Laws and Florida Statutes Chapter 718.

3.11 QUORUM: A quorum at the meetings of the directors 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 acts of the Board of Directors, except when approval by a greater number of directors is required by the Declaration, the Articles of these By-Laws.

3.12 ADJOURNED MEETINGS: If there is less than a quorum present at any meeting of the Board of Directors, the majority of those present may adjourn the meeting until a quorum is present. At any adjourned meeting, any business that might have been transacted at the meeting as originally called, may be transacted without further notice.

3.13 PROXIES NOT PERMITTED: There shall be no voting by proxy at any meeting of the Board of Directors.

3.14 JOINDER BY APPROVAL OF MINUTES: A director may join in the action of a meeting by signing and concurring in the minutes of that meeting. The concurrence, however, shall not constitute the presence of that director, at that meeting, for the purpose of determining a quorum.

3.15 ATTENDANCE BY MEMBERS: Meetings of the Board of Directors shall be open to all unit owners for attendance and observation. No unit owner, however, shall be entitled to participate in the meeting unless specifically invited to do so by the Board. Notice of any meeting in which assessments against unit owners are to be considered for any reason, shall specifically contain a statement that assessments will be considered and shall set out the nature of the assessments.

3.16 PRESIDING OFFICER: The presiding officer at Board meetings shall be the President or in his absence the Vice President and in his absence the directors present shall designate anyone of their number to preside.

3.17 MINUTES OF MEETINGS: The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by unit owners or their authorized representative and board members at any reasonable time. The Association shall retain

these minutes for a period of not less than seven (7) years. Unit owners and their authorized representatives shall have the right to make written notations form the minutes.

3.18 EXECUTIVE COMMITTEE: The Board of Directors, by resolution, may appoint an executive committee to consist of three (3) or more members of the Board. The executive committee shall have and may exercise all of the powers of the Board in the managements of the business and affairs of the condominium during the intervals between the meetings of the Board insofar as may be permitted by law. The executive committee, however, shall not have power to:

(A) Determine the common expenses required for the operation of the condominium;

(B) Determine the assessments payable by the unit owners to meet the common expenses of the condominium;

(C) Adopt or amend rules and regulations covering the details of the operation and use of the condominium property;

(D) Purchase, lease or otherwise acquire units in the condominium in the name of the Association;

(E) Approve or recommend to unit owners any actions or proposals required by the Act, the Declaration, the Articles or these By-Laws to be approved by unit owners; or

(F) Fill vacancies on the Board of Directors.

Meetings of the executive committee shall be open to all unit owners.

3.19 COMPENSATION: Directors shall serve without compensation but shall be entitled to reimbursement for expenses reasonably and necessarily incurred in the discharge of their duties.

3.20 ELECTION OF DIRECTORS BY UNIT OWNERS OTHER THAN THE DEVELOPER:

(A) When unit owners other than the Developer own 15% or more of the units in the condominium that will be operated ultimately by the Association, they shall be entitled to elect no less than one-third (1/3) of the members of the Board of Directors.

(B) Majority: Unit owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors upon the earliest to occur of the following:

(i) Three years after 50% of the units that ultimately will be operated by the Association have been conveyed to purchasers; or

(ii) Three months after 90% of the units that ultimately will be operated by the Association have been conveyed to purchasers; or

(iii) When all the units that ultimately will be operated by the Association have been completed and some of them have been conveyed to purchasers and none of the others are being offered for sale by the Developer in the ordinary course of business; or

(iv) 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.

(C) The Developer is entitled to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least 5% of the units that ultimately will be operated by the Association, if that number shall be fewer than 500 units, and 2% if that number shall be more than 500 units.

(D) Within sixty (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 and no more than 40 days notice of a meeting of the unit owners to elect the member or members of the Board of Directors. The meeting may be called and the notice given by any unit owner if the Association fails to do so.

(E) Prior to, but in no event less than 60 days after the time that unit owners, other than the Developer, elect a majority of the members of the Board of Directors, the Developer shall relinquish control of the Association and the unit owners shall accept control. Simultaneously, the Developer shall deliver to the Association all property of the unit owners and of the Association held or controlled by the Developer, including but not limited to those items specified in the Act.

(F) In any action brought to compel compliance with Florida Statute 718.301 regarding transfer of Association control, an election of directors by unit owners, other than the Developer, the summary procedure provided for in Florida Statute 51.011 may be employed and the prevailing party shall be entitled to recover reasonable attorneys fees.

(G) Nothing contained in this Paragraph 3.20 shall be deemed to prevent the Developer from transferring control of the Association to unit owners other than the Developer prior to the occurrence of the events described in this Section.

3.21 FAILURE TO ELECT DIRECTOR QUORUM: If the Association or the Board of Directors fails to fill vacancies on the Board of Directors sufficient to constitute a quorum, any unit owner may apply to the Circuit Court within whose jurisdiction the condominium is situated for the appointment of a receiver to manage the affairs of the Association in the manner prescribed in the Act. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys fees. The receiver shall have all of the powers and duties of a duly constituted Board of Directors and shall serve until the Association fills vacancies on the Board, sufficient to constitute a quorum.

ARTICLE IV

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

All of the powers and duties of the Association existing under the Act, the Declaration, the Articles and these By-Laws shall be exercised exclusively by the Board of Directors or its duly authorized agents, contractors or employees, subject only to the approval by unit owners when that approval is specifically required. The powers and duties of the Board shall include but shall not be limited to the following:

4.1 OPERATION OF THE CONDOMINIUM PROPERTY: The Board of Directors shall have the power and duty to do all things necessary for the maintenance, management and operation of the condominium property.

4.2 CONTRACT, SUE OR BE SUED: After control of the Association is established by unit owners other than the Developer, the Association may institute, maintain, settle, or appeal actions or hearings, in its name, on behalf of all unit owners concerning matters of common interest, including but not limited to the common elements and commonly used facilities. The Statute of Limitations for any action in law or in equity that the Association may have shall not begin to run until the unit owners have elected a majority of the members of the Board of Directors.

4.3 RIGHT OF ACCESS TO UNITS: The Association has the irrevocable right of access to each unit during reasonable hours as is necessary for the maintenance, repair or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements or to any other unit.

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4.4 ASSESSMENTS: The Association shall have the power to make and collect from the unit owners all assessments required for the maintenance, management and operation of the condominium property.

4.5 COMMON ELEMENTS: The Association shall have the power and duty to enter into leases for the use of common elements and to maintain, repair and replace any part of the common elements which are a part of the condominium.

4.6 LIEN FOR UNPAID ASSESSMENTS: The Association shall have a lien on each condominium parcel for any unpaid assessments together with interest and reasonable attorneys fees incurred in the collection of the assessment or enforcement of the lien. It also has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage or convey it.

4.7 PURCHASE OF UNIT: In addition to its right to purchase units at a lien foreclosure sale, the Association generally has the power to purchase units in the condominium and to acquire, hold, lease, mortgage and convey any such units.

4.8 MODIFY EASEMENTS: The Association, without the joinder of any unit owner, may modify or move any easement for ingress and egress or for utilities purposes if the easement constitutes part of or crosses the condominium property.

4.9 PURCHASE OF LAND OR RECREATION LEASE: Any land or recreation lease may be purchased by the Association on the approval of two-thirds (2/3) of the unit owners of the Association.

4.10 ACQUIRE USE INTEREST IN RECREATIONAL FACILITIES: The Association may enter into agreements, acquire leaseholds, memberships and other possessory or use interests in lands or facilities, such as country clubs, golf courses, marines and other recreational facilities, whether contiguous to the condominium property or not if:

(A) They are intended to provide enjoyment, recreation or other use or benefit to the unit owners; and

(B) If they exist or are created at the time the Declaration was recorded, they are fully stated and described in the Declaration.

4.11 AUTHORIZATION OF AMENDMENTS: Should it appear that as a result of a scrivener's error in the Declaration that the common elements, common expenses or common surplus have been stated or distributed improperly, an amendment to the Declaration correcting such error may be approved by the Board of Directors or by a majority of the unit owners. No unit owners, except those directly affected, must join in the execution of the amendment.

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4.12 ADOPT RULES AND REGULATIONS: The Association may adopt reasonable rules and regulations for the use of the common elements, common areas and recreational facilities serving the condominium.

4.13 ACCOUNTING RECORDS: The Association shall maintain accounting records according to good accounting practices.

4.14 INSURANCE: The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association and the common elements.

4.15 ANNUAL FINANCIAL REPORTS: The Association shall furnish to each and every member annual financial reports of the Association.

4.16 NOTICE OF LIABILITY EXPOSURE: If the Association may be exposed to liability in excess of insurance coverage in any legal action, it shall give notice of such exposure to all unit owners who shall have the right to intervene and defend.

4.17 CERTIFICATE OF ASSESSMENTS: Any unit owner, mortgagee or other record lien holder shall have the right to require from the Association a certificate showing the amount of unpaid assessments respecting the unit owner's condominium parcel.

4.18 PAYMENT OF ANNUAL FEES: The Association shall pay to the Florida Land Sales Division of Condominium the annual fee required for each residential unit operated by the Association.

4.19 APPROVAL OF UNIT TRANSFERS AND IMPOSITION OF FEES: The Association may charge a preset fee not to exceed \$50.00 in connection with the approval or disapproval of any proposed transfer, lease, sale or other disposition of a unit in the condominium.

4.20 CONTRACT FOR MAINTENANCE AND MANAGEMENT: The Association may enter into contracts or agreements for the maintenance and management of the condominium.

4.21 PAYMENT OF TAXES AND ASSESSMENTS: The Association shall pay all taxes and assessments levied by any governmental authorities or agencies against any common elements or Association property.

4.22 PAYMENT OF UTILITY SERVICES: The Association shall pay to the entity rendering same the cost of all utility services provided to Association property and not billed directly to individual unit owners.

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4.23 EMPLOYMENT OF PERSONNEL: The Association may employ and dismiss personnel as necessary for the maintenance and operation of the Condominium Property and may retain those professional services that are required for those purposes.

4.24 FINES: Pursuant to Florida Statute 718.303(3), the Association may levy reasonable fines against a unit, provided any such fine shall not exceed the sum of \$50.00, for violation of the Act, the Declaration, the Articles, these By-Laws and the lawfully adopted Rules and Regulations of the Association. A unit owner may be fined for any such violation notwithstanding that such violation has been committed by a guest, tenant, licensee or invitee of any such owner. The Board may collect those fines as an assessment in one of more installments. Each day, a violation shall constitute a separate violation. No fine shall be imposed until the offending party (which shall always include the unit owner) has been given written notice of the violation and an opportunity to appear and be heard before the Board of Directors.

4.25 PRIVATE USE OF COMMON ELEMENTS: The Board of Directors may authorize unit owners or others to use portions of the common elements, such as social rooms and meeting rooms for private parties and gatherings, for which reasonable charges may be imposed.

4.26 REPAIR OR IMPROVEMENT: The Association shall repair or reconstruct improvements which are a part of the Condominium Property after casualties and losses sustained thereto.

4.27 LIEN ON COMMON ELEMENTS FOR LABOR AND MATERIALS: Labor performed on or materials furnished to the common elements, if authorized by the Board of Directors, may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

4.28 ENFORCEMENT OF CONDOMINIUM DOCUMENTS: The Association shall have the right to enforce, by any legal means, all of the provisions of the Condominium Documents and the applicable provisions of the Act.

ARTICLE V

OFFICERS

5.01 EXECUTIVE OFFICERS: The Executive Officers of the Association shall be a President, a Vice President, a Secretary, an Assistant Secretary and a Treasurer. The President and Vice President shall be Directors but the remaining Executive Officers need not be. The Officers shall be elected annually by the Board of Directors and may be removed without cause at any meeting by a vote of a majority of all of the directors. A person may hold more than one office, except that the President may not also be the Secretary or Assistant Secretary. No person shall sign an instrument nor perform an act in the capacity of more than one office. The Board of Directors, from time to time, shall elect other officers and designate their powers and duties as the Board shall deem necessary to manage the affairs of the Association.

5.02 PRESIDENT: The President shall be the chief executive officer of the Association. He shall have all of the powers and duties usually vested in the office of a President of an association, including but not limited to the power to appoint committees from among the members to assist in the conduct of the affairs of the Association as he, in his discretion, may determine appropriate. He shall preside at all meetings of the Board of Directors.

5.03 VICE PRESIDENT: The Vice President shall exercise the powers and perform the duties of the President in the event of the absence or disability of the President. He shall also assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board of Directors.

5.04 SECRETARY: The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the serving of all notices to the members and directors and other notices required by law, by the Declaration, by the Articles or by these By-Laws. He shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Association, except those of the Treasurer and shall all other duties incident to the office of the Secretary of an association and as may be required by the Directors or the President.

5.05 TREASURER: The Treasurer shall have custody of all property of the Association, including funds, securities and evidence of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. He shall submit a treasurers report to the Board at reasonable intervals, but

REF. REC. 141657/1467

in no event less than semi-annually and shall perform all other duties incident to the office of Treasurer. All money and other valuable effects shall be kept for the benefit of the Association, in such depositories as may be designated by the Board of Directors.

5.06 COMPENSATION: The compensation, if any, of all officers and other employees of the Association shall be fixed by the Board of Directors. This provision shall not preclude the Board from employing a Director as an employee of the Association nor from contracting with a Director for the management of the Condominium.

ARTICLE VI

FISCAL MANAGEMENT

6.01 ADOPTION OF BUDGET: The Board of Directors shall adopt a budget for the common expenses of the Association in advance of each fiscal year, at a special meeting of the Board called for that purposes, which meeting shall be held at least 45 days before the end of each fiscal year.

6.02 BUDGET REQUIREMENTS: The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, when applicable, but not limited to:

- a. Administration of the Association;
- b. Management fees;
- c. Maintenance;
- d. Rent for recreational and other commonly used facilities;
- e. Taxes on Association property;
- f. Taxes on leased areas;
- g. Insurance;
- h. Security;
- i. Operating capital;
- j. Fees payable to Division of Florida Land Sales and Condominiums;
- k. Reserve accounts for capital expenditures and deferred maintenance, including but not limited to roof replacement, building painting and pavement resurfacing. Reserves may be removed from the final budget if, by vote of a majority of the unit owners

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present at a duly called meeting of the Association, such majority shall determine, for a fiscal year, to provide no reserves less than those required by Florida Statute 718.122(2)(k);

1. Other expenses.

6.03 NOTICE OF BUDGET MEETING: The Board of Directors shall cause to be mailed a notice of the budget meeting and copies of the proposed annual budget to each of the unit owners not less than 30 days prior to the meeting at which the budget shall be considered. The meeting shall be open to all unit owners.

6.04 REJECTION OF EXCESSIVE BUDGET: If a budget adopted by the Board of Directors requires assessment against the unit owners in any fiscal year, which assessment shall exceed 115% of the assessment for the previous year, the Board of Directors, upon written application of at least 10% of the unit owners, shall call a special meeting of the unit owners, such special meeting to be held within 30 days from the date of application. The special meeting shall be called on not less than 10 days written notice to each unit owner. At the special meeting, unit owners shall consider and enact a budget by not less than a majority vote of all unit owners. Provisions for reasonable reserves for repair or replacement of the condominium property, non-recurring expenses and assessments for betterments to the condominium property shall be excluded from the computation in determining whether assessments exceed 115% of similar assessments for the previous fiscal year.

6.05 ALTERNATIVE BUDGET: For any fiscal year, the Board of Directors, at its option, may propose a budget to the unit owners by mailing a copy of the proposed annual budget together with a notice of the meeting of unit owners at which the budget is to be considered, not less than 14 days prior to the date of such meeting. Upon approval by a majority of the unit owners attending such meeting, whether in person or by proxy, the budget shall be adopted.

6.06 BUDGET RESTRAINTS ON DEVELOPER: As long as the Developer is in control of the Board of Directors, the Board shall not oppose an assessment for any year greater than 115% of the previous year's assessment without approval of a majority of all unit owners.

6.07 ACCOUNTING RECORDS AND REPORTS: The Association shall maintain accounting records kept in accordance with good accounting practices and such records shall be maintained in the county in which the property is located. The records shall be open to inspection by all unit owners or their authorized representatives at reasonable times and upon reasonable notice. The record shall include, but shall not be limited to:

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a. A record of all receipts and expenditures of the Association; and

b. An account for each unit designating the name and current mailing address of the unit owner, the amount of each assessment, the dates and amounts in which the assessments become due, the amount paid on account and the balance due. Within 60 days after the end of each fiscal year, the Board of Directors shall mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months.

6.08 DEPOSITORY: The depository of the Association shall be such banks or savings and loan associations, whether state or federal, located in the county in which the condominium is situated, as shall be designated from time to time by the Board of Directors and in which the money for the Association shall be deposited. Withdrawal of money from such accounts shall be only by checks or other withdrawal instruments signed by those persons authorized to do so by the Board of Directors.

6.09 FIDELITY BONDING: Each Officer and Director of the Association who controls or disburses its funds shall be bonded by a fidelity bond in the principal sum of not less than TEN THOUSAND DOLLARS (\$10,000.00). The cost of bonding shall be at the expense of the Association.

6.10 ELECTION OF INCOME REPORTING METHOD: The Board of Directors shall make a determination based upon competent evidence as to whether it shall cause the Association's income to be reported to the Internal Revenue Service by Federal Tax Form 1120 or by Federal Tax Form 1120R. Such determination shall be made based on which method shall best serve the interests of the Association for the reporting period under consideration.

ARTICLE VII

ASSESSMENTS AND COLLECTION

7.01 ASSESSMENTS GENERALLY: Assessments shall be made against the unit owners at the discretion of the Board of Directors but in no event shall such assessments be made less frequently than quarterly. Such assessments shall be made in an amount no less than required to provide funds in advance for payment of all of the anticipated current operating expenses of the Condominium and for all of the unpaid operating expenses of the Condominium previously incurred. The assessment funds shall be collected against unit owners in the proportions or percentages provided in the Declaration. Unit owners' shares of common expenses shall be in the same proportion as ownership interest in the common elements.

7.02 EMERGENCY ASSESSMENTS: Assessments for expenses of emergencies that cannot be paid from the annual assessment for common expenses shall be made by the Board of Directors upon 30 days written notice thereof, given to the unit owners. These assessments shall be paid at the times and in the manner that the Board shall require in the notice of assessment.

7.03 ASSESSMENTS FOR CHARGES: Charges by the Association against members for other than common expenses shall be payable in advance and may be collected in the same manner as assessments for common expenses. Charges against a unit owner for other than common expenses may be made only upon approval by such unit owner or, when expressly provided for in the Declaration or other condominium documents. Such charges may include, without limitation, charges for the use of the condominium property or recreational facilities, maintenance services furnished at the expense of a member and other services furnished for the benefit of a member.

7.04 LIABILITY FOR ASSESSMENTS: Each unit owner, regardless of how title is acquired, shall be liable for all assessments coming due while he is the unit owner. The unit owner and his grantee, in a voluntary conveyance, shall be jointly and severally liable for all unpaid assessments due and payable up to the time of the voluntary conveyance. A first mortgagee who acquires title by foreclosure or deed in lieu of foreclosure however, shall not be liable for unpaid assessments of previous owners unless those assessments are evidenced by a lien recorded before the foreclosed mortgage. The liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which such assessments are made.

7.05 ASSESSMENT - AMENDED BUDGET: In the event the annual assessment shall not be sufficient to pay the expenses of the Condominium, the budget and assessments may be amended at any time by the Board of Directors. Unpaid assessments for the remaining portion of the year for which an amended assessment is made, shall be payable in as many equal installments as there are installment payment dates remaining in the budget year as of the date of the amended assessment. The budget shall not be amended for emergency or special non-recurring expenses.

7.06 COLLECTION - INTEREST AND APPLICATION OF PAYMENT: Any assessment, if not paid within 10 days after the date it shall become due, shall bear interest at the rate of 18% per annum until paid. All assessment payments shall be applied first to interest and then to the principal amount of the assessment payment due.

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5/95.

7.07 LIEN FOR ASSESSMENT: The Association shall have a lien on each condominium parcel for any unpaid assessment, together with interest and reasonable attorneys fees incurred by the Association incident to the collection of the assessment or

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enforcement of the lien. The lien shall be effective from and after the recording of a Claim of Lien in the public records in the county in which the Condominium Parcel is located. The Claim of Lien shall state the description of the Condominium Parcel, the name of the record owner, the amount due and the due dates and shall be signed and acknowledged by an officer or agent of the Association. The lien shall include only assessments which are due at the time of recordation of the Claim or Lien and shall be effective until all sums secured by it have been fully paid or until barred by Florida Statutes Chapter 95.

7.08 COLLECTION OF ASSESSMENTS - SUIT: The Association may bring an action to foreclose any lien for assessment in the manner that a mortgage upon real property is foreclosed. It may also bring an action to recover a money judgment for the unpaid assessment without waiving any claim of lien. The Association shall give notice to the unit owner of its intention to foreclose its lien at least 30 days prior to the filing of any such foreclosure action. The notice shall be given by delivery of a copy to the unit owner, personally, or by delivery thereof by certified mail, return receipt requested, addressed to the unit owner.

ARTICLE VIII

ASSOCIATION CONTRACTS

8.01 CONTRACTS PRIOR TO CONTROL BY UNIT OWNERS: All contracts made by the Association before the unit owners assume control thereof from the Developer shall be fair and reasonable. All contracts for the operation, maintenance or management of the Association or property serving the unit owners made by the Association, whether before or after assumption of control of the Association by the unit owners, shall not conflict with the powers and duties of the Association or the rights of the unit owners. Contracts made by the Association before the unit owners assume control may be cancelled by the unit owners after assumption of control of the Association, in the manner and under the circumstances as provided for in the Act.

8.02 VENDING EQUIPMENT: The Developer may obligate the Association under lease agreements or other contractual arrangements for the provision of vending equipment. The leases or agreements for the provision of vending equipment may not be subject to cancellation by unit owners, other than the Developer, if the vending equipment leases or agreements contain the provisions required by the Act.

8.03 MANAGEMENT CONTRACTS - ESCALATION CLAUSES PROHIBITED: No management contract entered into by the Association for the provision of management services to the Condominium shall contain an escalation clause as defined by the Act.

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8.04 MAINTENANCE AND MANAGEMENT CONTRACTS - REQUIREMENTS:
Written contracts for operation, maintenance and management entered into by the Association shall contain certain elements in order to be valid and enforceable as required by the Act. Such requirements include but are not limited to:

- a. Detailed specifications of the services, obligations and responsibilities of the service provider;
- b. Detailed specifications of costs for services to be performed;
- c. An indication of frequency of performance of services;
- d. Specification of the minimum number of personnel to provide the services contracted for;
- e. The disclosure of any financial or ownership interest that the Developer has in the service provider, if the Developer controls the Association.

ARTICLE IX

ROOSTER OF UNIT OWNERS AND MORTGAGES

Each unit owner shall file with the Association a copy or the deed or other instrument by which he acquired title to his unit, together with a copy of any mortgage encumbering the unit and, if applicable, any satisfaction of that mortgage. The Association shall maintain these documents in a suitable binder for reference as required in the exercise of its powers and duties.

ARTICLE X

COMPLIANCE AND DEFAULT

10.01 VIOLATIONS - NOTICE AND ACTIONS: In the case of a violation (other than the nonpayment of an assessment) by a unit owner of any of the provisions of the Act, the Declaration, the Articles, these By-Laws or any lawfully adopted Rules and Regulations of the Association, then the Association, by direction of its Board of Directors, may transmit to the unit owner by certified mail, return receipt requested, a notice of such violation. If the violation shall continue for a period of 30 days from the date of such notice, the Association shall have the right to treat such violation as an intentional and material breach of the provisions cited in such notice. The Association then, at its option, may do any of the following:

- a. File an action for the recovery of damages on behalf of the Association or on behalf of other unit owners;

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b. File an action for injunctive relief requiring the offending unit owner to take or to desist from taking certain actions;

c. File an action for both damages and injunctive relief.

A unit owner may bring an action against the Association for damages, injunctive relief or both, if the Association fails to comply with the provisions of the Act, the Declaration, the Articles, these By-Laws or such lawfully adopted Rules and Regulations.

The foregoing action may be taken in addition to any right of the Association to impose fines under Article IV of these By-Laws.

10.02 ATTORNEYS FEES: In any action brought, pursuant to the provisions of this Article X, the prevailing party shall be entitled to recover reasonable attorneys fees at all trial and appellate levels.

10.03 WAIVER: Neither a unit owner nor the Association may waive a provision of the Act, if that waiver would adversely effect the rights of any unit owner or the purposes of the provision except that unit owners or board members may waive notice of specific meetings in writing.

ARTICLE XI

ARBITRATION OF INTERNAL DISPUTES

Internal disputes form unit owners, the Association, members, their agents or assigns arising from the operation of the Condominium may be resolved by voluntary binding arbitration. Arbitrators shall be provided by the Division of Florida Land Sales and Condominiums pursuant to Florida Statute 718.112(2)(m) and arbitration proceedings shall be conducted in accordance with the rules of the American Arbitration Association or such other rules as the disputing parties shall mutually agree to. Each party to the dispute first must agree to the arbitration process and in such case, the arbitrator's decision will be final and binding. If judicial proceedings are taken after arbitration, the arbitrator's final decision shall be admissible in evidence. Any party may seek enforcement of the arbitrator's final decision in a court of competent jurisdiction. Nothing in this Article shall preclude any party from proceeding alternatively in the manner prescribed in Article X of these By-Laws.

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ARTICLE XII

SURVIVAL OF LIABILITY

Termination of membership in the Association shall not relieve nor release a former member from any liability or obligation incurred with respect to the Condominium during the period of membership nor impair any rights or remedies that the Association may have against such former member arising out of his membership and his covenants and obligations incident thereto.

ARTICLE XIII

LIMITATIONS OF USE OF COMMON ELEMENTS

Each unit owner may be personally liable for the acts or omissions of the Association relating to the use of the Common Elements. Such liability shall be shared with other unit owners in the same percentages as their respective interests in the common elements. No individual unit owner's liability shall exceed the value of his unit.

ARTICLE XIV

PARLIMENTARY RULES

The most current edition of Roberts Rules of Order shall govern the conduct of the Association's meetings when not in conflict with the Act, the Declaration, the Articles or these By-Laws.

ARTICLE XV

RULES AND REGULATIONS

15.01 ADOPTION BY BOARD: The Board of Directors may adopt and amend, from time to time, reasonable rules and regulations governing the details of the use and operation of the common elements, common areas and recreational facilities serving the Condominium.

15.02 COPIES OF RULES AND REGULATIONS: A copy of the Rules and Regulations adopted from time to time by the Board of Directors and any amendments to existing Rules and Regulations shall be posted in a conspicuous place on the condominium property and a copy thereof furnished to each unit owner. No rule, regulation or amendment shall become effective until 30 days after posting thereof, as herein provided, except in the case of an emergency, in which case the rule, regulation or amendment shall become effective immediately upon posting.

15.03 **LIMITATIONS ON AUTHORITY:** The Board of Directors may not unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common elements, common areas and recreational facilities. The Board may not deny any resident of the Condominium, whether tenant or owner, access to any available franchised or licensed cable television service or exact a charge or anything of value in excess of charges normally paid for like services by residence of single family homes within the same franchise or license area.

15.04 **REASONABLENESS:** Any rule or regulation created or imposed by the Board of Directors shall be reasonably related to the promotion of the health, happiness and peace of mind of the unit owners and uniformly applied and enforced.

ARTICLE XVI

RESTRICTIONS ON AND REQUIREMENTS FOR USE, MAINTENANCE
AND APPEARANCE OF THE UNITS

16.01 **WHERE CONTAINED:** Restrictions upon the use, maintenance and appearance of the individual condominium units shall be stated in the Declaration and no amendments or additions shall be contained elsewhere than in the Declaration, as adopted by a vote of the unit owners in the manner prescribed elsewhere in these By-Laws.

16.02 **VALIDITY:** Restrictions contained in the Declaration and any amendments duly adopted by a vote of the unit owners shall be valid and in the nature of covenants running with the land, unless such restrictions are:

1. Wholly arbitrary in their application;
2. Are in violation of public policy; or
3. Are in derogation of rights provided under the Constitution of the United States or the State of Florida.

ARTICLE XVII

BY-LAWS DEEMED AMENDED

These By-Laws shall be deemed amended in those particulars as may be required to make them consistent with the provisions of the Act as it may be amended from time to time.

ARTICLE XVIII

CONFLICT - PRIORITIES

In the event of conflict between or among the provisions of any of the following, the order of priorities shall be from highest to lowest:

- a. The Act.
- b. The Declaration.
- c. The Articles.
- d. These By-Laws.
- e. Rules and Regulations adopted by the Association.

ARTICLE XIX

INDEMNIFICATION

Every officer and director of the Association shall be indemnified by the Association against all expenses and liabilities, including reasonable attorneys fees incurred and imposed in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association, whether or not he is an officer or director at the time such expenses are incurred. The officer or director shall not be indemnified if he is adjudged guilty of gross negligence or willful misconduct or shall have breached his fiduciary duty to the members of the Association. The Association shall not be liable for payment of a voluntary settlement unless it is first approved by the Board of Directors. The foregoing rights shall be in addition to and not exclusive of all other rights to which a director or officer may be entitled.

ARTICLE XX

DEFECTIVE CONDOMINIUM DOCUMENTS - CURATIVE PROVISIONS

The Association or a unit owner may petition the Circuit Court having jurisdiction in the county in which the condominium property is situated, to correct an error or omission in the Declaration or any other documents required to establish the Condominium affecting its valid existence and which error or omission is not correctable by the amendment procedure set forth in the Declaration or the Act. In any case, after three years from the filing of the Declaration, it shall be deemed to be effective under the Act to create a condominium, whether or not, in fact, it substantially complies with a mandatory requirements of the Act.

ARTICLE XXI

AMENDMENTS

Amendments to these By-Laws shall be proposed and adopted as follows:

21.02 **NOTICE:** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

21.02 **ADOPTION:** An amendment may be proposed either by a majority of the Board of Directors or by not less than one-third of the members of the Association. The amendment shall be adopted, if it is approved, either by:

a. Not less than a majority of the votes of the entire membership of the Association and by not less than two-thirds of the Board of Directors; or

b. By not less than 75% of the votes of the entire membership of the Association.

21.03 **LIMITATIONS:** No amendment shall be made that is in conflict with the Act or the Declaration, nor shall any amendment abridge, alter or amend the rights of the Developer or mortgagees of units without their consent.

21.04 **RECORDING:** A copy of each amendment shall be attached to a certificate, certifying that the amendment was duly adopted as an amendment of the Declaration and By-Laws. Such certificate shall be executed by the President or Vice President of the Association and attested by the Secretary or Assistant Secretary of the Association with the same formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the county in which the Condominium is situated.

21.05 **FORMAT:** Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended. New words shall be underlined and words to be deleted shall be lined through with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment as follows: **SUBSTANTIAL REWORDING OF BY-LAW NO. _____ FOR PRESENT TEXT.**

REC. 14165781478

ARTICLE XXIII

CONSTRUCTION

Whenever the context permits or requires, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all genders. The foregoing were adopted as the By-Laws of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. on the ____ day of _____, 19____.

BANYAN GARDENS CONDOMINIUM OWNERS
ASSOCIATION, INC., a Florida
corporation not for profit

, President

Attest: _____
(Secretary)

RULES AND REGULATIONS
FOR
BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

The Rules and Regulations hereinafter enumerated, as to the Condominium Property, the Common Elements, the Condominium Units and the Condominium in general, shall be deemed in effect until amended by the Board of Directors of the Banyan Gardens Condominium Owners Association, Inc. ("ASSOCIATION") and shall apply to and be binding upon all Condominium Parcel Owners. The Condominium Parcel Owners shall, at all times, obey said Rules and Regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees, servants, licensees and persons for whom they are responsible and persons over whom they exercise control and/or supervision. Violation of these Rules and Regulations may subject the violator, or the Condominium Parcel Owner responsible for such violator, to any and all remedies available to the Association and other Condominium Unit Owners, pursuant to the terms of the Declaration of Condominium, Articles of Incorporation of the Association, ByLaws of the Association and laws of the State of Florida. Violations may be remedied by the Association by injunction or other legal means and the Association shall be entitled to recover in said actions any and all court fees and costs incurred by it, together with reasonable attorneys fees, against any person violating these Rules and Regulations or the Declaration of Condominium and any of the Exhibits attached thereto. The Board of Directors may, from time to time, adopt or amend these Rules and Regulations governing the details of the operation, use, maintenance, management and control of the Common Elements of the Condominium and any facilities or services made available to the Condominium Parcel Owners. Any waivers, consents or approvals given under these Rules and Regulations by the Board of Directors shall be revocable at any time and shall not be considered a waiver, consent or approval of identical or similar situations unless in writing by the Board of Directors. The Rules and Regulations are as follows:

ARTICLE I

VIOLATIONS

A. Violations should be reported in writing to the President of the Association and not to the Board of Directors or other Officers of the Association.

B. Violations shall 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.

C. Disagreements concerning violations will be presented to and judged by the Board of Directors who shall take appropriate action.

ARTICLE II

FACILITIES

The facilities of the Condominium are for the exclusive use of Association members, lessees, resident house guests and guests accompanied by a member. Any damage to any Common Elements or equipment, caused by any resident or his guest, shall be repaired at the expense of the Condominium Parcel Owner causing such damage or responsible for the person causing such damage.

ARTICLE III

NOISE

In order to insure the comfort of the occupants of each Unit, radios, stereos and television sets should be turned down to a minimum volume between the hours of 11:00 P.M. and 8:00 A.M. All other unnecessary noises should be avoided.

ARTICLE IV

PETS

Pets shall be permitted to be kept on the Condominium Property, under the circumstances and conditions specifically set forth herein:

A. Only common domestic animals, including by way of illustration, dogs, cats, birds and tropical fish may be kept on the Condominium Property.

B. There shall not be permitted more than one (1) dog and one (1) cat per Condominium Unit.

C. No pets shall be permitted upon the Common Elements of the Condominium, except:

(i) When carried;

(ii) On a leash, solely for the immediate purpose of entry or exit to or from the Condominium Property, which entry or exit shall at all times be conducted by the most immediate and direct route.

D. The owner of any such pet permitted or kept upon the Condominium Property shall indemnify the Association and hold it harmless against any loss or liability of any kind or nature, whatsoever, arising from or growing out of having any such pet upon the Condominium Property.

ARTICLE V

OBSTRUCTIONS

Sidewalks, entrances, driveways, passages, patios, courts, vestibules and stairways shall be kept open at all times and shall not be obstructed in any manner. No sign, notice or advertisement shall be inscribed on 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 antenna shall be attached to or hung from the exterior of the Condominium or the roof thereon without the express written approval of the Association.

ARTICLE VI

CHILDREN

Reasonable supervision shall be exercised when children are playing in the Common Elements or grounds of the Condominium Property.

ARTICLE VII

DESTRUCTION OR DAMAGE TO PROPERTY

Neither members, their dependents, guests, licensees, invitees nor permitted tenants shall mark, mar, damage, destroy, deface or engrave any part of a building or any Common Element. Members shall be responsible for any such damage.

ARTICLE VIII

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 the prior written consent of the Association, which consent may be withheld on purely aesthetic grounds within the sole discretion of the Association. No awnings, windowguards, 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 in writing by the Association, which approval may be withheld on purely aesthetic grounds within the sole discretion of the Association.

ARTICLE IX

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 disposal shall be used in accordance with instructions given to a Unit Owner by the Association.

ARTICLE X

BALCONIES

Plants, pots, receptacles and other movable objects must not be kept, placed or permitted on ledges or balconies without the prior written consent of the Association. No objects shall be hung from balconies or windowsills. No cloth, clothing, rugs or mats shall be hung up or shaken from windows, doors or balconies. Members shall remove all loose or movable objects from balconies during the hurricane season. No cigars, cigarettes or any other objects shall be thrown from balconies. No cooking shall be permitted on any balcony of any Unit.

ARTICLE XI

DOOR LOCKS

Members shall abide by Article XV, Paragraph E "Right of Entry into Private Dwellings in Emergencies" of the Declaration of Condominium, which reads as follows:

In case of an emergency originating in or threatening any UNIT, regardless of whether or not the OWNER is present at the time of such emergency, the BOARD OF DIRECTORS of the ASSOCIATION or any other person authorized by the BOARD OF DIRECTORS, or the building manager or managing agent shall have the right to enter such UNIT for the purpose of remedying or abating the cause of such emergency and such right of entry shall

compliance by such guests with the Rules and Regulations of the Association.

ARTICLE XVII

LEASING OR REALES

The Declaration of Condominium, which is filed of record in Dade County, Florida, specifies the manner in which the resale or leasing of Condominium Parcels shall be handled, including the following:

A. No Owner of a Condominium Parcel shall lease or sell his Condominium Parcel to anyone without first giving notice, in writing, by registered or certified mail, to the Board of Directors or by personal delivery to the Secretary or President of the Association.

B. The letter notifying the Association of an Owner's desire to sell or lease his Condominium Parcel must state the name, address and employment or occupation of the prospective lessee or purchaser and a copy of the bona fide offer to lease or sell the Condominium Parcel must also be submitted with the letter.

C. The application forms required by the Association shall be completely filled out and signed by the prospective lessee or purchaser. Such application shall be accompanied by a non-refundable administrative fee of FIFTY DOLLARS (\$50.00) to defray the Association's administrative expenses.

D. The Association shall have 30 days from receipt of all of the information requested to decide whether it will approve the application and will notify the Condominium Parcel Owner in writing.

E. Any lease must contain a covenant stating that the lessee shall comply with all present and future rules and regulations of the Association.

F. If the prospective lessee or purchaser is approved by the Board of Directors, the Board shall so notify the Owner and the lessee or purchaser in writing and will send a copy of the Rules and Regulations to the lessee or purchaser.

G. Subleasing by the lessee shall not be permitted except when the Association is the lessee.

H. No Condominium Parcel may be leased for a period of less than 12 months.

ARTICLE XVIII

SWIMMING POOL

A. Members and their guests using the swimming pool do so at their own risk. Members and their guests are required to obey the posted swimming pool rules. Children under 12 years of age using the pool and facilities must be accompanied and supervised by a responsible adult.

B. Swimming in the pool is permitted between the hours of 8:00 A.M. and 10:00 P.M. Since the pool is not guarded, persons using this facility do so at their own risk. Persons using these facilities must be properly attired.

C. The following are the basic rules for persons using the swimming pool:

- (1) Shower thoroughly each and every time before

amended
to state contract
not bona fide
offer!
10/29/96
Lumex

be immediate. To facilitate entry in the event of any such emergency, the owner of each UNIT, if required by the ASSOCIATION, shall deposit under the control of the ASSOCIATION, a key to such UNIT.

ARTICLE XII

PLUMBING

Water closets and other plumbing shall not be used for any other purpose than those for which they are constructed and no sweepings, rubbish, rags or other foreign substances shall be thrown therein. The cost of any damage resulting from misuse shall be borne by the member.

ARTICLE XIII

ROOF

Members, their families, dependents, guests, licensees, invitees or permitted lessees are not permitted on the roof for any purpose.

ARTICLE XIV

SOLICITATION

There shall be no solicitation by any person anywhere upon the Condominium Property for any cause, charity or any purpose whatsoever, unless specifically authorized by the Board of Directors.

ARTICLE XV

PARKING

No vehicle belonging to any Owner or to a member of the family of an Owner or to any guest, tenant, employee or licensee of an Owner shall be parked in such manner as to impede or prevent access to another Owner's parking space. The Owners, their employees, servants, agents, visitors, licensees and families shall obey parking regulations posted at the private streets, parking areas and drives, and any other traffic regulations promulgated in the future for safety, comfort and convenience of the Owners. No vehicle which cannot operate on its own power shall remain within the Condominium Property for more than 24 hours and no repair of vehicles shall be made within the Condominium Property. Except for guest parking spaces, each parking space is assigned as an appurtenance to a particular Condominium Parcel. As such, each space may be used only by the Owner except when the Owner has given written permission (copy to the Association) for use by another Owner, lessee or resident. No person shall park his car in any assigned space, other than the one assigned to him, without appropriate permission. When parking a vehicle, the driver thereof shall make certain that the vehicle is parked within the painted yellow lines, if any, defining the space, and is parked sufficiently close to the front end of the space so that the vehicle is out of the path of traffic. All parking shall be "head in" only.

ARTICLE XVI

GUESTS

Owners shall notify the Association, in advance, by written notice, of the arrival and departure dates of guests who have permission to occupy such Owner's Condominium Parcel in his absence. The Unit Owner permitting such guests to have the occupancy of his Condominium Parcel shall be responsible for

entering the pool.

(ii) Pets are forbidden in the general pool area.

(iii) Running and/or playing ball or throwing objects is not permitted in the pool or pool deck.

(iv) Beverages may be consumed within the pool area but extreme care must be taken that absolutely no glass, glass bottles or other glass containers be allowed within the pool area. Anyone who hosts or participates in serving or consuming beverages will be held strictly responsible for cleaning up after such refreshments have been consumed and will further be held strictly liable for any injury resulting from broken glass.

(v) If suntan oils, creams or lotions are used, a towel or other form of protection must be placed on pool furniture furnished by the Association, if any, to protect the attire of other who use the furniture.

THE FOREGOING RULES AND REGULATIONS are designed to make living for you and your neighbors pleasant and comfortable. The restrictions that we impose upon ourselves are for the mutual benefit of all. Violations of these Rules are to be reported to the President of the Association who will call the matter to the attention of the violating Owner, lessee or guest for corrective action. Any disagreement over the violation will be reported to the appropriate committee for subsequent judgment by the Board of Directors. If any irreconcilable conflict shall exist with respect to the interpretation of these Rules and Regulations or the Declaration of Condominium, the provisions of the Declaration of Condominium shall prevail.

BY ORDER OF BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

, President


BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

A RESOLUTION OF THE BOARD OF DIRECTORS
AFFIRMING AND REVISING PROCEDURES FOR PAYMENTS BY UNIT
OWNERS TO BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

WHEREAS, the Unit member Board after the Developer established by resolution a procedure for payment of monthly maintenance assessments which was posted May 4, 1992, wherein such procedure prohibited hand-delivery except to the BGCOA Treasurer at a Board of Director's meeting;

WHEREAS, the prior Board ignored the established procedure and allowed the prior BGCOA Officers to informally accept hand-delivery of payments;

WHEREAS, some Unit owners have even abused this informal procedure by simply leaving a check (even without an envelope) in the door of a BGCOA Officer or Director;

WHEREAS, hand-delivery of payments can give rise to claims by Unit owners that payments were made and lost by BGCOA, and BGCOA needs to accurately track receipt of payments since many Units owners have not been paying or have been paying late or whenever they feel like paying; and

WHEREAS, it is the intent of the new Board to re-institute a standard procedure similar to the one established by the Unit member Board after the Developer.

NOW, THEREFORE BE IT HEREBY RESOLVED by the Board as follows:

1. Unless otherwise notified in writing by the President or Treasurer of BGCOA, or BGCOA's attorney, payment by all Unit owners of any monthly maintenance assessment, special assessment or installment thereof, and any other payment due and owing to BGCOA shall be:

(a) made by check, money order or bank instrument (cash will not be accepted).

(b) in the correct amount for the obligation required or specified to be paid to BGCOA by or on behalf of the Unit.

(c) either (i) mailed to BGCOA at its then current post office box address, which is currently P. O. Box 570171, Miami, Florida 33257-0171 or (ii) presented to the BGCOA Treasurer at any Board of Director's meeting held on or before the date when the particular payment is due.

2. Failure to receive payment in accordance with the provision of paragraph 1 shall subject such payment to non-acceptance and rejection by BGCOA, for which BGCOA reserves the right to pursue all rights available to it under the Condominium Act, the Florida Statutes and the Condominium Documents for late or non-payment.

ADOPTED by the Board of Directors this _____ day of September, 1994.

BY: _____
Claudette Daniels
Secretary

BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

**A RESOLUTION OF THE BOARD OF DIRECTORS
ESTABLISHING PROCEDURES FOR THE
COLLECTION OF DELINQUENT ASSESSMENTS**

WHEREAS, the Unit member Board of Directors after the Developer established procedures for the collection of delinquent assessments by resolution dated February 19, 1992; and

WHEREAS, the new Board wishes to revise and clarify those procedures, and replace the prior resolution.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board as follows that:

1. All monthly maintenance assessments are due the first day of each month and, if not received by BGCOA (a) on or before ten (10) days after the first day of the month for which it is due (i.e., by the 11th.) or (b) in the manner provided for by BGCOA, shall be delinquent and assessed interest at the rate of 18% per year accruing from the due date (i.e., the first day of the month).
2. All special assessment or installments thereof are due when specified by BGCOA and, if not received (a) on or before ten (10) days after the date when due or (b) in the manner provided for by BGCOA, shall be delinquent and assessed interest at the rate of 18% per year accruing from the due date.
3. Any installment authorized or agreed to by BGCOA to be paid toward any assessment, or any other payment to be made to BGCOA, not received when due as specified by BGCOA and in the manner provided for by BGCOA shall be delinquent.
4. In accordance with the Condominium Act, late payments shall be first applied toward accrued interest, then administrative late fees and then principle.
5. Any assessment, or installment thereof, paid in an amount less than that required or specified shall be deemed a partial payment thereon if accepted for deposit by BGCOA, with the unpaid balance delinquent if not received by BGCOA pursuant to paragraphs 1, 2 or 3 above, and such acceptance shall not be deemed or constitute a waiver of any right or remedy of BGCOA to collect full and complete payment thereon.
6. BGCOA shall notify the Unit owner and/or lessee of any delinquency by certified mail, return receipt requested, and first class mail to the Unit address and, for non-resident

Unit owners if such information has been provided in writing to BGCOA by such non-resident Unit owner, to the non-resident Unit Owner's address.

7. A copy of the Notice of Delinquency, the form of which is attached hereto, shall be placed in BGCOA's records for that Unit and provided to BGCOA's attorney(s) or legal representative.

8. Any monthly or special assessment (a) not received within thirty (30) days from the date when due and in the manner provided for by BGCOA or (b) for which arrangements for payment agreed to in writing by BGCOA have not been made, and any installment thereon not received when due and in the manner specified by BGCOA, shall be secured by a claim of lien in accordance with the Condominium Act and Florida Statutes.

9. In the event that payment or arrangements for payment with BGCOA have not been made in response to the Notice of Delinquency, BGCOA shall notify its attorney(s) or legal representative to proceed with collection thereof.

10. BGCOA's attorney(s) or legal representative shall be, as is hereby, authorized to pursue all rights and remedies on behalf of BGCOA in the collection of delinquent monies in accordance with the current Condominium Act, Florida Statutes and the Condominium Documents, including without limitation, notification of collection procedures, recording of a claim of lien and commencement of foreclosure proceedings and/or personal lawsuits.

ADOPTED by the Board of Directors this 13th day of September, 1994.

BY: Claudette Daniels

Claudette Daniels
Secretary

**BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.
P. O. BOX 570171
MIAMI, FLORIDA 33257-0171**

(_____)
(_____)
(_____)

RE: Notice of Delinquency - Unit #__

Dear _____:

The records of Banyan Gardens Condominium Owners Association, Inc. ("BGCOA") indicate that the (special/monthly maintenance) assessment due _____, 199__ has not been received by BGCOA.

Please remit your payment or make arrangement with BGCOA for payment of the following amount due as of the date of this letter:

\$ _____ Monthly Maintenance Assessment(s)
\$ _____ Special Assessment(s)
\$ _____ Interest (18%/yr = ___ days x _____
\$ _____ Interest (18%/yr = ___ days x _____
\$ _____ TOTAL DUE

no later than fifteen (15) days from the date of this letter in order to avoid turning this matter over to BGCOA's attorney(s) for collection, and incurring additional fees and costs including attorneys' fees. Please be advised that should this matter be turned over to BGCOA's attorney, the minimum fee charge is currently \$250.00 for which you will be directly responsible.

Thank you in advance for your cooperation.

**BANYAN GARDENS CONDOMINIUM
OWNERS ASSOCIATION, INC.**

BY: _____
Mathew J. Catanese
Treasurer

pc: R. Keith Allen, Esq.

bgcoa/delqncmt.doc

**CERTIFIED MAIL P
RETURN RECEIPT REQUESTED
and FIRST CLASS MAIL**

BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

ARTICLE IV

PETS

Pets, as specified below, shall be permitted to be on the Condominium Property pursuant to the following circumstances and conditions:

- A. Only common domestic animals, including by way of illustration, dogs, cats, small birds and aquarium fish, may be kept within a Unit; provided, however that
- (i) no such pet may be maintained, kept or for any period of time left unattended on a Unit's patio or balcony; and
 - (ii) no pet house, enclosure, cage or other structure, bed, litter box, toy or supply may be maintained or kept on a Unit's patio or balcony.
- B. No pet shall be permitted on the Condominium Property other than pursuant to subsection (a.) above except:
- (i) when carried; or
 - (ii) on a leash, solely for the immediate purpose of walking the pet.
- C. Only one dog or one cat shall be permitted to resident within any Unit.
- D. No pet shall be allowed, and is strictly prohibited from being, in the pool or within the enclosed pool area.
- E. The owner of any pet and Unit owner, or lessee shall be responsible for cleaning-up any visible excrement deposited by such pet on any curb, pavement or concrete walkway, and all interior areas or property bounded by the perimeter concrete walkway.
- F. Pets not belonging to a Unit owner, resident family member or lessee shall not be maintained or kept within a Unit for more than 72 hours without the written permission of the Association.

G. Feeding of birds and wild or stray animals is prohibited.

H. It is the responsibility of the owner of any pet to comply with all laws and regulations regarding ownership of pets, including without limitation, licensing and vaccination requirements. The owner of any pet permitted or kept on the Condominium Property, and the particular Unit owner and/or lessee shall indemnify and hold the Association harmless against any damage, injury, loss or liability of any kind or nature whatsoever arising in any manner whatsoever from such pet being on the Condominium Property.

ARTICLE III

NOISE

In order to insure the comfort of the occupants of each Unit, radios, stereos and television sets should be turned down to a minimum volume between the hours of 11:00 P.M. and 8:00 A.M. All other unnecessary noises should be avoided.

ARTICLE IV

PETS

Pets shall be permitted to be kept on the Condominium Property, under the circumstances and conditions specifically set forth herein:

A. Only common domestic animals, including by way of illustration, dogs, cats, birds and tropical fish may be kept on the Condominium Property.

B. There shall not be permitted more than one (1) dog and one (1) cat per Condominium Unit.

C. No pets shall be permitted upon the Common Elements of the Condominium, except:

(i) When carried;

(ii) On a leash, solely for the immediate purpose of entry or exit to or from the Condominium Property, which entry or exit shall at all times be conducted by the most immediate and direct route.

D. The owner of any such pet permitted or kept upon the Condominium Property shall indemnify the Association and hold it harmless against any loss or liability of any kind or nature, whatsoever, arising from or growing out of having any such pet upon the Condominium Property.

ARTICLE V

OBSTRUCTIONS

Sidewalks, entrances, driveways, passages, patios, courts, vestibules and stairways shall be kept open at all times and shall not be obstructed in any manner. No sign, notice or advertisement shall be inscribed on 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 antenna shall be attached to or hung from the exterior of the Condominium or the roof thereon without the express written approval of the Association.

ARTICLE VI

ARTICLE VII

DESTRUCTION OR DAMAGE TO PROPERTY

Neither members, their dependents, guests, licensees, invitees nor permitted tenants shall mark, mar, damage, destroy, deface or engrave any part of a building or any Common Element. Members shall be responsible for any such damage.

ARTICLE VIII

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 the prior written consent of the Association, which consent may be withheld on purely aesthetic grounds within the sole discretion of the Association. No awnings, windowguards, 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 in writing by the Association, which approval may be withheld on purely aesthetic grounds within the sole discretion of the Association.

ARTICLE IX

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 disposal shall be used in accordance with instructions given to a Unit Owner by the Association.

ARTICLE X

BALCONIES

Plants, pots, receptacles and other movable objects must not be kept, placed or permitted on ledges or balconies without the prior written consent of the Association. No objects shall be hung from balconies or windowsills. No cloth, clothing, rugs or mops shall be hung up or shaken from windows, doors or balconies. Members shall remove all loose or movable objects from balconies during the hurricane season. No cigars, cigarettes or any other objects shall be thrown from balconies. No cooking shall be permitted on any balcony of any Unit.

ARTICLE XI

DOOR LOCKS

Members shall abide by Article XV, Paragraph E "Right of Entry into Private Dwellings in Emergencies" of the Declaration of

be immediate. To facilitate entry in the event of any such emergency, the owner of each UNIT, if required by the ASSOCIATION, shall deposit under the control of the ASSOCIATION, a key to such UNIT.

ARTICLE XII

PLUMBING

Water closets and other plumbing shall not be used for any other purpose than those for which they are constructed and no sweepings, rubbish, rags or other foreign substances shall be thrown therein. The cost of any damage resulting from misuse shall be borne by the member.

ARTICLE XIII

ROOF

Members, their families, dependents, guests, licensees, invitees or permitted lessees are not permitted on the roof for any purpose.

ARTICLE XIV

SOLICITATION

There shall be no solicitation by any person anywhere upon the Condominium Property for any cause, charity or any purpose whatsoever, unless specifically authorized by the Board of Directors.

ARTICLE XV

PARKING

No vehicle belonging to any Owner or to a member of the family of an Owner or to any guest, tenant, employee or licensee of an Owner shall be parked in such manner as to impede or prevent access to another Owner's parking space. The Owners, their employees, servants, agents, visitors, licensees and families shall obey parking regulations posted at the private streets, parking areas and drives, and any other traffic regulations promulgated in the future for safety, comfort and convenience of the Owners. No vehicle which cannot operate on its own power shall remain within the Condominium Property for more than 24 hours and no repair of vehicles shall be made within the Condominium Property. Except for guest parking spaces, each parking space is assigned as an appurtenance to a particular Condominium Parcel. As such, each space may be used only by the Owner except when the Owner has given written permission (copy to the Association) for use by another Owner, lessee or resident. No person shall park his car in any assigned space, other than the one assigned to him, without appropriate permission. When parking a vehicle, the driver thereof shall make certain that the vehicle is parked within the painted yellow lines, if any, defining the space, and is parked sufficiently close to the front end of the space so that the vehicle is out of the path of traffic. All parking shall be "head in" only.

compliance by such guests with the Rules and Regulations of the Association.

ARTICLE XVII

LEASING OR REALES

The Declaration of Condominium, which is filed of record in Dade County, Florida, specifies the manner in which the resale or leasing of Condominium Parcels shall be handled, including the following:

A. No Owner of a Condominium Parcel shall lease or sell his Condominium Parcel to anyone without first giving notice, in writing, by registered or certified mail, to the Board of Directors or by personal delivery to the Secretary or President of the Association.

B. The letter notifying the Association of an Owner's desire to sell or lease his Condominium Parcel must state the name, address and employment or occupation of the prospective lessee or purchaser and a copy of the bona fide offer to lease or sell the Condominium Parcel must also be submitted with the letter.

C. The application forms required by the Association shall be completely filled out and signed by the prospective lessee or purchaser. Such application shall be accompanied by a non-refundable administrative fee of FIFTY DOLLARS (\$50.00) to defray the Association's administrative expenses.

D. The Association shall have 30 days from receipt of all of the information requested to decide whether it will approve the application and will notify the Condominium Parcel Owner in writing.

E. Any lease must contain a covenant stating that the lessee shall comply with all present and future rules and regulations of the Association.

F. If the prospective lessee or purchaser is approved by the Board of Directors, the Board shall so notify the Owner and the lessee or purchaser in writing and will send a copy of the Rules and Regulations to the lessee or purchaser.

G. Subleasing by the lessee shall not be permitted except when the Association is the lessee.

H. No Condominium Parcel may be leased for a period of less than 12 months.

ARTICLE XVIII

SWIMMING POOL

A. Members and their guests using the swimming pool do so at their own risk. Members and their guests are required to obey the posted swimming pool rules. Children under 12 years of age using the pool and facilities must be accompanied and supervised by a responsible adult.

BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.
P. O. BOX 570171
MIAMI, FLORIDA 33257-0171

March 15, 1995

Re: Proposed Amendments to Declaration and By-Laws

To All Unit Owners:

Since the Unit Owners took control of the Association in August, 1991, not a month has gone by without someone failing to pay their monthly assessment on time. The number of delinquent paying Units has been as high as 8, and is almost never less than 3. And these numbers do not reflect payments that are 1 or 2 weeks late. These numbers refer to payments which are over 30 days late. Some delinquencies have unbelievably gone on for over a year, with at least 3 foreclosure proceedings instituted in order to force payment. There have also been 2 bankruptcy proceedings filed.

Each time a payment is late, the Association is obligated by the Condominium Documents to initiate a collection procedure which begins with the requirement to send out letters and notices by certified mail. This is not a mere technicality. The Association cannot ever collect the late payments without first sending such letters and notices. And, unfortunately, the Association would never had recovered any money, and would have lost its right to collect its money, had it not taken these initial steps.

The requirement to send out letters and notices forces the Association to needlessly spend accounting and administrative time and Association money which cannot be currently recovered. The Association's inability to recover its administrative costs is unfair to the majority of the Unit Owners that faithfully and timely pay their assessments.

Florida law allows a condominium association to charge an administrative late fee for each delinquent payment if its declaration or by-laws authorizes charging a late fee. BGCOA's declaration and by-laws can be amended to provide for a late fee. Since the Board has prepared the amendment, the only charge will be filing fees of about \$20.

Please take a moment to vote on the attached amendments and hopefully the Association will be able to remedy this inequity.

Very truly yours,

BANYAN GARDENS CONDOMINIUM
OWNERS ASSOCIATION, INC.

BY: Jay G. Kolman

Jay G. Kolman, Esq.
President

JGK/cd
bgcoa/Proposed Amendment

BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

**A RESOLUTION OF THE BOARD OF DIRECTORS
TO AMEND ARTICLE XIX, ASSESSMENTS,
OF THE DECLARATION OF CONDOMINIUM**

WHEREAS, at least three Units are delinquent in payment of assessments each and every month;
and

WHEREAS, Section 718.116 (3), Florida Statute (1991) authorizes an association to charge an administrative fee for delinquent payment of assessments if the association's declaration or by-laws so provide; and

WHEREAS, Banyan Gardens Condominium Owners Association, Inc.'s Declaration of Condominium and By-Laws do not provide that Banyan Gardens Condominium Owners Association, Inc. may charge an administrative fee for delinquent payments.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board as follows that:

1. Subject to Unit Owner approval, the Board Proposes the following amendment to Article XIX:

SUBSTANTIAL REWORDING OF ARTICLE XIX (C) FOR PRESENT TEXT

C. INTEREST, ADMINISTRATIVE FEES AND APPLICATION OF PAYMENTS: ASSESSMENTS and installments thereof not received by the ASSOCIATION, in the manner provided for by the ASSOCIATION, on or before 10 days after the date when due shall be delinquent and bear interest at the highest rate permitted by the laws of the State of Florida, from the date when due until paid. The ASSOCIATION shall charge an administrative late fee, in addition to such interest, at the highest amount or rate permitted by the Condominium Act of the State of Florida. Any ASSESSMENT or installment thereof paid in an amount less than that required or specified shall be deemed and constitute a partial payment thereon if accepted for deposit by the ASSOCIATION, with the unpaid balance delinquent if not timely received by the ASSOCIATION, and such acceptance shall not be deemed or constitute a waiver of any right or remedy of the ASSOCIATION in the collection of delinquent payments, unless otherwise agreed to in writing by the ASSOCIATION. All payments upon account received by the ASSOCIATION shall be applied first to any accrued interest, then to any administrative late fees, then to the delinquent ASSESSMENT. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

ADOPTED by the Board of Directors this _____ day of _____, 1995

BY: _____
Claudette Daniels
Secretary

BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

**TO AMEND ARTICLE VII, ASSESSMENTS
AND COLLECTIONS. OF THE BY-LAWS**

Pursuant to Article XXI, AMENDMENTS, of the By-Laws of Banyan Gardens Condominium Owners Association, Inc. ("BGCOA"), and Section 718.116 (3), Florida Statute (1993), the Board of Directors of BGCOA proposes that Article VII, ASSESSMENTS AND COLLECTIONS, be amended as follows:

7.06 COLLECTION - INTEREST, ADMINISTRATIVE FEE, AND APPLICATION OF PAYMENTS:

Any assessment, or installment thereof if not paid within 10 days after the date it shall become due, shall be delinquent and bear interest at the rate of 18% per annum until paid. In addition to such interest, an administrative late fee shall be charged in an amount not to exceed the greater of \$25.00 or 5% of each installment of the assessment for each delinquent installment that the payment is late. All assessment payments shall be applied first to any interest, then to any administrative late fees, and then to the principal amount of the assessment payment due.

entering the pool.

(ii) Pets are forbidden in the general pool area.

(iii) Running and/or playing ball or throwing objects is not permitted in the pool or pool deck.

(iv) Beverages may be consumed within the pool area but extreme care must be taken that absolutely no glass, glass bottles or other glass containers be allowed within the pool area. Anyone who hosts or participates in serving or consuming beverages will be held strictly responsible for cleaning up after such refreshments have been consumed and will further be held strictly liable for any injury resulting from broken glass.

(v) If suntan oils, creams or lotions are used, a towel or other form of protection must be placed on pool furniture furnished by the Association, if any, to protect the attire of other who use the furniture.

THE FOREGOING RULES AND REGULATIONS are designed to make living for you and your neighbors pleasant and comfortable. The restrictions that we impose upon ourselves are for the mutual benefit of all. Violations of these Rules are to be reported to the President of the Association who will call the matter to the attention of the violating Owner, lessee or guest for corrective action. Any disagreement over the violation will be reported to the appropriate committee for subsequent judgment by the Board of Directors. If any irreconcilable conflict shall exist with respect to the interpretation of these Rules and Regulations or the Declaration of Condominium, the provisions of the Declaration of Condominium shall prevail.

BY ORDER OF BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC.

, President

OFF. REC. 14165M1485

BANYAN GARDENS, A CONDOMINIUM
ACCEPTANCE, WAIVER AND WARRANTY

RE: CONDOMINIUM UNIT _____, BANYAN GARDENS, A CONDOMINIUM

The undersigned Purchaser, having acquired title to the above referred to Unit, does hereby acknowledge as follows:

1. That the Seller has performed its obligations under the Agreement for Purchase and Sale entered into between the Purchaser and Seller and dated the ____ day of _____, 19__.

2. That Purchaser has been advised that the Condominium documents have been recorded in the Public Records of Dade County, Florida and Purchaser has had an opportunity to examine and read said documents, as recorded, consisting of the Declaration of Condominium, Articles of Incorporation and ByLaws of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. and various other Exhibits, all set forth in the Prospectus for this Condominium and does hereby ratify and confirm all of the terms and provisions of said documents, waiving all objections to the circumstance that the initial Officers and Directors of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. are comprised of persons identified with, selected by or controlled by the Seller, APD, INC. The undersigned further ratifies and approves actions taken by said persons on behalf of said Condominium Owners Association.

3. That the said Condominium Unit and the Condominium Building in which said Unit is contained has been examined by the Purchaser and that he has accepted the sale subject only to such warranties imposed by Florida Statute Chapter 718 (The Florida Condominium Act) which are LIMITED WARRANTIES. Purchaser acknowledges and agrees that there are no warranties or guaranties of any nature whatsoever, explicit or implied, given by Developer with respect to the subject Unit or the Condominium Property or the Condominium Owners Association Property and the improvements thereto, other than the LIMITED WARRANTIES imposed by the Florida Condominium Act and nothing herein contained shall be construed as the imposition of any other warranties or the granting by Developer of any other warranties. Any items in the Condominium Unit requiring adjustment, repair or touch-up, as of the date of closing will be attended to by the Seller within a reasonable time, provided written notice of the existence of such required repairs, adjustments or touch-up is delivered to Seller within 15 days from the date of closing. The undersigned shall be deemed to have waived all right to have any such item attended to if the same has not been reported in writing within the said 15 days from the date of closing. The undersigned understands that the Seller reserves the right to dispute responsibility or the need for any reported repair, adjustment or touchup items.

4. The parties hereto have relied upon the provisions of this Acceptance, Waiver and Warranty in proceeding to close upon the above referred to Condominium Unit.

Signed this ____ day of _____, 19__.

SELLER:
APD, INC.,
a Florida corporation

_____, Authorized Agent

PURCHASER:

EXHIBIT R

OFF. REC. 14165761486

AGREEMENT FOR PURCHASE AND SALE OF CONDOMINIUM UNIT
IN
BANYAN GARDENS, A CONDOMINIUM

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A PURCHASER OR LESSEE. ANY PAYMENT IN EXCESS OF 10% OF THE PURCHASE PRICE MADE TO THE DEVELOPER PRIOR TO CLOSING, PURSUANT TO THIS AGREEMENT, MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

THIS AGREEMENT, made this _____ day of _____, 19____, by and between APD, INC., a Florida corporation, whose address is 3001 Ponce de Leon Blvd., Coral Gables, Florida 33134 (hereinafter referred to as "SELLER") and _____ whose address is _____ (hereinafter referred to as "Purchaser").

W I T N E S S E T H:

WHEREAS, Seller is the Developer of BANYAN GARDENS, A CONDOMINIUM, which is fully described in the Prospectus relative to it (a copy of such Prospectus has, contemporaneously with the execution of this Contract, been delivered to and received by Purchaser); and

WHEREAS, Purchaser desires to purchase Unit _____ of BANYAN GARDENS, A CONDOMINIUM and Seller is agreeable to such purchase; and

WHEREAS, the parties wish to define their respective rights and obligations relative to the purchase.

NOW THEREFORE, for a valuable consideration, receipt and sufficiency of which is hereby acknowledged by each of the parties, it is agreed as follows:

1. PROPERTY: The Seller shall sell and the Purchaser shall purchase the following described real property in accordance with the terms and conditions of this Agreement:

Unit _____ of BANYAN GARDENS, A CONDOMINIUM, according to the Declaration of Condominium recorded in Official Records Book _____, Page _____, of the Public Records of Dade County, Florida (in the event the Declaration shall not have been recorded as of the date of the execution of this Agreement, the Unit Number designation set forth herein shall constitute an adequate description of the subject Unit).

2. PURCHASE PRICE AND METHOD OF PAYMENT: The purchase price for the property shall be the sum of _____ DOLLARS (\$ _____) which shall be payable as follows:

- A. Deposit (received) \$ _____
- B. Additional deposit due by _____ \$ _____
- C. Balance of purchase price, excluding costs payable at closing \$ _____
- Total purchase price \$ _____

EXHIBIT S

OFF. REC.

1416501487

THE PURCHASE PRICE HEREIN REFLECTED DOES NOT INCLUDE PURCHASER'S CONTRIBUTIONS TO THE CONDOMINIUM OWNERS ASSOCIATION'S WORKING CAPITAL, PURCHASER'S MORTGAGE EXPENSES, IF ANY, PRORATION AND OTHER EXPENSES OF CLOSING.

3. **INCOMPLETE CONSTRUCTION:** If the Purchaser's Unit has not been completed as of the date of execution of this Agreement, it is understood that the Seller will construct and equip the Unit, and other improvements comprising the Condominium, substantially in accordance with the plans and specifications and amendments thereto, if any, available for inspection by the Purchaser at the sales office of the Seller on the Condominium Property or at the Seller's office address set forth at the beginning of this Agreement.

4. **COMPLETION AND CLOSING:** Purchaser fully understands and is aware that Seller anticipates that the building containing the subject Unit will be completed about June, 1989, but cannot provide a fixed date for occupancy by reason of factors influencing the rate of completion, such as, but not limited to acts of God, strikes, war, availability of material, order of court of competent jurisdiction and the like. Accordingly, the transaction shall be closed at such time as a Certificate of Occupancy shall have been issued by the appropriate government agency having jurisdiction and authority to issue same upon notification to Purchaser by Seller, at a time, date and place as specified in such notice, which date shall be not less than 10 days from the date of such notice. In all events, Seller guarantees Purchaser completion of the Unit within two years from the date hereof. If Purchaser requests a later closing date and Seller agrees thereto, all prorations shall be as of the date originally set for closing and Purchaser shall pay the Seller an amount computed on the basis of 12% per annum on the purchase price from the date originally set for closing to the date of actual closing to compensate Seller for its carrying costs for the additional period of time and in consideration for the extension of closing; provided however, nothing herein shall be construed as requiring the Seller to consent to such extension of the closing or to close on a later date than that initially set by the Seller for closing.

5. **DEPOSITS HELD IN ESCROW:** All deposits toward the purchase price paid by Purchaser under this Agreement, shall be delivered to and held in escrow pursuant to Florida Statute Chapter 718 by Mishan, Sloto, Hoffman & Greenberg, P.A. at 2350 Southeast Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131 (ESCROW AGENT), who shall give Purchaser a receipt for the deposit, upon request, and the deposit shall be disbursed in accordance with this Agreement. The Escrow Agent is empowered to invest the escrowed funds in securities of the United States or any of its agencies or in savings or time deposits in institutions insured by an agent of the United States. Disbursement from escrow shall be as follows:

A. ANY PAYMENT MADE TO DEVELOPER UNDER THIS CONTRACT IN EXCESS OF 10% OF THE PURCHASE PRICE, TOGETHER WITH ACCRUED INTEREST, SHALL BE DISBURSED BY THE ESCROW AGENT TO DEVELOPER UPON COMMENCEMENT OF CONSTRUCTION OF IMPROVEMENTS, SUCH SUMS TO BE USED FOR CONSTRUCTION PURPOSES.

B. Provided that the Escrow Agent has not received from Purchaser a written notice of dispute between the Purchaser and Seller, funds constituting the first 10% of the purchase price held in escrow by the Escrow Agent and any accrued interest thereon shall be disbursed to Seller at the closing of the transaction. If Escrow Agent has received written notice from Purchaser of a dispute between Purchaser and Seller, Escrow Agent shall not release the escrowed funds to the Seller or Purchaser until the dispute has been resolved.

C. Notwithstanding the provisions of Sub-Paragraph A above, all escrowed funds together with interest earned thereon shall be released to Seller if Purchaser defaults in the performance of this Agreement or, shall be released to Purchaser within 45 days from the date Purchaser properly terminated this Agreement pursuant to its terms or pursuant to Florida Statute Chapter 718, as the case may be.

6. **CONVEYANCE:** Seller shall convey the Unit by Special Warranty Deed and in connection with such conveyance, Purchaser shall, at closing, execute all instruments required to complete the closing, including the acceptance of the Deed, the Acceptance, Waiver and Warranty and all documents required to be signed in connection with mortgage financing, if any.

7. **EXPENSES AND PRORATIONS:** Seller shall pay the cost of preparation and recording of the Special Warranty Deed and shall pay for the documentary stamps and surtax relative to it and the recording of the Special Warranty Deed. Seller shall provide an owner's policy of title insurance as hereinafter described, at Seller's expense. Purchaser shall pay Seller a closing fee equal to 1% of the purchase price and shall further pay for all costs and closing costs, if any incurred, related to financing procured by Purchaser for the purchase of the Unit, including, if such be the case, reimbursement to Seller for loan costs incurred by Seller in obtaining any existing mortgage to be assumed by the Purchaser at closing.

8. **MORTGAGE CONTINGENCY:** If any portion of the purchase price of the Unit is to be paid from proceeds of a mortgage loan, this Agreement is conditioned upon Purchaser qualifying and being approved for a first mortgage loan by a lending institution ("Lender") designated or approved by Seller. Purchaser shall make prompt application, furnish bona fide current financial information and execute all documents required for such mortgage loan within ten (10) days of the date of this Agreement. In the event Purchaser fails to make prompt application and fails to execute all documents required for such mortgage loan, it shall be considered a default under the terms of this Agreement. The rate of interest, term of years and other provisions and payments required under said mortgage loan, such as for taxes, insurance, etc. shall be such as the Lender, at the time of commitment, is receiving and granting on similar loans in the community in which the property is located. All costs incurred and prepayments required in connection with such mortgage loan shall be the sole obligation of the Purchaser. If Lender does not approve Purchaser's application for the mortgage loan (upon proper, diligent and timely filing) and Seller does not elect to make said mortgage loan or to provide alternate comparable financing, Seller shall direct the Escrow Agent to return to Purchaser all deposits made hereunder and the parties hereto shall be released and relieved of all obligations hereunder, provided however, once a commitment has been obtained from an institutional lender or provided by Seller, Purchaser shall have no right to a refund of his deposit hereunder if the commitment is subsequently cancelled or no closing is held, as herein contemplated, due to no condition, fault or negligence attributable to Seller. Time is of the essence in this Agreement.

9. **TITLE INSURANCE:** Seller shall deliver to Purchaser, before closing, an owner's binder of title insurance issued by a reputable title insurance company, agreeing to insure title to the Condominium Unit, subject only to standard printed exceptions, those items mentioned in the Contract and any item that may be cured by an application of the purchase price. The binder shall be conclusive of compliance by the Seller relative to the title requirements of this Contract. If Purchaser intends to complete this transaction with the assistance of a federally related mortgage loan, as defined in the Real Estate Procedures Act of 1974 as amended, Purchaser shall have the right to procure the binder of title insurance by

such time and the title insurance policy from any title agent or title insurance company of Purchaser's choosing instead of having it delivered by Seller as provided above. In the event Purchaser shall so elect to have title insurance provided by other than the Seller, Seller shall not be obligated to pay any premium for such title insurance in excess of that which Seller would otherwise have paid for delivery of such title insurance to Purchaser. In the event any title binder provided hereunder shall disclose any defects of title, Seller shall have 60 days from the date of notice thereof to cure or remove said defects. In the event Purchaser shall elect to provide its own title insurance, then Seller shall have 60 days from receipt of a copy of Purchaser's title binder within which to cure said defects, if any. If after the expiration of said 60 day period Seller is unable to cure or remove any such defects of title, Purchaser shall have the option to cancel this Contract and receive a return of all money paid hereunder or to proceed to a closing with no abatement of the purchase price, accepting title in its then condition. These shall be the exclusive rights and remedies of the Purchaser. In the event of any such title defects, Seller agrees to use due diligence in attempting to cure same.

10. INSULATION SPECIFICATION: Insulation will only be installed in the above described Condominium Unit as follows, to-wit:

A. Exterior walls of the Unit shall be insulated with cellulose insulation to a thickness of 3/4" (inch) which according to the manufacturer of the insulation, will result in an R value of R-19; and

B. The roof/ceiling of the Condominium Unit will be insulated with cellulose insulation to a thickness of 6' 1/2" inches which thickness, according to the manufacturer of the insulation, will result in an R value of R-19.

11. ASSESSMENTS AND WORKING CAPITAL CONTRIBUTION: This Agreement involves the sale of a fee simple title to the subject Unit, together with an undivided interest in the Common Elements appurtenant thereto (it being acknowledged that Purchaser Unit's share of Common Elements and the particulars of Purchaser's interest in the same are to be determined solely by reference to the Declaration of Condominium and the Exhibits attached thereto) and the Purchaser will be responsible for assessments made by the Association governing the affairs of the Condominium for common expenses such as but not limited to management and administration, premiums for casualty liability and workmen's compensation insurance, maintenance and repairs of the Common Elements and obligations incurred by the said Association with respect to recreational facilities. Purchaser agrees that upon execution of this Agreement, a Contract exists regarding the purchase of the subject Unit and for the assumption by the Purchaser of his share of the Association's assessments and therefore PURCHASER ACKNOWLEDGES THAT HIS HOMESTEAD RIGHTS ARE SUBORDINATE TO THESE CONTRACTUAL LIEN RIGHTS.

At the time of closing, Purchaser shall deposit with the Association the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00) which may be used by the Association for any purpose, including but not limited to the payment of starting expenses and maintenance and capital expenses as well as the funding of deficits prior to the commencement of Seller's obligation to fund such deficits in accordance with the provision of the Maintenance Agreement, if any, and the reimbursement of the Seller for all prepaid premiums, rentals and other consideration paid by the Seller to such insurers, contractors and utility companies, which shall be prorated as of the date of closing for each Unit, as the Seller shall deem appropriate, except that utility deposits will be reimbursed to Seller, in full, without proration therefor.

12. INITIAL OPERATION OF ASSOCIATION: Purchaser acknowledges that officers, employees, agents and/or directors of the Seller will be acting as initial Officers and Directors of BANYAN GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. and of necessity, will be acting on behalf of the Association in dealings and transactions with the Seller and other parties. Purchaser expressly waives all objections to any transactions or dealings as disclosed in the Prospectus for this Condominium and does hereby ratify same. Purchaser understands that Seller may have advanced certain initial expenses which are the obligation of the Association (for example, insurance premiums, utility charges, permanent license fees, prepaid charges for elevator and other service contracts and other prepayments). These expenses shall be apportioned between the Seller and the Association on a prorata per Unit basis at the time of closing, provided however, that Seller shall be reimbursed in full, without apportionment, on a per Unit basis, as each Unit closes, for utility deposits advanced, if any. Purchaser acknowledges that Seller may withhold from the working capital contribution made at time of closing, the above described Unit's share of these expenses.

13. PRORATION: Taxes, monthly maintenance payments and other expenses shall be adjusted and prorated as of midnight of the date prior to closing.

14. LIMITED WARRANTIES: PURCHASER ACKNOWLEDGES AND AGREES THAT THERE ARE NO WARRANTIES OR GUARANTEES OF ANY KIND OR NATURE WHATSOEVER, EXPLICIT OR IMPLIED, GIVEN BY DEVELOPER WITH RESPECT TO THE SUBJECT UNIT OR ANY OF THE CONDOMINIUM PROPERTY AND IMPROVEMENTS THERETO. THE ONLY WARRANTIES GIVEN BY DEVELOPER ARE THOSE IMPOSED BY FLORIDA STATUTE CHAPTER 718 (THE FLORIDA CONDOMINIUM ACT) WHICH ARE LIMITED WARRANTIES. TO THE EXTENT LAWFUL, ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR USE, MERCHANTABILITY AND HABITABILITY AND ALL WARRANTIES IMPOSED BY STATUTE (EXCEPTING ONLY THOSE IMPOSED BY THE FLORIDA CONDOMINIUM ACT, FLORIDA STATUTE CHAPTER 718, TO THE EXTENT THEY CANNOT BE DISCLAIMED) ARE SPECIFICALLY AND EXPRESSLY HEREBY DISCLAIMED. This Paragraph shall not be construed as the imposition of any other warranties or the granting by Developer of any other warranties.

15. SELLER'S RIGHTS TO CHANGES: The Seller reserves the right to make architectural, structural or design modifications or changes in the Unit and/or improvements constituting the Common Elements and recreational facilities as Seller deems necessary or desirable or in the material, appliances and equipment contained therein and the Purchaser agrees to close title, notwithstanding any such modifications, changes or substitutions, provided that no such modifications, changes or substitutions shall materially alter the dimensions, size or value thereof, and any substitution of material, equipment or appliances shall be of equivalent or better quality and no such changes, modifications or substitutions shall result in the purchase price of the subject Unit being increased.

16. STATUTORY CANCELLATION: THIS AGREEMENT IS VOIDABLE BY PURCHASER BY DELIVERING WRITTEN NOTICE OF THE PURCHASER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE PURCHASER AND RECEIPT BY PURCHASER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER UNDER FLORIDA STATUTES SECTION 718.503. THIS AGREEMENT IS ALSO VOIDABLE BY PURCHASER BY DELIVERING WRITTEN NOTICE OF THE PURCHASER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE PURCHASER. ANY PURPORTED WAIVER BY THE PURCHASER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. PURCHASER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER PURCHASER HAS RECEIVED ALL OF THE ITEMS REQUIRED BY FLORIDA STATUTE SECTION 718.503. PURCHASER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

17. **PURCHASER'S DEFAULT:** Should Purchaser fail to make any of the payments due hereunder, as hereinabove set forth, or fail or refuse to execute the instruments required to close this transaction (including failure to promptly and diligently execute and file all mortgage loan application documents and all mortgage loan and real estate closing documents and to comply with the mortgage lender, including providing any and all information requested) or refuse to pay any costs or the sums required by this Agreement or otherwise default hereunder and shall fail to correct such default within two (2) days after Seller has given Purchaser a written notice of the existence of such default, then Seller may declare this Agreement terminated and retain all monies paid by Purchaser as liquidated and agreed upon damages which Seller shall have sustained and suffered as a result of the Purchaser's default and thereupon the parties hereto will be released and relieved from all obligations hereunder. The provisions herein contained for liquidated and agreed upon damages are bona fide provisions for such and are not a penalty, the parties understanding that by reason of the withdrawal of the Unit from sale to the general public at a time when other parties would be interested in purchasing the Unit, that Seller will have sustained damages in the event of Purchaser's default, which damages will be substantial but will not be capable of determination with mathematical precision and therefore, as aforesaid, the provision for liquidated and agreed upon damages has been incorporated into this Agreement as a provision beneficial to both parties.

18. **SELLER'S DEFAULT:** The parties hereto understand and agree that in the event of Seller's default or breach of any of the terms and provisions hereof, other than as a result of Seller's willful non-performance of its obligations hereunder, Seller's sole liability and obligation to Purchaser shall be the return to Purchaser of any and all deposits made hereunder, together with interest earned thereon, if any (provided however that nothing herein contained shall require Seller or Seller's Escrow Agent to place any deposits made hereunder in an interest bearing account). In the event of Seller's breach of its obligations hereunder, other than through its willful non-performance, then, upon payment of said deposit, together with interest thereon, if any, to Purchaser, Seller will no longer have any liability to Purchaser and this Agreement will automatically be cancelled and rendered null and void.

In the event of Seller's willful non-performance of any of its obligations hereunder, Purchaser shall be entitled to recover from Seller any and all damages or other relief permitted by the laws of the State of Florida, provided however, that in no event shall Purchaser have the right to compel Seller's specific performance of its obligations hereunder.

19. **ATTORNEYS FEES:** In the event legal proceedings shall be instituted by any party to enforce or protect his rights under this Agreement, then the prevailing party in such litigation shall be entitled to the recovery of his court costs, together with reasonable attorneys fees at all trial and appellate levels.

20. **DISCHARGE OF LIEN:** Any mortgages and liens now or hereafter encumbering the real estate or Unit will be discharged or released at or prior to closing, but until that discharge or release, Purchaser acknowledges and agrees that his rights under this Agreement are subordinate to the lien of any construction loan mortgage that now or hereafter shall encumber the property or Unit prior to closing.

21. **NO RECORDING:** Neither this Agreement nor any memorandum hereof shall be recorded in the Public Records and execution hereof shall not create any lien or lien right in favor of the Purchaser, the Purchaser hereby expressly waiving and relinquishing any such lien or lien rights. Any recording of this Agreement or any memorandum hereof, by the Purchaser, shall be considered a default

under this Agreement.

22. **ASSIGNABILITY:** Purchaser shall not have the right to assign this Contract except with the prior written consent of the Seller.

23. **CO-PURCHASERS:** If two or more persons are named as Purchasers herein, any one of them is authorized to act as agent for, with the right to bind, all other Purchasers in all matters and of every kind and nature with respect to this Agreement. If Purchaser is married and Purchaser's spouse is not named as a Purchaser herein, Purchaser shall be responsible and liable for such spouse executing the mortgage and other closing documents as required by Lender and Seller. Failure of said spouse to do so shall constitute a default hereunder by Purchaser.

24. **PUNCH LIST:** Purchaser shall be given a reasonable opportunity to examine the subject Unit prior to closing and at that time, will sign an inspection statement (PUNCH LIST) listing any defects in workmanship or materials which are discovered. Within the perimeters of the Acceptance Waiver and Warranty, the Seller will be responsible to repair defects in workmanship or materials (keeping in mind the construction standards prevalent in Dade County, Florida for similar property), at Seller's cost, within a reasonable period of time after closing, but Seller's obligation to make said repairs will not be grounds for deferring the closing nor for imposing any conditions on closing. No escrows or holdbacks of closing funds will be permitted.

25. **OFFER:** This Agreement shall constitute an irrevocable offer by Purchaser to Seller to purchase the Unit referred to above on the terms and conditions contained herein. This offer is to be accepted, if at all, by Seller affixing its signature below and delivering a copy of this executed Agreement to the Purchaser, either in person or by depositing same in the United States mail, addressed to Purchaser, postage prepaid, within seven (7) days of the date of execution hereof by the Purchaser.

26. **ENTIRE AGREEMENT:** It is agreed by the parties hereto that all prior understandings and agreements with respect to the subject matter hereof are superseded by and are merged into this Agreement. No representations, claims, statements, inducements, advertising brochures, promotional activities, maps or otherwise made by Seller or Seller's agents, employees or representatives shall, in any way, be binding on Seller and same shall be of no force and effect unless expressly set forth in this Agreement. The provisions of this Paragraph shall survive the closing. Upon closing, acceptance of a Special Warranty Deed by Purchaser shall be deemed acknowledgement of full performance and discharge of every agreement, obligation and representation made by the Seller in accordance with the terms and provisions hereof and no agreement or representation shall survive the delivery and acceptance of said deed, except as may be set forth in writing at or prior to the closing.

27. **NOTICES:** Any notices permitted or required under this Agreement shall be deemed delivered when they are deposited in the United States mail, postage prepaid, registered or certified return receipt requested, addressed to the appropriate party at the address first shown above.

28. **PURCHASER'S ACCESS TO UNIT:** Purchaser shall not have access or entry to the Unit nor shall Purchaser store any of his possessions in or about the Unit or the Property prior to the closing of this transaction. Purchaser shall not interfere with workmen during working hours nor trespass upon the job site and all matters pertaining to the construction of the Unit shall be presented by the Purchaser directly to the Seller's sales representative at the Seller's sales office on the Condominium Property or at the address of Seller set forth at the beginning of this Agreement.

29. **PURCHASER'S RECEIPT OF DOCUMENTS:** Purchaser acknowledges receipt of the Prospectus and Exhibits attached thereto and made a part thereof, as required by Chapter 718 of the Florida Statutes, which include the form Special Warranty Deed, Affidavit of No-Lien, Acceptance, Waiver and Warranty and other form documents to be used at time of closing, as well as the floor plans of the Unit being purchased by the Purchaser and all other documents required to be furnished by Sections 718.503 and 718.504, Florida Statutes, all of which instruments, documents and floor plans are hereby approved and accepted by the Purchaser. Purchaser agrees to be bound by each and every term and condition of said instruments and documents and to purchase the Unit pursuant to this Agreement and subject to all of said instruments and documents.
30. **SPECIFICATION/SELECTION SHEET:** An Addendum or Specification Sheet (if any) attached hereto setting forth items included or excluded from the Condominium Unit shall constitute a part of this Agreement and is incorporated herein by reference. Any extras shall be ordered by separate written agreement and shall be paid for when ordered. It is understood that, depending upon the timing of entering into this Agreement and the stage of construction of the Unit, Purchaser may be entitled to make selections of various colors and option items, provided the Unit does not pass a certain state of completion as may be determined in the sole discretion of Seller. It is agreed that Purchaser shall make such selections, if permitted, within seven (7) days of execution of this Agreement. In the event the color or option selected by Purchaser has been discontinued or for any other reason is not available, it is agreed that Purchaser shall make an alternative selection based upon available colors or other options within seven (7) days of request for same by Seller. In the event Purchaser does not make such selection within the time provided therefor, Seller may, at its sole option, make such selection and Purchaser shall be bound thereby.
31. **CONSTRUCTION LOAN:** All terms and provisions of this Agreement are and shall be subject and subordinate to the lien of any construction loan mortgage previously or subsequently made and any advances previously or subsequently made pursuant thereto and any payments or expenses already made or incurred or subsequently made or incurred pursuant to the terms of such construction loan mortgage, or incidental to it or to protect its security as to the full extent of it without the execution of any further instrument by the Purchaser in order to effectuate this subordination. This subordination shall apply whether the advances are voluntary or involuntary and whether they are made in accordance with the construction loan schedule of payments or accelerated by virtue of the Lender's right to make advances before they become due in accordance with the schedule of payments.
32. **RIGHT OF AMENDMENT:** Seller reserves the right to change or amend the Condominium Documents of BANYAN GARDENS, A CONDOMINIUM. If Seller elects to exercise that right, Seller shall furnish to Purchaser a copy of the revised proposed documents. If any amendment materially alters or modifies the documentation in a manner that is adverse to Purchaser, Purchaser shall have 15 days from the receipt thereof within which to approve the proposed amended documents. If Purchaser does not approve the modified documents that materially alter or modify the documentation in a manner adverse to Purchaser, Purchaser shall have the immediate right of cancellation, upon written notice furnished to Seller within the 15 day period and a right to a return of any and all monies deposited or paid hereunder to Seller or Escrow Agent. Failure to so notify the Seller of cancellation within the time herein provided shall be deemed a waiver of that right. That right shall be Purchaser's exclusive remedy relative to any such amendments.

33. **BROKER:** Purchaser represents that Purchaser has not dealt with a broker relative to this transaction and shall save and hold Seller harmless relative to any brokerage commission claimed by virtue of breach of this representation.

34. **INDUCEMENT:** Purchaser acknowledges that the primary inducement to purchase under this Agreement is the Condominium Unit to be purchased and not the Common Elements or facilities.

35. **PRONOUNS:** All pronouns and variations thereof shall be construed so as to refer to the masculine, feminine, neuter, singular or plural form thereof, as the identity of the person or persons and the context of the situation may require.

36. **GOVERNING LAW:** Purchaser certifies that Purchaser is executing this Purchase Contract while in the State of Florida and of Purchaser's own volition and that this Agreement was not solicited either by telephone or mail in another state. The obligations under this Contract shall be performed in the State of Florida and governed by and construed in accordance with the laws of the State of Florida.

NOTE: BEFORE PURCHASER EXECUTES THIS AGREEMENT, PURCHASER SHOULD READ IT CAREFULLY. PURCHASER IS ADVISED THAT THIS AGREEMENT CONTAINS REFERENCES TO CERTAIN CLOSING COSTS, STRICT LIMITATIONS UPON PURCHASER'S RIGHTS UPON DEVELOPER'S DEFAULT, DISCLAIMERS OF WARRANTY LIABILITY, AND THE RIGHT TO MAKE CHANGES IN THE OFFER MADE TO PURCHASER. PURCHASER IS FURTHER ADVISED THAT THE CONDOMINIUM DOCUMENTS CONTAIN OTHER IMPORTANT INFORMATION, INCLUDING BUT NOT LIMITED TO INFORMATION RESPECTING THE SCHEDULE AND OTHER DETAILS FOR THE TURNOVER OF CONTROL OF THE CONDOMINIUM OWNERS ASSOCIATION TO UNIT OWNERS OTHER THAN THE DEVELOPER AND THE RIGHT TO CANCEL CERTAIN CONTRACTS ENTERED INTO BY THE CONDOMINIUM OWNERS ASSOCIATION BEFORE CONTROL IS TRANSFERRED TO UNIT OWNERS OTHER THAN THE DEVELOPER.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

SELLER:

APD, INC.,
a Florida corporation

By: _____

ANY PAYMENT IN EXCESS OF 10% OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING, PURSUANT TO THIS CONTRACT, MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

PURCHASER:

