

**DECLARATION OF CONDOMINIUM  
FOR  
KENDALLWOOD PARK REPLAT BLOCK 2, LOTS 4 & 5 CONDOMINIUM  
ASSOCIATION, INC.**

**ARTICLE I**

**INTRODUCTION AND SUBMISSION STATEMENT**

Commercial Development Partners, Ltd., a Florida limited partnership organized under the laws of the State of Florida on September 16, 2004 (hereafter called the "Developer") is the owner and holder of the fee interest in that certain parcel of land situated in Miami-Dade County, Florida, more particularly described on Exhibit "A" annexed hereto (the "Land").

Developer hereby submits its fee interest in the land, fee title to all improvements erected or to be erected upon the Land, all easements, rights and appurtenances belonging thereto, to condominium ownership pursuant to the Condominium Act of the State of Florida (Chapter 718 of the Florida Statutes), and does hereby establish a condominium to be known as the KENDALLWOOD PARK REPLAT BLOCK 2, LOTS 4 & 5 CONDOMINIUM ASSOCIATION, INC.

**ARTICLE II**

**DEFINITIONS OF TERMS**

Except as otherwise provided herein, the definitions of terms contained in Chapter 718 of the Florida Statutes, as it exists on the date thereof, are adopted herein and made a part hereof. Unless the context otherwise requires, the terms used herein and in all Exhibits annexed hereto and in all amendments hereof, shall have the following meanings:

A. **Association.** The KENDALLWOOD PARK REPLAT BLOCK 2, LOTS 4 & 5 CONDOMINIUM ASSOCIATION, INC. a Florida Corporation not for profit.

B. **Condominium Property.** All of the property submitted to condominium ownership pursuant to Article I whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the KENDALLWOOD PARK REPLAT BLOCK 2, LOTS 4 & 5 CONDOMINIUM ASSOCIATION, INC.

C. **Common Elements.** All of the Condominium Property other than the units (as hereinafter described), Limited Common Elements, easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to Units and the common elements, an easement of support in every portion of a Unit which contributes to the support of a building, and the property and installations required for the furnishing of utilities and other services to more than one Unit or to the common elements.

D. **Limited Common Elements.** Those portions of the Common Elements reserved for the exclusive use of a certain Unit or Units to the exclusion of other Units. When the term "Common Elements" is used in this Declaration, such term shall include the Limited Common Elements unless the context otherwise specifically requires.

E. **Condominium Unit or Units.** A Unit as defined in the Condominium Act, referring herein to each of the separate and identified Units delineated on Exhibits B-1 and B-2 annexed to this Declaration, and, when the context permits, the Condominium Parcel (as defined in the said Condominium Act) comprised of such Unit, including its undivided interest in the Common Elements appurtenant thereto, which interest is set forth as a percentage or fraction on Exhibit "C", annexed to this Declaration, and the exclusive right to use such portion of the common Elements and Limited Common Elements as may be provided by this Declaration. The physical boundaries of Units are more particularly described in Article III hereof.

F. **Owner or Unit Owner.** An Owner of an interest in one or more Units to the extent of such interest.

G. **Board of Administration or Board of Directors or Board.** The Board of Directors of the Association, as it may from time to time be composed.

H. **Common Expenses.** All expenses incurred from the upkeep, maintenance, repair, replacement, a management and operation of the Common Elements, including any reserve for maintenance and repairs, reinstatement, rebuilding and replacement for the Common Elements; all charges for taxes on or relating to the Common Elements (except real property taxes and other such taxes assessed separately on Condominium Parcels or on the personal property of any other interest of the Unit Owner); the cost of insurance of or on the Common Elements (including fire, flood, windstorm and other casualty and liability insurance required to be maintained by the Association under this Declaration), and the cost of yard, janitorial and similar services, including irrigation systems and signage, lighting and parking lot maintenance for the Common Elements and those parts of the Condominium Property designated by the Association; wages; accounting and legal fees, management fees, any valid charge against or expense of the Condominium as a whole; and any other expense declared to be a Common Expense in this Declaration or -in the Exhibits annexed thereto. Without limiting the generality of the foregoing, Common Expenses shall include all. expenses of alterations or additions in or to the Common Elements which may be required from time to time, to cause such Common Elements as built and existing to be in conformity with the Common Elements described in the Declaration as amended from time to time.

I. **Common Surplus.** The amount by which all receipts of the Association from the Condominium and the unit owners, including, but not limited to assessments, rents, profits and revenues on account of the Common Elements, shall exceed the amount of the Condominium budget or funds for payment of common element expenses.

J. **By-laws.** The by-laws of the association as they exist from time to time. The initial by-laws to be adopted by the Association are annexed hereto as Exhibit "D".

K. **Institutional Lender.** A bank, savings and loan association, insurance company, pension fund, an agency of the United States government, a real estate investment trust, or a licensed mortgage lender generally recognized in the community as an institutional lender, including the servicing agent for any of the foregoing.

### ARTICLE III

#### **GENERAL DESCRIPTION OF UNITS AND LIMITED COMMON LEMENTS**

A. **Identification, Location, and Dimension of the Units.** The Condominium includes sixteen (16) units. All units are identified by a number and alphabetical designation, and are delineated on the graphic description of the improvements which is a part of Exhibits B-1 and B-2 to this Declaration. No unit bears the same designation as any other unit and the designation of the unit is also the designation of the Condominium Parcel. Exhibits B-1 and B-2 includes a site plan, building plans, floor plans, which, together with the Declaration, are in sufficient detail to identify the Common Elements and each unit and their relative locations and approximate dimensions. The construction of the condominium is not substantially completed, but upon substantial completion of construction, the developer shall amend the declaration to include the surveyor's certificate complying with the requirements of the Condominium Act.

B. **Boundaries of Units.** The horizontal boundaries of each Unit shall be the finished surface of the top of the concrete floor and the unfinished surface of the top of the concrete steel ceiling, except that where there is a stairway or other opening in the floor or ceiling the boundary shall be the surface resulting from extensions of the nearest adjacent unfinished surfaces of the top of the concrete floor or the bottom of the concrete ceiling, as the case may be. The vertical boundaries of each unit shall be the middle of any divider wall as shown on the graphic description of the improvements, which are a part of Exhibits B-1 and B-2 to this declaration. Any entry door, warehouse overhead door, or window in a non-divider wall shall also be a part of the unit notwithstanding that it may lay outside the vertical boundary described above arid below. Where the unit consists in whole or in part of unenclosed space, the vertical boundary defining such space is the boundary as shown on the graphic description of the improvements which are a part of Exhibits B-1 and B-2 to this declaration, same being a plane

extending vertically from the unfinished surface of the top of the concrete floor to the unfinished surface of the bottom of the concrete or steel ceiling.

C. **Divider Walls.** The walls separating a unit of one owner from a unit of an adjoining owner shall be referred to as a "divider wall" and the location of the plane of its center line shall be coincident with the vertical plane which serves as the common boundary between the units of unit owners whose units adjoin one another. A divider wall shall not be removed by a unit owner, except by the developer.

D. **Easements to the Association.** The association is hereby granted easements over, upon and under the condominium property, including specifically into, upon and through the individual condominium units, and within such units, into, upon and through the space contained between the top of the finished ceiling within such units and the bottom of the concrete ceiling slab forming the upper boundary of such units, for the maintenance of utility and other services, for the maintenance of divider walls as described in Article II and for the exercise of all other rights and the performance of all other duties granted to the Association in this Declaration.

E. **Authority of Developer and Association Concerning Easements.** To the extent that easements over, upon or under the condominium property are necessary so as to provide utility services to the condominium, each unit owner, and his heirs successors and assigns, do hereby designate and appoint the association as his agent and attorney-in-fact, each along with full power in his name, place and stead, to execute instruments creating such easements; provided, however, that such easements shall not unreasonably interfere with the use by unit owners of the condominium property or be detrimental to the structural integrity of the building. Further, the Association shall be authorized to give, convey, transfer, cancel, relocate and otherwise deal with utility and other easements located on or affecting the condominium property.

F. **Altering Unit Boundaries.** The Developer reserves the right to change the interior design and arrangement of all units, and to alter boundaries between units as long as the Developer owns the units so altered. If more than one unit is concerned, the developer shall apportion between the units the undivided interest in the Common Elements appurtenant to every unit concerned. An amendment of this declaration of Condominium reflecting such authorized alteration of the unit(s) by the Developer need be executed and acknowledged only by the Developer, and need not be approved by the Association, Unit Owners, lienor, or mortgagees of Units not concerned therewith.

G. **Limited Common Elements.** Each unit has appurtenant thereto Limited Common Elements designated as "LCE" as shown on the graphic description of the improvements which are a part of Exhibits B-1 and B-2 to this Declaration. The LCE appurtenant to the Unit has the same numerical designation as the unit. Since the LCE consists of unenclosed space, the vertical boundary defining such space is the boundary as shown on the graphic description of the improvements which are a part of Exhibits B-1 and B-2 to this declaration, same being a plane extending vertically from the unfinished surface of the top of the concrete slab to the horizontal plane of the top of the roof located on the concrete slab. The portion of a unit located outside of the unit Limited Common Element appurtenant building extending outward over air conditioning system serving boundary shall also be deemed a to the units it serves.

#### ARTICLE IV.

#### **RESTRICTIONS AND COVENANTS**

A. **Owners and Units Subject to Declaration.** All Unit Owners, mortgagees, tenants, and occupants of Units and their employees and any other person who may use the facilities of the condominium property in any manner shall be subject to the provisions of this Declaration, the Rules and Regulations (as set forth in Exhibit "F" attached hereto and made part hereof by reference thereto) and the by-laws as they may be amended from time to time, including all restrictions, covenants, agreements, easements and declaration of record. The acceptance of a deed of conveyance by a Unit Owner or the entering into occupancy of a Unit by a Unit Owner, tenant or occupant, shall constitute an agreement that the provisions of this Declaration and the by-laws as they may be amended from time to time are accepted and ratified by such Unit Owner, tenant or occupant. The restrictions and burdens imposed by the provisions of this

declaration and the Exhibits annexed hereto are intended to and shall constitute an equitable servitude upon each unit and its appurtenant undivided interests in the Common Elements, binding upon the Developer, its successors and assigns, and any other holder of an interest or estate in a Unit, as though all such provisions and Exhibits were recited and stipulated at length in each deed or conveyance or lease relating to a unit.

B. **Use of Office/Warehouse Space: General.**

1. No Unit Owner, tenant or occupant of a unit shall do, or suffer or permit to be done, anything in any unit which would impair the soundness or safety of the Condominium Property, or which will increase the insurance rate or result in the cancellation of insurance applicable to the Condominium Property, or which would be noxious or offensive or hazardous or an interference with the peaceful possession and proper use of the other units, or which would require any alteration of or addition to any of the Common Elements so as to be in compliance with any applicable law or regulation, or which would otherwise be a violation of law.

2. No Unit Owner, tenant or occupant of a Unit shall, without the written approval and consent of the Association, place or suffer to be placed or maintained any advertising matter within a Unit which shall be visible from the exterior thereof or any sign, awning or canopy, decoration, lettering, or advertising matter or other thing of any kind on any exterior door, wall or window of the Common Elements provided, however, that the Association shall establish reasonable and uniform regulations permitting the placement and maintenance by each Owner of identifying signs and insignia of such size and materials and in such locations as shall be architecturally suitable and appropriate to the design and function of the Condominium Property.

3. No Unit Owner, tenant or occupant of a Unit shall do, or suffer or permit to be done, in its unit any activities of an illegal or unlawful nature.

4. No Unit Owner, tenant or occupant shall repair, alter, replace or move any of the Common Elements which are located within its Unit without the prior written consent of the Association.

5. No Unit Owner, tenant or occupant shall have the right to use or occupy any area not contained within the Unit or the Limited Common Elements nor the right to enter into, upon or through such space, except in an emergency, nor to interfere in any way with any of the pipes, ducts, cables, wires, conduits, utility lines or other lines or other Common Elements contained in or extending through such space.

C. **Parking Easement.** The developer does hereby grant a non-exclusive perpetual easement for parking and ingress and egress to the Unit Owners and their successors and assigns over the asphalt driveway and parking area more particularly described on Exhibits B-1 and B-2, attached hereto, and incorporated by reference herein ("Parking Easement").

The Parking Easement and all of the surface parking improvements thereon shall be maintained by the Association and shall be used for parking and other purposes and normal purposes for which the same are reasonably intended. The Association and Unit Owners shall not be permitted to restrict or inhibit the uses and purposes for which the Parking Easement is intended. The exclusive use of certain parking spaces within the Parking Easement may be assigned by the Association for use by the owners of the units and their employees, agents and invitees. However, once a parking space has been initially assigned, it may not be reassigned without express written consent of the then owner of the unit to which the parking space is assigned.

## ARTICLE V

### **TAXES**

Each Unit Owner shall be obligated to cause the real property taxes for its Unit to be assessed separately by the appropriate governmental authority and to pay all real property taxes so determined directly to the appropriate governmental authority. The foregoing shall apply to all types of taxes and assessments, including special assessments, which now are or may hereafter be assessed separately by law on each Unit and the appurtenant interest in the Common

Elements, or on the personal property or other interest of the Unit Owner. Each Unit Owner shall execute such documents and take such action as may reasonably be specified by the Board to facilitate dealing with the appropriate governmental authorities regarding real property taxes, other taxes and assessments. Each Unit Owner shall be obligated to pay directly to the Association as a Common Expense, a proportionate share of any assessment by the Board for a portion of taxes or assessments which may be assessed against the entire Condominium Property or any part of the Common Elements as a whole and not separately. If, in the opinion of the Board, any taxes or assessments may be a lien upon the entire Condominium Property or a part of the Common Elements, the Board may pay such taxes or assessments and shall assess the same to the Unit Owners in proportion to their share of the Common Expenses of the Condominium. Such assessments by the Board shall be secured by the lien rights of the Association described in and/or created by Article VII of this Declaration.

## ARTICLE VI.

### **SHARE OF COMMON EXPENSES AND COMMON SURPLUS**

Each Unit Owner shall be liable for that proportion of the Common Expenses, and shall own that proportion of the Common surplus, which is set forth, expressed as a percentage or fraction, in Exhibit "C" annexed to this Declaration with respect to its Unit. Such percentages or fractions shall remain regardless of the purchase price, location or square footage comprising a Unit. Notwithstanding the foregoing, however, the Board shall have the right at any time in its discretion to allocate to a Unit Owner assessments for a specific Common Expense based upon such Unit Owner's use of his unit; for example, the Board may determine and allocate to a Unit Owner the proportion of trash disposal cost of the Unit Owner's unit which is allocable fairly to such Unit Owner based upon the Unit Owner's use of such Unit (without affecting his proportion of trash disposal cost with respect to the Common Elements otherwise allocable to such Unit Owner as part of its share of Common Expenses). A copy of the proposed initial budget for the Association is attached hereto as Exhibit "G" and made part hereof by reference thereto.

## ARTICLE VII.

### **ASSESSMENTS FOR COMMON EXPENSES**

A. **Method of Assessment.** For the purposes of determining the assessments for Common Expenses of the Condominium, the Board shall, on behalf of the Unit Owners, determine and assess for each year, the estimated aggregate amount of the Common Expenses for each year. For the purpose of such determination, each year the calendar year, except that the first year's shall begin on the date upon which this Declaration is filed among the Public Records of Miami-Dade County, Florida, and end on the 31st day of December of said year. The Board may, from time to time during each year, make reasonable adjustments in the assessments after the end of each year, the aggregate amount of Common Expenses actually incurred for said year shall be determined by the Board.

B. **Payment of Common Expenses.** The assessments for each year, as determined and allocated to each Unit Owner from time to time in accordance with the percentage or fractional share of the Common Expenses as set forth in Exhibit "C" annexed to this Declaration, shall be payable by the Unit Owner in monthly installments in advance on or before the first day of each month.

Any omission or delay in determining assessments for any year shall not relieve the Unit Owners therefrom; the Unit Owners, pending such determination, shall pay monthly installments of the assessment for Common Expenses in accordance with the determination of such assessments for the preceding year and, within ten (10) days after notice of the assessment for Common Expenses for the current year, shall pay any deficiency.

C. **Liability for Assessments.** The Owner of each Unit shall be personally liable to the Association for the payment of all assessments and charges which may be levied by the Association with respect to such Unit. No Owner of any Unit may exempt himself from liability for any of the Common Elements, or by abandonment of any Unit with respect to which the assessment or charge is levied, or in any other way. The payment of an assessment for Common Expenses shall be in default if such assessment or charge, or any installment thereof, is not paid

to the Association on or before the due date for such payment. If the Association has not received the full amount of any assessment by the end of the tenth (10th) calendar day after the date it is due, the Owner shall pay a late charge to the Association in the amount of Fifty and 00/100 Dollars (\$50.00). When in default, the delinquent assessment or delinquent installment or charge shall bear interest at the highest legal rate per annum until such delinquent assessment or installment or charge and all interest due thereon has been paid in full, and the Owner shall be personally liable for interest on such delinquent assessment or installment or charge as above provided, and for all costs of collecting such assessment or installment or charge and interest thereon, including a reasonable attorney's fee, whether or not suit be brought thereon.

D. **Lien to Secure Payment of Common Expenses.**

1. In the event that an assessment for common Expenses with respect to a unit is due and unpaid, the Assessment shall be a lien (the "Assessment Lien") upon the Unit and the Limited Common Element appurtenant to the Unit (and the appurtenant undivided interests in the Common Elements) to secure the sums due for all assessments now or hereafter levied against the Owner of such Unit, together with any interest due thereon, and all costs and expenses, including a reasonable attorney's fee incurred by the Association in connection with the enforcement of the Association's rights, and, further, to secure advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be paid by the Association in order to preserve and protect its lien; for any such advances made for such purposes, the Association shall be entitled to interest on such advances at the highest legal rate per annum. All persons, firms or corporations which shall acquire, by whatever means, any interest in the ownership of a unit or who may be given or acquire a mortgage, lien or other encumbrances thereon, are hereby placed on notice of the lien rights granted to the Association under the Article VII and shall acquire such interest expressly subject to such lien rights.

2. The Assessment Lien shall be effective from and after the time of recording in the Public Records of Miami-Dade County, Florida, a claim of lien stating the description of the Unit encumbered thereby, the name of the record Owner, the amount due, and the date when due. Such claims of lien shall be signed by an officer or managing agent of the Association and shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, and advances to pay taxes and prior encumbrances and interest thereon. The lien shall continue in effect until all sums secured by said lien shall have been fully paid. Upon full payment of all said sums the lien shall be satisfied of record at the Owner's cost.

3. The Assessment Lien may be foreclosed in the same manner as real estate mortgages, in which event the Association shall be entitled to rental from the Owner of the Unit from the date on which the payment of any assessment or installment becomes delinquent and to the appointment of a receiver for said Unit without notice to the Unit Owner. Such rental shall be equal to the rental charged on comparable space in the Condominium or in Miami-Dade County, Florida.

4. In the event that an Institutional Lender, or its successors or assigns, shall acquire title to a Unit by judicial or statutory foreclosure or by deed in lieu of foreclosure, for the unpaid assessments that became due prior to the Institutional Lender's acquisition of title, the Institutional Lenders' liability for such unpaid assessments is limited to the lesser of:

a. The Unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or

b. One percent of the original mortgage debt.

The provisions of this subsection shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the Institutional Lender. Nothing herein shall release or be construed as releasing the enforcement or collection of amounts from the delinquent Unit Owner by means other than foreclosure.

E. **Statement as to Assessment.** Whenever a Unit is to be leased, sold or mortgaged by its Owner, the Association, upon written of such Unit Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement (upon which he may rely) signed by an officer of the Association or its managing agent, verifying the status of assessment due and payable to the Association with respect to such Unit.

F. **Special Assessments.** All expenses for maintenance, repair or replacement of Common Elements shall be treated as and paid for as a Common Expense of the Condominium unless otherwise specifically provided in this Declaration and Exhibits annexed hereto; however, in the event such maintenance, repair, or replacement is caused by the negligence or misuse of a Unit Owner, his employees, guests or invitees, such Unit Owner shall be responsible therefore, and the Association shall have the right to levy a special assessment against such Unit Owner for such expense.

G. **Action at Law to Collect Assessments.** Institution of a suit at law to attempt to effect collection of payments of delinquent assessments shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure, enforcement of the collection of any sums remaining owing to it, nor shall proceedings by foreclosure to attempt to effect such collection be deemed to be an election by the Association precluding the institution of a suit at law to attempt to effect collection of any sum then remaining owing.

H. **Liability of Grantee for Assessments.** In any voluntary conveyance of Units, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments with respect to such Units made prior to the time of the conveyance, without prejudice to the rights of grantee to recover from grantor the amounts paid by grantee therefore.

I. **Developer's Liability of Assessments.** The Developer shall be excused from the payment of the share of Common Expenses and assessments related to Units the Developer is offering for sale for a period of time beginning with the day on which this Declaration of Condominium for KENDALLWOOD PARK REPLAT BLOCK 2, LOTS 4 & 5 CONDOMINIUM ASSOCIATION, INC., is recorded in the Public Records of Miami-Dade County, Florida, and ending on the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first Unit occurs. However, during the aforementioned time period the Developer must pay the portion of Common Expenses incurred which exceeds the amount assessed against other Unit Owners.

J. **Lien to Secure Payment of Liabilities.** "Liabilities" affecting any unit shall mean all sums due to the Association, and in default under the terms of the Declaration, on account of unpaid assessments for Common Expenses against such Units or the Owners of such Units, together with (a) interest thereon; (b) the reasonable attorney's fees incurred by the Association incident to the collection of such assessments and the enforcement of the Assessment lien against such Unit; (c) rentals with respect to such Unit which may be due to the Association during the period of foreclosure of the Assessment Lien as provided in this Articles and in Section 718.116 of the Condominium Act; and (d) any monies which the Association shall have expended to cure defaults under any mortgage against such Unit having priority over the Assessment Lien.

## ARTICLE VIII.

### **SALE, LEASE OR SUBLEASE OF UNITS**

A. **Transfer of Units.** A Unit Owner desiring to sell, lease, mortgage or otherwise transfer his Unit shall, subject to the provision of this Article VIII, effect such transfer by conveying, leasing or encumbering said Unit, together with its Limited Common Elements and appurtenant interest in the Common Elements, because the title to a Unit includes that Unit's exclusive right to use the Limited Common Element appurtenant thereto and that Unit's undivided interest in the Common Elements.

Such interest is deemed conveyed or encumbered, as the case may be, with the unit to which such interest is appurtenant. Any attempt to separate the title of a Unit from that Unit's exclusive right to use the Limited Common Element appurtenant thereof and that Unit's undivided interest in the Common Elements appurtenant thereto shall be null and void. A



conveyance or encumbrance of a portion of a Unit shall include that Unit's exclusive right to use the Limited Common Element appurtenant in the Common Elements.

B. **Association's Rights of Prior Approval and Prior Refusal.** No Unit Owner shall sell, lease or sublease all or any part of his Unit without affording to the Association the prior right to purchase, lease or sublease the Unit on the same terms and conditions as the Owner of such Unit has received in writing for the purchase, lease or sublease of the Unit in a bona fide offer ("Offer").

C. **Exercise of Right of Prior Refusal.**

1. Within ten (10) days after receiving notice from a Unit Owner of an offer, the Association shall deliver written notice to the Unit Owner presenting the Offer that the Association is ready, willing and able to enter into a lease, sublease or contract for the purchase of the Unit in accordance with and pursuant to all of the terms and conditions of the Offer.

2. In the event the Association has decided to exercise the right to purchase, lease or sublease a Unit for which it has the right of first refusal, the Association must first obtain the approval of a majority of the Unit Owners (as such term is described in Article XIV of the Declaration) in the Condominium. After such approval has been obtained, the acquisition of the Unit may be made from the working capital and operating income of the Association, or, in the event such funds are insufficient, the Board may levy an assessment, as a Common Expense, against all Unit Owners, which assessment shall be enforceable in the same manner as provided in Article VII hereof. In addition, the Association may borrow money to finance the acquisition of such Unit, provided that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit being acquired by the Association, and said Unit's percentage or fractional interest in the Common Elements.

D. **Limitation and Prohibitions.**

1. Notwithstanding anything herein to the contrary, in no event may an Owner consummate a sale, lease or sublease, of his Unit (a) on terms and conditions which do not meet the requirements of the Offer described in Article VIII.B; (b) to any party other than the party designated in the required notice to be given to the Association pursuant to Article VIII.B hereof; (c) for a lower purchase price or rental or on more favorable terms and conditions than contained in the Offer without again giving the Association the right of refusal to purchase, lease or sublease the Unit as provided in this Article; or (d) to a party without giving the required written notice to the Association as provided in paragraph VIII.B hereof.

2. In the event of the occurrence of any of the foregoing, the sale, lease or sublease which is consummated shall be null and void and shall confer no right or title to the party acquiring such interest.

E. **Certificate of Compliance.** A certificate in recordable form, executed and acknowledged by the Secretary of the Association, or by any two officers of the Association, or by the managing agent thereof, stating in substance that the sale, lease or sublease of the subject Unit has been effected in conformity with the provisions of this Article, shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Such certificate may, upon request, be furnished to an Owner who has in fact complied with the provisions of this Article. The Board may from time to time establish a reasonable fee to be paid by such Owner to the Association.

F. **Transaction to Which the Right of Prior Refusal Does Not Apply.** The right of prior refusal granted herein shall not be applicable to the following:

1. The sale, lease or sublease of Units by or to the Developer;
2. Foreclosure or other judicial sale of Condominium Units or a conveyance by the Owner of a Unit to an Institutional Lender in lieu of foreclosure; the right of first refusal herein, however, shall be applicable to any subsequent sale, lease or sublease by an Institutional Lender;



3. A sale, lease or sublease by a Unit Owner to his spouse, children, parents, brothers or sisters, or any one or more of them;

4. The sale, lease or sublease from an Owner to a partnership or a corporation in which the Owner is a partner or principal stockholder; from a partnership or corporate owner to the partners or stockholders thereof; from partners who are Unit Owners to new partners; from one Co-Owner to another;

5. A conveyance or transfer from a Unit Owner by gift, devise by will of succession.

## ARTICLE IX

### **OPERATION OF THE CONDOMINIUM**

A. **The Operating Entity.** KENDALLWOOD PARK REPLAT BLOCK 2, LOTS 4 & 5 CONDOMINIUM ASSOCIATION, INC., shall be the entity responsible for the operation of the Condominium. Such Association shall have all of the powers and duties set forth under Florida law, including the Condominium Act, as well as all of the powers and duties granted to or imposed upon it by this Declaration, and the Articles of Incorporation (the form of which is annexed hereto as Exhibit "E") and by-laws of the Association, and all of the powers and duties necessary to operate the Condominium as set forth therein.

B. **By-laws of the Association.** The operation of the Condominium shall be governed by the by-laws of the Association, a copy of which are annexed to this Declaration as Exhibit "D". No amendment shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Unit, alter the provisions of the by-laws with respect to institutional mortgages of record, or change the rights and privileges of the Developer without its prior written approval.

## ARTICLE X

### **REPAIR AND MAINTENANCE BY THE ASSOCIATION**

A. **Repair and Maintenance.** The responsibility of the Association for repair and maintenance of the Condominium include:

1. All Common Elements including exterior walls the building.
2. All portions of Units which contribute to the support of the building, including main bearing walls, but excluding painting, wallpaper, decoration or other work on the interior surfaces of walls, ceilings and floors of Units.
3. All damage caused by work done by the Association.

B. **Rights of Access to Units.** The Association shall have the right on behalf of all Unit Owners to have access to any Unit or Limited Common Element from time to time during reasonable hours therefrom, to maintain, repair or replace any portion of the Common Elements, and to do other things necessary for the operation of the Condominium Property or for making emergency repairs in such Unit to prevent damage to the Common Elements or to another Unit. Such entries shall be made with as little inconvenience to the Owner of the Unit as practicable.

C. **Mechanics' Liens.** In the performance of any labor or the furnishing of any material to a Unit, under the direction of the Association, no liens shall be established nor shall such work give rise to the basics for filing a mechanic's lien against the Unit of an Owner except for such work performed for emergency repair. Nothing herein contained shall prevent a mechanic's lien from being filed against the Unit of an Owner who expressly consents in writing that the work be done.

## ARTICLE XI

### **WORK AND MAINTENANCE BY UNIT OWNERS**

Each Unit Owner shall keep the interior of its Unit, the Limited Common Elements appurtenant to its Unit and all plumbing, electrical and other such fixtures and other appurtenant in good order and repair and shall be responsible for damage or loss caused by his failure to do so. Each Unit Owner shall also be responsible for any damage caused to the Common Elements by his negligent use thereof. Each Unit Owner shall have the right, at his own cost and expense, to install and remove partitions, to paint, paper, panel, plaster, tile, finish and do other such work on the interior surfaces of the ceilings, floors, walls and divider walls of his Unit, to substitute new finished surfaces for the finished surfaces then existing on said ceilings, floors, walls, and divider walls, and to finish, alter, or substitute any plumbing, electrical or other such fixtures attached to said ceilings, floors, or walls; provided, however, that this provision shall not be construed as permitting interference with or damage to the structural integrity of the building, interference with the operation and use of the electrical and plumbing system within the buildings, interference with the use and enjoyment of the Common Elements by other Unit Owners or of the divider wall used by an adjoining Unit Owner, or construction or removal of a divider wall, except as permitted by the Developer in accordance with Article III above.

## ARTICLE XII

### **ADDITIONS AND ALTERATIONS TO THE COMMON ELEMENTS**

A. **Adjoining Units.** Subject to such reasonable regulations as shall be established by the Association, and with its prior approval, the Unit Owner of any two Units which shall be separated only by a Common Element or a divider wall may alter or remove all or portions of the intervening Common Element or divider wall, provided that a building permit for such work has been issued by the appropriate governmental authority and that the structural integrity of the Building will not be affected by the alteration and that the finish of the Common Element then remaining is restored to a condition substantially the condition which existed prior to its alteration or removal.

B. **Cost of Additions and Alterations.** Except as otherwise provided in this Article XII, unless authorized by the Association and approved by not less than seventy-five percent (75%) of the Owners of the Condominium (as such percentage of Unit Owners is determined in accordance with Article XIV of this Declaration) and by those Institutional Lenders whose mortgages encumbering Units represent at the time not less than seventy percent (70%) of the total unpaid principal indebtedness on said Units, no additions or alterations to the Common Elements shall be made if the cost thereof is in excess of ten percent (10%) of the annual budget for the Common Expenses of the Condominium. No addition or alteration shall be made if it shall adversely affect any Unit Owner, unless his prior consent shall have been obtained. The cost of additions or alteration to the Common Elements shall be assessed as Common Expenses, except that the cost of any such additions or alterations which are substantially or exclusively for the benefit of the Unit Owner(s) requesting same shall be assessed against and collected solely from such Unit Owners, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board.

## ARTICLE XIII

### **REGISTRATION OF OWNERS AND MORTGAGES**

In the event of the sale or other transfer of a Unit by a Unit Owner, the transferee shall be responsible for notifying the Association in writing for inclusion in the Association's registry of Unit Owners of his interest in such Unit, together with such instrument by which such transferee acquired his interest. Further each Unit Owner shall notify the Association, promptly following consummation of the transaction, of the name of all parties holding a mortgage lien upon his Unit and the amount of such lien and, promptly following the recording of the lien instrument, the recording information pertinent to identify same. The holder of any mortgage lien upon Unit may notify the Association of the existence thereof and upon receipt of such notice, the Association shall register in its records all pertinent information regarding same.

## ARTICLE XIV

### **DETERMINING PROPORTION OF UNIT OWNERS: MEETINGS OF UNIT OWNERS: VOTING**

A. **Proportion of Unit Owners.** Every Unit Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit. Whenever a percentage or fraction of Unit Owners or a Unit Owner's interest is referred to in this Declaration, in the Articles of Incorporation or By-Laws of the Association, it shall mean the Unit Owners of that proportion of the undivided interest in the Common Elements of the Condominium as such ownership interests are set forth on Exhibit "C" annexed to this Declaration. Nevertheless, Membership shall be divided into two types of membership as follows:

1. **Class A.** Class A Members shall all be Unit Owners, with the exception of Developer, and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in a given Unit, all such persons shall be Members and the vote for such Unit shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any Unit owned by Class A Members.

2. **Class B.** The Class B Member shall be Developer, who shall be entitled to exercise three votes for each Unit owned. Class B membership shall cease and be converted to Class A membership when Developer has sold 90% of the Units or seven (7) years after the Recording of the Declaration, whichever first occurs.

B. **Meetings of Unit Owners.** Meetings of Unit Owners for the purpose of amending this Declaration or for other proper purposes requiring the vote of the Unit Owners of the Condominium shall be called and held in accordance with the by-laws of the Association.

C. **Voting by Owner: Proxies.** All Unit Owners and the Developer shall be members of the Association. If more than one Owner shall own interests in more than one Unit, each Owner may vote the percentage of the vote which is determined by multiplying the percentage or fraction of the undivided interest in the Common Elements appurtenant to such Unit held by such Owner. If more than one Owner shall own interest in more than one Unit, each Owner may vote one vote per each Unit owned by such Owner. At any meeting of Unit Owners, the vote of a majority of the Unit Owners shall be required to adopt decisions and take actions binding upon all of the Unit Owners in matters relating solely to the Condominium. Any Unit Owner, by written proxy or authorization filed with the Secretary of the Association, may empower another to vote as a proxy of such Unit Owner at a meeting of the Unit Owners. Such written proxy or authorization, unless specifically limited in terms, shall remain effective until there shall be filed with the Secretary a written revocation of the same or a written proxy or authorization of later date.

## ARTICLE XV.

### **AMENDMENT OF DECLARATION**

Until turnover of the Condominium Association to the owners, the developer may amend this Declaration by recording said amendment in the Public Records of Miami-Dade County, Florida. After turnover, at any regular or special meeting of the Unit Owners called or convened in accordance with the by-laws, amendment to this Declaration may be made by the affirmative vote of not less than a majority of the Unit Owners, unless otherwise required by any governmental entity. All amendments shall be recorded and certified as required by the Condominium Act. 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 its proportionate, fractional, or percentage share of the Common Elements, Common Surplus or the Common Expenses, nor the voting rights appurtenant to it, unless the Owner of such Unit and all record holders of mortgages or other voluntarily placed liens thereon shall join of the amendment. The acquisition of property by the Association and material alterations or substantial additions to such property or the Common Elements by the Association in accordance with Florida Statute section 718.111(7) or section 718.113 shall not be deemed to constitute a material alteration or modification of the appurtenances to a Unit. No amendment shall be

passed which shall impair or prejudice the rights and priorities of mortgages, or change the provisions of the is Declaration with respect to institutional mortgages or the Developer, without the written approval of the Developer and holders of all institutional mortgages recorded against a Unit which remains unsatisfied.

## ARTICLE XVI

### **RIGHTS OF INSTITUTIONAL LENDERS HOLDING FIRST MORTGAGES**

A. For so long as any Institutional Lender shall hold a first mortgage upon any Unit, or shall be the Owner of any Unit, such Institutional Lender shall, subject to the conditions precedent in paragraph XVI.B, have the following rights:

1. To be furnished, promptly after its preparation, with a copy of the annual financial statement or similar report of the Association prepared by certified public accountants designated by the Association.

2. To be given notice by the Association of the call of any meeting of the membership to be held for the purposes of considering a proposed amendment to this Declaration, or to the Articles of Incorporation or the by-laws of the Association which notice shall state the nature of the amendment being proposed.

3. To be given notice by the Association of the default in the payment of Common Expenses by an Owner of a Unit encumbered by that Institutional Lender's mortgage.

B. The provisions of paragraph XVI.A shall be applicable only after the Institutional Lender shall serve written notice upon the Association identifying the Units which it owns or upon which it holds a mortgage, identifying such mortgage and designating the place to which notices are to be given to the Association.

## ARTICLE XVII

### **INSURANCE**

A. **Insurance Obtained by Association.** The Association shall obtain and maintain, to the extent available, insurance on the building and all other insurable improvements upon the Land of the Condominium and all of the machinery, equipment and other personal property for common use, covering the interest of the Unit Owners as they appear from time to time. Coverage for the Condominium shall include the following:

1. Casualty or physical damage insurance in an amount equal to full insurable replacement value of the building, excluding excavation and foundation costs, as determined annually by the Board with the assistance of the insurance company affording such coverage. All policies of casualty or physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to all the insured including all first mortgagees of Units, and that certificates of such insurance and all renewals thereof, together with proof of payment of premiums, shall delivered to all Unit Owners and their first mortgagees at least thirty (30) days prior to the expiration of the then current policies. Coverage thereunder shall, if available and if deemed appropriate by the Association, afford protection against the following:

a. Loss or damage by fire and other hazards covered by the standard extended coverage endorsement together with coverage for the payment of Common Expenses with respect to damaged Units during the period of reconstruction.

b. Such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism, malicious mischief, windstorm, water damage, boiler and machinery explosion or damage, plate glass damage, and such other insurance as the Board may determine. The policies providing such coverage shall provide that, notwithstanding any provisions thereof which will give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the approval of the Association nor if in conflict with the terms of this Declaration, and shall not be terminated for nonpayment of premiums without at least thirty (30) days prior notice, and, for any other reason, without at least thirty (30) days prior notice, to all of the insured, including each first mortgagee of Units indicated on such policies.

2. Public liability insurance in such amounts and in such forms as shall be required by the Association with coverage to include water damage, legal liability, hired automobile, non-owned automobile and off-premiums employee coverages.

3. Workmen's compensation insurance to meet the requirements of the law.

4. Fidelity insurance covering those employees of the Association and those agents and employees hired by the Association who handle Association funds, in an amount determined by the Board.

B. **Master Policies.** The Association shall obtain master policies of insurance which shall provide that the loss thereunder shall be paid to an insurance trustee under this Declaration. Certificates of Insurance shall be issued which indicate on their face that they are a part of such master policies of insurance covering all Units of the Condominium and the Common Elements. A Certificate of Insurance with proper mortgage endorsements shall be issued to each Owner and the original thereof shall be delivered to the first mortgagee or to the Unit Owner if there is no such mortgage. The Certificate shall provide that improvements to Units which may be made by a Unit Owner shall not affect the valuation for the purpose of the insurance of the building and other improvements upon the Land. Such master insurance policies and certificates shall contain provisions to the effect that (1) the insurer waives its right to subrogation as to any claim against the insurance which may be purchased by Unit Owners as permitted thereunder. The original master policy of insurance shall be deposited with the Insurance Trustee and a memorandum thereof shall be deposited with any first mortgagee who may require same. The Insurance Trustee shall acknowledge that the insurance policies and any proceeds thereof will be held in accordance with the terms hereof. The Association, at least thirty (30) days prior to the expiration date of any such policies, shall pay, for the benefit of the Unit Owners and each first mortgagee, the premiums for the insurance required hereunder to be carried, and will notify each first mortgagee of such payment within ten (10) days after the making thereof.

C. **Insurance Proceeds.** All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association shall be paid to the Insurance Trustee, which shall be Bruce J. Hermelee, Esq. Of Brooks Hermelee Geffin, 25 SW 2<sup>nd</sup> Avenue, Suite 1350, Miami, Florida, 33130. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold same in trust for the purposes provided in this Declaration, and for the benefit of the Unit Owners and their respective mortgagees. Where a mortgagee endorsement appears on the Certificate of Insurance, distributions of proceeds made by the Insurance Trustee his right to adjust with the insurance companies for all losses under policies purchased by the Association.

D. **Insurance Obtained by Owners.** Each Owner may obtain additional insurance at his own expense affording coverage upon his Unit, personal property and for his personal liability, but all such insurance shall provide that it shall be without contribution from the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association due to purchase by the Owner of additional insurance as referred to hereunder, the Unit Owner shall assign the proceeds of such insurance to the extent of the amount of such reduction, too the Board to be distributed as hereinabove provided.

## ARTICLE XVIII

### **RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE**

A. **Funds for Reconstruction or Repair.** 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 replace the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Association desires. Except as otherwise be provided herein, damage to or destruction of the building shall be promptly repaired and reconstruction by the Association substantially in accordance with the original plans and specifications, using proceeds of insurance on the building for that purpose as provided herein, and any deficiency shall constitute Common Expenses. The action of the Association in proceeding to repair or reconstruct damaged property shall not constitute a waiver of any rights against a Unit Owner or another for committing willful or malicious damage. The proceeds of insurance collected on account of casualty, and the sums received by the Association from 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.

1. If the amount of the estimated cost of reconstruction and repair is less than \$50,000.00, then the construction fund shall be disbursed in payment of such costs upon order of the Board, provided, however, that upon request of a first mortgagee which is a beneficiary under any insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided in the following subparagraph.

2. If the estimated cost of reconstruction and repair of the building or other improvement is more than \$50,000.00, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Florida and employed by the Board to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate (a) describing briefly the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work; (b) certifying that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (c) certifying that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (d) certifying that the cost as estimated by said architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum as requested.

B. **Surplus Funds.** In the event that there is a surplus of monies in the construction fund after the reconstruction or repair of the casualty damage has been fully completed and all costs paid, such sums may be retained by the Board as a reserve or may be used in the maintenance and operation of the Condominium, or, in the discretion of the Board, make distribution to the Unit Owners and their mortgagees who are the beneficial owners of the fund.

## ARTICLE XIX

### **EMINENT DOMAIN**

A. **Notification to Mortgagees.** The Association, upon obtaining knowledge of the institution or threat of institution of any proceeding or other action with respect to the taking in condemnation of any portion of Units or Common Elements, shall notify first mortgagees listed in the Association's records as holding liens on any Unit. Such mortgagee may, at its option, participate in negotiations in connection therewith or may, if permitted by court having jurisdiction, participate in any such proceeding or action.

B. **Award and Restoration.** In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements, excluding any Limited Common Elements, the award made for such taking shall be payable to the Association. In the event the repair and restoration of the Common Elements shall, in the opinion of the Board, be essential to the

operation of the Condominium, or in the event a majority of the Unit Owners duly and promptly approve such repair and restoration, the Board shall arrange for same, and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments; in the event that a majority of the Unit Owners do not approve the repair and restoration of the Common Elements, the Board shall disburse the net proceeds of such award in the same manner as insurance proceeds where there is no repair or restoration of damage.

C. **Partial Taking of Unit.** Where part of a Unit has been taken by eminent domain and a majority of the Unit Owners duly approve the repair and restoration of Units and, if affected, Common Elements, the Board shall adjust such loss with the affected Unit Owner, including but not limited to the payment of compensation of the Owner's undivided interest in the Common Elements. Any such settlement shall not be effective unless approved by the first mortgagee of the affected Unit, a majority of the Unit Owners, and the Developer if it shall then be an Owner. In no event shall the Board be required to make any payments in excess of that portion of the overall condemnation award that is reasonably attributable to such owner's loss. In no event shall the Board be required to make any payments prior to receipt of sufficient funds for such purpose from the condemning authority. However, nothing contained herein shall prohibit the Board from making in advance a partial payment to such Owner when the Board, in its discretion, deems such advance or partial payment to be reasonable and proper. Nor shall anything contained herein be deemed to relieve such Owner of the obligation to contribute to the repair or restoration of the building and Common Elements, although the Board may, in a proper case, reduce the amount of such obligation or eliminate same.

D. **Trade Fixtures.** Where all or part of the Condominium is taken by eminent domain, each Owner shall have the exclusive right to claim all of the award made for trade fixtures installed by such Owner, and any relocation, moving expense, or other allowance of a similar nature designate to facilitate his relocation.

E. **Trustee.** The Board shall act as trustee of all funds received by it as a result of eminent domain or condemnation proceedings.

## ARTICLE XX

### **TERMINATION OF DECLARATION AND CONDOMINIUM**

A. **Voluntary Termination.** This Declaration and the condominium regime established herein may be voluntarily terminated at any time: (1) in the manner provided for under the Condominium Act of the State of Florida; provided, however, that the written consent of the Developer shall be required if it is the Owner of any unit; or (2) if the proposed voluntary termination is submitted to a meeting of the Unit Owners, pursuant to proper notice, and is approved in writing within sixty (60) days of said meeting by all of the Unit Owners, and all Institutional Lenders holding first mortgages upon Units.

B. **Condemnation.** This Declaration and the condominium regime established herein shall be terminated by the taking of all or materially all of the Condominium property by eminent domain.

C. **Destruction of the Building.** Notwithstanding anything in this Declaration to the contrary, in the event of fire or other casualty or disaster which shall totally demolish the building, or which shall destroy so much thereof as to require, as determined by the Board, more than two-thirds (2/3) of the building and related improvements to be reconstructed, then this Declaration and the condominium regime established herein shall terminate, unless the majority of Unit Owners agree that the building shall be reconstructed. Notwithstanding any of the foregoing, the condominium regime established herein shall nevertheless terminate if there exists any regulation or order of any governmental authority having jurisdiction of the Condominium Property which prevents reconstruction of the Condominium. Nothing herein contained shall be construed as releasing or in any manner charging any obligation which under any insurance policy then existing may be owned to the Association, for itself or for the benefit of Unit Owners.

D. **Effects of Termination.** If, in the foregoing events, this Declaration and the condominium regime established herein shall be terminated, then a Certificate of Resolution of



the Board to that effect, and notice of the cancellation and termination hereof, shall be executed by the President and Secretary of the Association in recordable form and recorded in the Public Records of Miami-Dade County, Florida. Upon termination, all of the Unit Owners shall be and become tenants in common as to ownership of real property of the former Condominium and in any then remaining improvements thereon. The interest in such real property and remaining improvements held by each Owner shall be the same as was his interest in Common Elements, and the lien of any mortgage or other encumbrance upon his Unit shall attach to such interest which the owner shall hold as tenant in common with all other Owners. In the event of termination due to casualty, the Owners of all Units still fit for business occupancy shall, within sixty (60) days from the date of recording of the Certificate, deliver possession of the respective Units to the Association, upon which such Unit Owners and their respective mortgagees as their interest may appear, together with all Owners of Units unfit for business occupancy, shall become entitled to participate proportionately in the distribution of the proceeds in the possession of the Insurance Trustee. Such distribution of any insurance indemnity which may be due under any policy of casualty insurance, as well as the assets of the Association, shall be made by the Insurance Trustee to the Unit Owners and the mortgagees as their respective interest may appear, in accordance with the Unit Owners' then undivided interests in the real property and remaining improvements. Assets held by the Association upon a valid condition requiring return, transfer or conveyance, which condition has occurred or will occur, shall be returned, transferred or conveyed in accordance with the condition, prior to distribution to the Owners as hereinabove set forth.

E. **Existence After Termination.** If the Association has been terminated, the Association shall nevertheless continue to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not for the purpose of conducting its activities except so far as necessary for the winding up thereof.

## ARTICLE XXI

### **EXECUTION OF DOCUMENTS**

The Developer's plan for the development of the Condominium may require from time to time the execution of certain documents for the County of Miami-Dade, or another governmental body or agency having jurisdiction of the Condominium Property. To the extent that said documents require the joinder of any or all the Unit Owners of the Condominium, each Unit Owner does hereby irrevocably nominate and appoint (which nomination and appointment shall be coupled with an interest) the Association or the Developer, or any of their officers individually, as his agent and attorney-in-fact to execute said documents in his name, place, and stead.

## ARTICLE XXII

### **ADDITIONAL PROVISIONS**

A. **Developer's Use of Common Elements.** The Developer shall have the right to use portions of the Common Elements in selling or renting Units in the building, including the right to use portions of the Common Elements for parking for prospective purchasers, tenants and such other parties as Developer may determine; to displace; erect, store, keep and exhibit signs, billboards and placards; and to distribute audio and visual promotional material upon the Common Elements of the Condominium property.

B. **Governing Law.** In the event a dispute or litigation arises between parties whose rights and/or duties are affected or determined by this Declaration or any of the Exhibits attached hereto, the laws of the State of Florida shall determine the outcome thereof.

C. **Notices.** Unless otherwise provided herein, notices hereunder to Unit Owners are required to be delivered either personally or by mail, addressed to such Unit Owners at their place of business in the Condominium; and to the Developer or the Association by mail at 2460 S.W. 137<sup>th</sup> Avenue, Suite 238, Miami, Florida 33175. All mailed notices shall be deemed and considered sent when mailed. Any party may change his mailing address by written notice to the Association, duly receipted for.

D. **Invalidity**. In the event any term, provision or covenant of this Declaration or any of the Exhibits annexed hereto shall be held partially or wholly invalid or unenforceable, no other term, provision or covenant hereof shall be affected, altered, modified or impaired thereby.

E. **Gender**. Whenever the context so permits, the use of the plural shall include the singular and the singular shall include the plural and any gender shall be deemed to include all genders.

F. **Captions**. Captions used herein are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of the text.

G. **Exhibits**. Provisions set forth in any exhibit are hereby incorporated herein by this reference to the extent required to be contained in this Declaration.

SIGNATURE PAGE FOLLOWS