

# Declaration of Condominium

## American Gardens



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DECLARATION OF CONDOMINIUM

OF

AMERICAN GARDENS,  
A CONDOMINIUM

DADE COUNTY, FLORIDA

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EXHIBITS TO DECLARATION OF CONDOMINIUM  
AMERICAN GARDENS, A CONDOMINIUM

|             |                                                                                |
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| Exhibit "A" | Legal Description of Condominium Property                                      |
| Exhibit "B" | Plot Plan, Survey and Graphic Description                                      |
| Exhibit "C" | Articles of Incorporation of American Gardens<br>Condominium Association, Inc. |
| Exhibit "D" | By-Laws of American Gardens Condominium Association,<br>Inc.                   |
| Exhibit "E" | Rules and Regulations                                                          |
| Exhibit "F" | Share in Common Expenses, Common Elements and<br>Common Surplus                |

DECLARATION OF CONDOMINIUM  
OF  
AMERICAN GARDENS, A CONDOMINIUM

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I. Submission Statement

JACK D. BURSTEIN, Trustee (hereinafter called the "Developer"), owns the fee simple title to that certain real property in Dade County, Florida, legally described in Exhibit "A" annexed hereto. Developer does hereby submit said real property, and the improvements thereon and the appurtenances thereto, to condominium ownership pursuant to Chapter 718 of the Florida Statutes (the "Condominium Act"), and declares same a condominium known as AMERICAN GARDENS, a Condominium (the "Condominium").

All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall be binding on each unit owner, his heirs, personal representatives, successors and assigns. Both the burdens imposed and the benefits provided shall run with the title to each unit and their appurtenant interests in the common elements as defined herein.

II. Definitions

As used herein and in the By-Laws attached hereto and in all amendments thereto, unless the context requires otherwise:

A. "Act" means and refers to the Condominium Act of the State of Florida (Florida Statute 718, et seq.).

B. "Assessment" means a share of the funds required for the payment of common expenses which from time to time are assessed against a unit owner.

C. "Association" or "Corporation" means AMERICAN GARDENS CONDOMINIUM ASSOCIATION, INC., a not-for-profit Florida corporation, the entity responsible for the operation of the Condominium.

D. "Board" means the Board of Directors of the Corporation.

E. "By-Laws" means the By-Laws of the Association, existing from time to time, and as they may be amended from time to time.

F. "Condominium Documents" means this Declaration and all Exhibits attached hereto as the same, from time to time, may be amended.

G. "Condominium Property" means and includes the land and personal property submitted to condominium ownership, whether or not contiguous, all improvements thereon, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

H. "Unit" or "Condominium Unit" means the portion of the condominium property which is to be subject to exclusive ownership; said unit being a unit space designated as "Condominium Unit" on the Plot Plan, Survey and Graphic Description attached hereto as Exhibit "B".

I. "Common Elements" means the portion of the condominium property not included in the units. Common elements shall include the tangible personal property required for the maintenance of the common elements even though owned by the Association. References to common areas mean, and are, the common elements, and said words "common areas" and "common elements" are used interchangeably.

J. "Common Expenses" means (1) expenses of administration and management of the Condominium property; (2) expenses of maintenance, operation, repair or replacement of common elements; (3) expenses declared common expenses by the provisions of this Declaration or the By-Laws; and (4) any valid charge against the Condominium as a whole.

K. "Common Surplus" means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the common elements over and above the amount of money expended as common expenses.

L. "Condominium" means that form of ownership of real property created pursuant to the provisions of Chapter 718, Florida Statutes, which is comprised of units that may be owned by one or more persons or entities and there is appurtenant to each unit, as part thereof, an undivided share in the common elements.

M. "Condominium Parcel" means a unit together with the undivided share in the common elements which is appurtenant to the unit.

N. "Declaration" or "Declaration of Condominium" means this instrument, and all Exhibits attached hereto, as same may from time to time be amended.

O. "Institutional Lender" or "Mortgagee" means a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, pension trust, or any other generally recognized institutional-type lender or its loan correspondent, or agency of the United States Government, holding a mortgage encumbering a condominium parcel. The Developer, so long as it holds any mortgage encumbering a unit in the Condominium, shall be an Institutional Lender or Mortgagee.

P. "Insurance Trustee" means that Florida Bank having trust powers, designated by the Board to receive proceeds on behalf of the Corporation, which proceeds are paid as a result of casualty or fire loss covered by insurance policies.

Q. "Limited Common Elements" means those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units.

R. "Owner" means that person or entity owning a Condominium parcel.

III. Condominium Parcel; Units; Appurtenances; Limited Common Elements; Possession and Enjoyment

A. A condominium parcel is a separate parcel of real property, the ownership of which may be in fee simple, or any other estate in real property recognized by law.

B. The upper and lower boundaries of the condominium unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

1. Upper Boundaries -- the horizontal plane of the undecorated finished ceiling.

2. Lower Boundaries -- the horizontal plane of the undecorated finished floor.

C. The perimetrical boundaries of the unit shall be the vertical planes of the undecorated finished interior of the walls bounding the unit extending to intersections with each other and with the upper and lower boundaries.

D. Each condominium unit shall not be deemed to include the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding the unit, nor shall it be deemed to include pipes, wires, conduits or other public utility lines running through the condominium unit which are utilized for or serve more than one condominium unit, which items are by these presents hereby made a part of the common elements. A unit shall be deemed to include the interior walls and partitions which are contained in a condominium unit, and also shall be deemed to include the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings of the condominium unit, including plaster, paint, wallpaper, etc.

E. There shall pass with each unit as an appurtenance thereto:

1. An undivided interest in the common elements.

2. An undivided share in the common surplus.

3. An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

4. Such other easements, rights or privileges which, pursuant to the provisions to this Declaration and of law, are deemed appurtenances to the condominium parcel.

5. Membership for the owner in the Association, subject to the rights and obligations of membership therein.

F. The owner of a unit is entitled to the exclusive possession of his unit. He shall be entitled to use the 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 owners of other units. There shall be a joint use of the common elements (other than limited common elements) and a joint mutual easement for that purpose is hereby created.

G. Balconies and terraces adjoining any condominium unit and air conditioning units contained within the unit are deemed Limited Common Elements of that unit and the owner of a

condominium unit shall have the exclusive use of the particular balcony or terrace which may adjoin his condominium unit. Each owner shall pay the cost of maintaining all sliding glass doors contained within his condominium unit; the replacement or repair of windows and window operators, screening, wiring, electrical outlets and fixtures which are wholly within the unit; and of ordinary cleaning and maintenance of the balconies and terraces. Rules and regulations regarding the uniform maintenance and appearance of all exterior facing parts of the improvements may be promulgated by the Association from time to time.

H. All parking spaces in the Condominium, if there be any, shall be common elements and available for uses designated by the Board of Directors of the Association, except that so long as the Developer owns at least one (1) unit in the Condominium, it shall have the right and authority to designate the uses for all parking spaces, and the individuals or entities entitled to use the parking spaces.

I. A unit may be used only for residential purposes. No unit may be partitioned or subdivided.

#### IV. Restraint Upon Separation and Partition of Limited Common Elements and Common Elements

The appurtenant limited common elements and the undivided share in the common elements which are appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described.

A share in the common elements and limited common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

The share in the common elements and limited common elements appurtenant to units shall remain undivided, and no action for partition shall lie.

#### V. Common Elements

Common elements includes within its meaning the following items:

A. Common elements as the term is used herein shall mean and comprise all of the real property, other than the units and limited common elements as the same are defined herein, all of which are more particularly described and set forth in the Plot Plan, Survey and Graphic Description attached hereto as Exhibit "B". Common elements shall include easements through units for all conduits, pipes, ducts, plumbing, wiring and all other facilities for the furnishing of utility services to units and common elements and easements of support in every portion of a unit which contributes to the support of the improvements, and shall further include all personal property held and maintained for the joint use and enjoyment of all of the owners of all such units.

B. Installations for the furnishing of utility services to more than one unit or to the common elements or to a unit other than the unit containing the installation.

C. Easements or encroachments by the perimeter walls, ceilings, and floors surrounding each condominium unit caused by the settlement or movement of the building or caused by minor inaccuracies in building or rebuilding which now exist or hereafter exist, and such easements shall continue until such encroachment no longer exists.

D. Easements for overhanging troughs or gutters, downspouts, and the discharge therefrom of rainwater and the subsequent flow thereof over condominium units or any of them.

E. A non-exclusive easement for ingress and egress over the walks and other rights-of-way of the common elements as shall be necessary to provide access to the public ways to and from the units.

#### VI. Condominium Property and Identification of Units

A. Annexed hereto as Exhibit "B" is a sketch of survey of the land being submitted to condominium ownership, together with a plot plan and graphic description of the improvements in which the units are located.

B. The identification, location and dimensions of each unit, the limited common elements and the common elements appear on the aforescribed Exhibit "B". Each unit has been given a numerical designation for purposes of identification so that no unit has the same designation as any other unit. Each unit is described in Exhibit "B" annexed hereto in such a manner that there can be determined therefrom the identification, location and approximate dimensions of each unit and the limited common elements and common elements appurtenant thereto. The legend and notes contained in Exhibit "B" are incorporated herein and made a part hereof by reference.

#### VII. Ownership of Common Elements and Shares of Common Surplus

A. The owner of each unit shall own a share and certain interest in the condominium property which is appurtenant to unit owner's unit, which includes, but is not limited to, the following items which are appurtenant to the several units as indicated:

1. Common Elements -- The undivided shares, stated as percentages, in the common elements appurtenant to each of the condominium units is set forth on the schedule attached hereto and made a part hereof by reference as Exhibit "F".

2. Common Surplus -- Each unit owner shall own any common surplus of the condominium in the same percentage as the common expenses appurtenant to each unit are shared, as set forth in Exhibit "F". This ownership, however, does not include the right to withdraw or require payment or distribution of said common surplus.

#### VIII. Amendment to Declaration

A. This Declaration may be amended at any regular or special meeting of the Association, called and convened in ac-



cordance with the By-Laws by the affirmative vote of not less than 66-2/3% of the unit owners of this Condominium. All amendments to this Declaration shall be certified and recorded, as required by the Condominium Act.

B. No amendment shall change any condominium parcel nor a unit owner's proportionate share of the common elements, its common expenses or common surplus, nor the voting rights appurtenant to any unit, unless the record owner(s) thereof and all record owners of mortgages or other liens thereon shall join in the execution of the amendment.

C. No amendment shall be passed which shall impair or prejudice the rights and priorities of mortgagees.

D. Notwithstanding the foregoing paragraphs, the Developer reserves the right to change the interior designs and arrangement of all units and to alter the boundaries between units, as long as the Developer owns the units so altered; however, no such change shall increase the number of units nor alter the boundaries of the common elements, except the party wall between any units, without amendment of this Declaration in the manner hereinbefore set forth. If the Developer shall make any changes in units, as provided in this paragraph, such changes shall be reflected by an amendment to this Declaration with a survey attached reflecting such authorized alteration of units, and said amendment need only be executed and acknowledged by the Developer and any Institutional Mortgagee whose mortgage encumbers the said altered units. The survey shall be certified in the manner required by the Condominium Act. If more than one unit is concerned, the Developer shall apportion between the units the shares in the common elements appurtenant to the units concerned, together with apportioning common expenses and common surplus of the units concerned and such shares of common elements, common expenses and common surplus shall be duly noted in the amendment of the Declaration.

Notwithstanding anything to the contrary herein, the Developer reserves the right to amend the Declaration and its Exhibits so as to correct any legal description contained herein, which legal description may have been incorrect by reason of a scrivener's or surveyor's error, so long as such amendments do not materially affect the rights of unit owners, lienors or mortgagees. Such Amendment need be executed and acknowledged by the Developer only, and need not be approved by the Association, unit owners, lienors or mortgagees of units, whether or not elsewhere required for amendments.

E. In the event it shall appear that there is an error or omission in this Declaration or the Exhibits hereto, then and in that event, the Association may correct such error and/or omission by amendment to this Declaration in the following manner:

1. Notice of the subject matter of a proposed amendment to cure a defect, error or omission shall be included in the notice of any meeting at which such amendment is to be considered.

2. A resolution for the adoption of such a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association, and members not present in person or by proxy at the meeting considering the amendment may express their approval by writing delivered to the Secretary at or prior to the meeting. Such approvals to amend this Declaration must be either by:

a. Not less than 33-1/3% of the entire membership of the Board of Directors, and by not less than 10% of the votes of the entire membership of the unit owners; or

b. Not less than 25% of the votes of the entire membership of the unit owners; or

c. In the alternative, an amendment may be made by an agreement signed and acknowledged by all unit owners 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.

IX. The Association; Its Powers and Responsibilities

A. The Condominium is governed and administered by AMERICAN GARDENS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation. A copy of the Articles of Incorporation of the Association are annexed hereto and made a part hereof as Exhibit "C". Amendments to the Articles of Incorporation shall be valid when adopted in accordance with their provisions and filed with the Secretary of State or as otherwise required by Chapter 617, Florida Statutes, as same may be amended from time to time. Article VIII of this Declaration, regarding amendments to this Declaration, shall not pertain to amendments to the Articles of Incorporation, the recording of which shall not be required among the Public Records to be effective unless such recording is otherwise required by law. No amendment to the Articles of Incorporation shall, however, change any condominium parcel or the share of common elements, common expenses, or common surplus attributable to a parcel nor the voting rights appurtenant to a parcel unless the record owner or owners thereof and all record owners of mortgages upon such parcel or parcels shall join in the execution of such amendment.

B. The powers and duties of the Association shall include those set forth in the By-Laws annexed hereto and made a part hereof as Exhibit "D" but, in addition thereto, the Association shall have all of the powers and duties set forth in the Condominium Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including:

1. The irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein, or for making emergency repairs therein necessary to prevent damage to the common elements or to any other unit.

2. The power to make and collect assessments and to lease, maintain, repair and replace the common elements.

3. The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by unit owners at reasonable times during normal business hours.

4. The power to enter into contracts with others, for a valuable consideration, for maintenance and management, including the normal maintenance and repair of the common elements. The duty and responsibility to maintain and preserve the landscaping, gardening, painting, repairing and replacement of the common elements shall not relieve the condominium unit owner of the unit owner's personal responsibility to maintain and

preserve the interior surface of the condominium units and limited common elements, and to paint, clean, decorate, maintain and repair the individual condominium units.

5. The power to adopt reasonable rules and regulations for the maintenance and conservation of the condominium property and for the health, comfort, safety and welfare of the condominium unit owners, all of whom shall be subject to such rules and regulations.

C. Each unit owner, and each unit owner's heirs, successors and assigns, shall be bound by any management agreement in the event a management agreement is entered into by the Association, or amendments or revisions thereof to the same extent and effect as if the unit owner had executed such management agreement for the purposes therein expressed, including, but not limited to, adopting, ratifying, confirming and consenting to the execution of same by the Association, covenanting and promising to perform each and every of the covenants, promises and undertakings to be performed by unit owners as required under said management agreement and acknowledging all of the terms and conditions thereof, including the manager's fee, if any, and agreeing that the persons acting as directors and officers of the Association entering into such an agreement have not breached any of their duties or obligations to the Association.

D. The By-Laws may be amended in the manner provided for therein, but no amendment to said By-Laws shall be adopted which would affect or impair the validity or priority of any institutional mortgage covering any condominium parcel(s), or which would change the provisions of the By-Laws with respect to Institutional Mortgagees, without the written approval of all Institutional Mortgagees of record. Article VIII of this Declaration, regarding amendments to this Declaration, shall not pertain to amendments to the By-Laws, the recording of which shall not be required among the Public Records to be effective unless such recording is otherwise required by law.

E. Each unit shall be entitled to one vote to be cast by its Owner(s) in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association.

#### X. Maintenance, Alterations and Improvements

The responsibility for the maintenance of the condominium property and restrictions upon its alteration and improvement shall be as follows:

A. By the Association -- The Association shall maintain, repair and replace at the Association's own expense:

1. All Common Elements.
2. All portions of the units (except interior wall surfaces) contributing to the support of the building, which portions shall include, but not be limited to, the outside walls of the building, and load-bearing columns.
3. All conduits, ducts, plumbing, air-conditioning, wiring and other facilities for the furnishing of utility services which are contained in the portions of a unit contributing to the support of the building or within interior boundary walls, and all such facilities contained within a unit which service part or parts of the condominium other than the unit within which contained.

4. All property owned by the Association.

5. All incidental damage caused to a unit by such work shall be promptly repaired at the expense of the Association.

B. By the Condominium Parcel Owner -- The responsibility of the condominium parcel owner shall be as follows:

1. To maintain, repair and replace at unit owner's expense all portions of the unit except the portions to be maintained, repaired and replaced by the Association. Included within the responsibility of the unit owner shall be windows, screens and doors opening into or onto owner's unit, sliding glass doors and plate glass. All such maintenance, repairs and replacements shall be done without disturbing the rights of other unit owners.

2. To maintain, repair and replace at unit owner's expense unit owner's individual air-conditioning and heating system inside and outside unit owner's individual condominium unit.

3. Within the unit to maintain, repair and replace at unit owner's expense all fans, stoves, refrigerators, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to unit owner's condominium unit. The floor and interior walls of any balcony, terrace or patio of a condominium unit shall be maintained by the condominium unit owner thereof at unit owner's expense.

4. Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the building, including balconies, patios or terraces, or any stucco portion of the unit.

5. To promptly report to the Association any defects or need for repairs, the responsibility for the remedy of which is that of the Association.

6. No condominium parcel owner, other than the Developer, shall make any alterations in the portions of the building which are to be maintained by the Association, or remove any portion thereof or make any additions thereto or do any work which would jeopardize the safety or soundness of the building or impair any easement, without first obtaining approval from the Board of Directors of the Association.

C. Alteration and Improvement of Common Elements -- There shall be no material alterations or substantial additions to the common elements, except as the same are authorized by the Board of Directors and ratified by the affirmative vote of voting members of the Association casting not less than 66-2/3% of the total votes of the members of the Association present at any regular or special meeting of the Association called for that purpose. The cost of the foregoing shall be assessed as common expenses of the Condominium. Where any alterations or additions as aforescribed are exclusively or substantially exclusively for the benefit of unit owner(s) requesting same, then the cost of such alterations or additions shall be assessed against and collected solely from the unit owners exclusively or substantially exclusively benefiting, and the assessment shall be levied in such proportion as may be determined as fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively or substantially exclusively benefit unit

owners requesting same, said alterations or additions shall be made only when authorized by the Board of Directors of the Association and ratified by not less than 75% of the total votes of the unit owners exclusively or substantially exclusively benefiting therefrom; and where said unit owners are ten or less, the approval of all but one unit owner shall be required.

D. Alteration of Unit. Except as provided in Article XXVII hereinafter, no owner of a condominium unit shall make or cause to be made any structural modifications or alterations in unit owner's unit, or in the water, gas, electrical, plumbing, air-conditioning equipment or utilities therein, without the consent of the Board of Directors of the Association, which consent may be withheld in the event the Board of Directors determines that such structural alteration or modification would in any manner endanger the building. If the modification or alteration desired by a unit owner involves the removal of any permanent interior partition, the Association may permit same if the same is not a load-bearing partition and if the same does not interfere with any common utility source. A unit owner making or causing to be made any structural modification or alteration to unit owner's unit agrees, and shall be deemed to have agreed, to hold the Association and all other unit owners harmless from any liability arising therefrom. No unit owner shall cause any improvements or changes to be made to the exterior of the building, including but not limited to painting, installation of electrical wires, television antennae, or air-conditioning units which may protrude through the walls or roof of the building, install hanging plants or lights in balconies or exterior walls, or in any manner change the appearance of the exterior of the building or any portion of the building not totally within the unit, without consent of the Association. No unit owner or any other person shall install upon the roof or exterior of the building or upon the common elements of the Condominium, any television antennae, radio antennae, electric, electronic or electro-mechanical device, decorative item or affixed furnishing, without the consent of the Association.

#### XI. Enforcement of Maintenance

In the event the owner of a unit fails to maintain the unit as required above, the Association, the Developer, or any other unit owner shall have the right to proceed in a Court of equity to seek compliance with the foregoing provisions, or the Association shall have the right to assess the unit owner and the unit for the necessary sums to put the improvements within the unit in good condition. 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 provision.

Further, in the event a unit owner violates any of the provisions of Article X above, 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.

#### XII. Common Expenses

A. Common Expenses shall include expenses of the operation, maintenance, repair or replacement of the common

elements, costs of carrying out the powers and duties of the Association, and any other expenses designated as common expenses by this Declaration and the By-Laws.

B. All costs of water, gas, trash and garbage collection and sewage service to the condominium property shall be a common expense of the condominium.

C. Common expenses shall be shared by the unit owners in accordance with their respective interests in the common elements and ownership of common surplus, as set forth in Exhibit "F". The foregoing ratio of sharing common expenses and assessments shall remain, regardless of the purchase price of the condominium parcels, their locations or the square footage included in each condominium unit.

XIII. Assessments; Liability, Lien and Priority; Interest; Collection

A. The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sums necessary to provide for the common expenses of the condominium. A unit owner, regardless of how title is acquired, shall be liable for all assessments coming due while 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 grantee's share of the common expenses up to the time of such voluntary conveyance.

B. The Association shall estimate from time to time the amount of common expenses it expects to incur and the period of time involved therein and may assess sufficient monies from unit owners to meet this estimate. Assessments for common expenses shall be borne by unit owners in the proportions or shares set forth in Article XII hereof pertaining thereto. Assessments shall be payable monthly or in such other installments and at such times as may be fixed by the Board of Directors.

C. Should the Association, through its Board of Directors, at any time determine that the assessments made are not sufficient to pay the common expenses or, in the event of emergencies, the Board of Directors shall have the authority to levy and collect additional assessments to meet such needs of the Association.

D. Liability for assessments may not be avoided by abandonment of a unit, or by waiver of the use of any common elements or other property which an owner is entitled to use or enjoy.

E. Assessments and installments thereon not paid within 10 days of when due shall bear interest from the date when due until paid at the rate of 10% per annum until paid. Payments made shall be applied to interest first and then to principal. The Association shall furnish to the mortgagee of any unit upon its request, written notification of any default in assessment payments of the owner whose unit is encumbered by that mortgage.

F. The Association shall have a lien on each condominium parcel for any unpaid assessment and interest thereon against the owner of such condominium parcel, until paid. Such lien shall also include a reasonable attorney's fee incurred by the Association incident to the collection of such assessment or enforcement of such lien. Such liens shall be executed and

recorded in the Public Records of Dade County, Florida, in the manner provided by law, but such liens shall be subordinate to the lien of any mortgage or any other lien recorded prior to the time of the recording of the claim of lien by the Association. The Board of Directors may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said lien, as provided in the Condominium Act, 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 by the Condominium Act and shall have the priorities established by said Act. The Association shall maintain a register of institutional first mortgagees and shall give such mortgagees notice, in writing, of all notices given by the Association to the owner of such condominium parcel encumbered by such institutional mortgage.

G. Liens for assessments may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property, as more fully set forth in the Condominium Act. The Association may bid at any sale and apply as a cash credit against its bid all sums due the Association covered by the lien being enforced. In any suit for the foreclosure of said lien, the Association shall be entitled to rental from the owner of any condominium parcel from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said condominium parcel. The rental required to be paid shall be equal to the rental charged on comparable type of condominium units in Dade County, Florida. The lien granted to acquiror shall be liable for acquiror's share of common expenses or assessments attributable to acquiror's condominium unit from the date of acquiring said condominium unit. Except as provided in this Declaration, no unit owner may be excused from the payment of unit owner's proportionate share of the common expense of the Condominium unless all unit owners are likewise proportionately excused from such payment.

H. Where the mortgagee of any mortgage of record or other purchaser of a condominium unit obtains title to the condominium parcel as a result of foreclosure of the mortgage, or as a result of a deed given in lieu of foreclosure, such acquiror of title, acquiror's 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 parcel which became due prior to acquisition of title as a result 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 collectible from all of the unit owners, including such acquiror, acquiror's successors and assigns. It is understood that such acquiror shall be liable for acquiror's share of common expenses or assessments attributable to acquiror's condominium unit from the date of acquiring said condominium unit. Except as provided in this Declaration, no unit owner may be excused from the payment of unit owner's proportionate share of the common expense of the Condominium unless all unit owners are likewise proportionately excused from such payment.

I. Any person who acquires an interest in a unit, except through foreclosure (or deed in lieu thereof) of a mortgage of record, as specifically provided in the paragraph immediately preceding, including without limitation persons acquiring title by operation of law, including purchasers at judicial sales,

shall not be entitled to occupancy of the unit or enjoyment of the common elements until such time as all unpaid assessments due and owing by the former owner have been paid.

J. 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 assessments to the Developer or to any unit owner or group of unit owners, or to any third party.

#### XIV. Condominium Working Capital Fund

At the time the Developer sells and closes a condominium unit to a purchaser (purchaser thereby becoming a unit owner in this Condominium), the purchaser shall deposit with the Association an amount equal to one monthly installment of the assessments for common expenses attributable to purchaser's condominium unit into the purchasers' condominium fund ("Condominium Working Capital Fund") for the purpose of initial maintenance, reserve, emergency needs, initial and non-recurring items, capital expenses, permits, licenses, and all utility deposits and advance insurance premiums for insurance policies and coverages pursuant to this Declaration and the Exhibits attached hereto. All of the foregoing expenses or items may be paid from the Condominium Working Capital Fund. If the Developer has paid any of the foregoing expenses or items, then any such expense or item shall be paid to or reimbursed to the Developer from the Condominium Working Capital Fund. The purchasers' condominium fund may be commingled by the Association with any of its other funds.

#### XV. Limitation of Liability

A. The liability of the owner of a unit for common expenses shall be limited to the amounts for which unit owner is assessed from time to time in accordance with this Declaration or the By-Laws (including any interest, penalties, costs or fees provided for therein in the event of delinquency).

B. The owner of a unit shall have no personal liability for any damages caused by the Association on or in connection with the use of the common elements. A unit owner shall be liable for injuries or damages resulting from an accident in unit owner's unit to the same extent and degree that the owner of a single-family detached dwelling would be liable for an accident occurring within unit owner's single-family detached dwelling.

#### XVI. Liens

A. No liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (as distinguished from individual units) except with the unanimous consent of the unit owners.

B. Unless a unit owner has expressly requested or consented to work being performed or materials being furnished to unit owner's unit, such labor or materials may not be the basis for the filing of a lien against same. No labor performed or materials furnished to the common elements shall be the basis for a lien thereon unless authorized by the Association, in which



event same may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners thereof are liable for common expenses.

C. In the event a lien against two or more condominium parcels becomes effective, each owner thereof may relieve his condominium parcel of the lien by paying the proportionate amount attributable to owner's condominium parcel. Upon such payment, it shall be the duty of the lienor to release the lien of record for such condominium parcel.

#### XVII. Easements

Each of the following easements is a covenant running with the land of the Condominium, to-wit:

A. Utility Services; Drainage -- Easements are reserved under, through and over the Condominium property as may be required for utility services and drainage in order to serve the Condominium. An owner shall do nothing within or outside unit owner's unit that interferes with or impairs the utility services using these easements. The Board of Directors of the Association or its designee shall have a right of access to each unit to inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility service facilities and common elements contained in the unit or elsewhere on the Condominium property, and to remove any improvements interfering with or impairing the utility services or easements herein reserved; provided that such right of access shall not unreasonably interfere with the unit owner's permitted use of the unit, and entry shall be made on not less than one-day's notice, except in the event of an emergency.

B. Traffic -- An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, halls, lobbies, elevators, center cores, and other portions of the common elements as may be from time to time intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the common elements and limited common elements as may, from time to time, be paved and intended for such purpose; and such easements shall be for the use and benefit of owners, institutional mortgagees, or tenants, and those claiming by, through or under the aforesaid.

C. Easement for Unintentional and Non-Negligent Encroachments -- If a unit shall encroach upon any common element, limited common element or upon any other unit, by reason of original construction or by the non-negligent or non-purposeful act of the unit owner or Developer, then an easement appurtenant to such encroaching unit, to the extent of such encroachment, shall exist so long as such encroachment shall exist. If any common element or limited common element shall encroach upon any unit by reason of original construction or the non-purposeful or non-negligent act of the Association or the Developer, then an easement appurtenant to such common element or limited common element, to the extent of such encroachment, shall exist so long as such encroachment shall exist.

D. Support -- The Developer and Association hereby grant to each other, their heirs, successors, and assigns, and all third party beneficiaries, including condominium unit owners, their lessees, guests, invitees, servants, and employees, the

right of support for all structures on any portion of the real property of the Condominium.

E. Additional Easements -- The Developer (during any period in which there are any unsold units in the Condominium) and the Association each shall have the right to grant such additional electric, telephone, gas or other utility easements, and to relocate any existing easements in any portion of the Condominium property, and to grant access easements and relocate any existing access easements in any portion of the Condominium property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the improvements, or any portion thereof, or for the general health or welfare of the unit owner, or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the units for dwelling purposes.

F. All easements, of whatever kind or character, whether heretofore or hereafter created, shall constitute a covenant running with the land, shall survive the termination of the Condominium, and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in a way which would unreasonably interfere with its proper and intended use and purpose. The unit owners do hereby designate Developer and/or Association as their lawful attorneys-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

#### XVIII. Conveyances, Sales, Rentals, Leases and Transfers

In order to insure a community of congenial residents and occupants and protect the value of the units and to further the continuous harmonious development of the Condominium community, the sale, leasing, rental and transfer of units, by any owner other than the Developer, shall be subject to the following provisions:

A. Conveyances, Sales and Transfers -- Prior to sale, conveyance or transfer of any condominium parcel to any other person, the owner shall notify the Board of Directors of the Association, in writing, of the name and address of the person to whom the proposed sale, conveyance or transfer is to be made and furnish such other information as may be required by the Board of Directors of the Association. Within 15 days from receipt of said notification, the Board of Directors of the Association shall either approve or disapprove a proposed sale, transfer or conveyance, in writing, and shall notify the owner of its decision. In the event the Board of Directors shall fail to approve or disapprove a proposed sale within said 15 days, the failure to act as aforesaid shall be considered approval of the sale.

In the event the Board of Directors disapproves the proposed sale, conveyance or transfer and if a member still desires to consummate such sale, conveyance or transfer, member shall, 30 days before such sale, conveyance or transfer, give written notice to the Secretary of the Association of member's intention to sell, convey or transfer on a certain date, together with the price and other terms thereof, and the Secretary shall promptly notify the members of the Association of the date, price

and terms. Any member shall have the first right over the prospective purchaser to accept such sale or transfer at the price and on the terms contained in the notice, provided member so notifies the Secretary of the Association in writing of the acceptance at least 15 days before the date of the intended sale or transfer, and deposits with the Secretary of the Association 10% of the purchase price as a good faith deposit, which information and notice of deposit the Secretary of the Association shall promptly forward to the selling member. In the event no members of the Association accept this first right to purchase as aforescribed, then the Association must either approve the transaction or furnish a purchaser approved by the Association who will accept the transaction upon the price and upon the terms contained in the notice, provided the Association, at least 10 days before the date of the intended sale or transfer, notifies the owner that a purchaser has been furnished and that said purchaser has deposited 10% of the purchase price with the Association as a good faith deposit for the intended sale. In the event the member giving notice receives acceptance from more than one member, it shall be discretionary with the member giving notice to consummate the sale or transfer with whichever of the accepting members the member giving notice chooses.

In the event the member giving notice receives no written notice from any member of the Association accepting the price and terms of the proposed sale or transfer on or before 10 days before the date given in the notice as of the day of sale or transfer, then that member may complete the sale or transfer on the day and at the price and terms given in the notice, but on no other day and at no other price or terms, without repeating the procedure outlined above. In the event the member makes a sale or transfer without first complying with the terms hereof, any other member shall have the right to redeem from the purchaser, according to the provisions hereof. The member's redemption rights shall be exercised by the member reimbursing the purchaser for the monies expended and immediately after such reimbursement, said purchaser or transferee shall convey all of purchaser's or transferee's right, title and interest to the member or members making the redemption.

An affidavit of the Secretary of the Association stating that the Board of Directors has approved in all respects, on a certain date, the sale or transfer of a Condominium parcel to certain persons, shall be conclusive evidence of such fact, and from the date of approval as stated in the affidavit, the redemption rights herein afforded the members shall terminate.

✓ An affidavit of the Secretary of the Association stating ~~that~~ the Board of Directors was given proper notice on a certain date of a proposed sale or transfer and that the Board of Directors disapproved or failed to act on such proposed sale or transfer, and that thereafter all the provisions hereof which constitute conditions precedent to a subsequent sale or transfer of a condominium parcel have been complied with, so that the sale or transfer of a particular condominium parcel to particularly named persons does not violate the provisions hereof, shall be conclusive evidence of such facts for the purpose of determining the status of the persons to whom such condominium parcel is sold or transferred. Such affidavit shall not be evidence of the fact that the subsequent sale or transfer to such persons was made at the price, terms and date in the notice given to the Secretary of the Association, but 120 days after the date of the notice to the Board of Directors, as stated in the affidavit, the redemption rights herein afforded the members shall terminate.

B. Rental or Lease -- A condominium parcel shall not be leased or rented without the prior written approval of the Association, which approval shall not be unreasonably withheld. The Board of Directors shall have the right to require that a substantially uniform form of lease be used.

In the event the Board of Directors approves a rental or lease, such approval of a lease or rental shall not release the member from any obligation under this Declaration, and either the lessee or the member shall have the right to use the recreational facilities to the exclusion of the party not using the same.

Completely apart from and in addition to the Association's right to pass on and approve or disapprove any such attempted lease of any condominium unit, is the right of the Association hereby given and granted of first refusal to lease any condominium unit offered for lease by any member of the Association. Accordingly, no owner of a condominium unit shall lease same to any party without first giving the Association notice in writing of such lease, as herein provided, thereby giving the Association the opportunity to determine whether it will exercise the right of first refusal to lease said condominium unit on the same terms and conditions as those contained in any bona fide offer which the owner of such condominium unit may have received for the lease of owner's condominium unit. If the Association is desirous of exercising its option to lease said condominium unit on the same terms and conditions as are contained in said bona fide offer, then the Association shall notify the owner of said condominium unit desiring to lease the same of the exercise by the Association of its election to so lease said condominium unit, such notice to be in writing and sent by certified mail to said owner within 15 days from receipt by the Association of the owner's notice to said Association as hereinabove required. If the Association has elected to lease such condominium unit, then, upon notifying the owner of such condominium unit of its election to lease said condominium unit, the Association shall execute a lease agreement and shall consummate said lease, all on the terms and conditions as those contained in said bona fide offer. If the Association does not, within 15 days after notice to it from the owner, exercise its right of first refusal herein granted, the owner may lease the condominium unit to the proposed lessee, providing that the Association has approved the lessee, as hereinabove stated. If the Board of Directors of the Association shall so elect, it may cause its right of first refusal to lease any condominium unit to be exercised in its name for itself or for a party approved by said Board of Directors.

C. If the purchaser or lessee is a corporation, the approval of the sale, transfer or lease may be conditioned upon the approval by the Association of all occupants of the condominium parcel.

D. In the case of the death of the owner of a condominium parcel, the surviving spouse, if any, and if no surviving spouse, the other member or members or such owner's family residing with the owner at the time of owner's death, may continue to occupy the said condominium parcel; and if such surviving spouse or other member or members of the decedent owner's family shall have succeeded to the ownership of the condominium parcel, the ownership thereof shall be transferred by legal process to such new owner. In the event said decedent shall have conveyed or bequeathed the ownership of decedent's condominium parcel to some designated person or persons other than the surviving spouse or members of decedent's family, as aforescribed, or if some other

person is designated by such decedent's legal representative to receive the ownership of the condominium parcel, or if under the laws of descent and distribution of the State of Florida the Condominium parcel descends to some person or persons other than his surviving spouse or members of decedent's family as afore-described, the Board of Directors of the Association shall, within 30 days of proper evidence of rightful designation served upon the President or any other officer of the Association, or within 30 days from the date the Association is placed on actual notice of the said devisee or descendant, express its refusal or acceptance of the individual or individuals so designated as owners of the condominium parcel. If the Board of Directors of the Association shall consent, ownership of a condominium parcel may be transferred to the person or persons so designated, who shall thereupon become the owner of the condominium parcel, subject to the provisions of this Declaration and the By-Laws of the Association. If, however, the Board of Directors of the Association shall refuse to consent, then the members of the Association shall be given an opportunity, during 30 days next after said last above-mentioned 30 days, to purchase or to furnish a purchaser, for cash, for the said condominium parcel, the purchase price to be determined by an appraiser appointed by the senior judge of the Circuit Court in and for Dade County, Florida, upon 10 days' notice, on petition of any party in interest. The expense of appraisal shall be paid by the said designated person or persons or the legal representative of the deceased owner out of the amount realized from the sale of said condominium parcel. In the event the then members of the Association do not exercise the privilege of purchasing or furnishing a purchaser of said condominium parcel within such period, and upon such terms, the person or persons so designated may take title to the condominium parcel; or such person or persons or the legal representative of the deceased owner may sell the said condominium parcel; but such sale shall be subject in all other respects to the provisions of this Declaration and the By-Laws of the Association.

E. Mortgage -- No unit owner may mortgage a condominium unit or any interest therein without the approval of the Association, except to an institutional mortgagee. The approval of any other mortgagee may be upon conditions determined by the Association or may be arbitrarily withheld.

F. Any sale, mortgage or lease not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

G. There shall be deposited and delivered to the Association, a reasonable screening fee not to exceed \$50.00, simultaneously with the giving of notice of intention to sell or lease, for the purpose of defraying the Association's expenses. No charge shall be made in connection with an extension or renewal of a lease.

H. The foregoing provisions of this Article XVIII shall not be applicable to transfer by a unit owner to any member of unit owner's immediate family (i.e., spouse, children or parents); or if a parcel is owned by a form of co-tenancy, to transfers from one co-tenant to the other co-tenant.

I. No judicial sale of a parcel or any interest therein shall be valid unless:

1. The sale is to a purchaser approved by the Association, which approval shall be in recordable form; or

2. The sale is a result of a public sale with open bidding.

J. The Board of Directors of the Association shall have the right to withhold consent and approval of prospective unit owners or lessees, to any lease, sale, transfer, conveyance, bequest, devise or otherwise in the event the prospective unit owner or lessee, by being such a unit owner or lessee, would automatically violate or breach a term, condition, restriction, rule or regulation or covenant under this Declaration or the Exhibits hereto.

K. The foregoing provisions of this Article XVIII shall not apply to a transfer to or purchase by an institutional mortgagee that acquires its title as a result of owning a mortgage upon the unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, mortgagor's successor or assigns, or through foreclosure proceedings; nor shall such provision apply to a transfer, sale or lease by an institutional mortgagee that so acquires its title. Neither shall such provisions apply to the Developer or the assignee or nominee of the Developer and any such person or corporation shall have the right to freely sell, lease, transfer or otherwise deal with the title and possession of a unit without complying with the provisions of this Article XVIII, and without the approval of the Association, and without payment of any screening fee.

XIX. Obligations of Unit Owners

In addition to other obligations and duties heretofore set out in this Declaration, each unit owner shall:

A. Promptly pay the assessments levied by the Association.

B. Maintain in good condition and repair unit owner's unit and limited common elements and all interior surfaces within or surrounding unit owner's unit (such as the surfaces of the walls, ceilings, floors), whether or not a part of the unit or common elements, and maintain and repair the fixtures therein and pay for any utilities which are separately metered to unit owner's unit.

C. Not permit or suffer anything to be done or kept in unit owner's unit which will increase the insurance rates on unit owner's unit or the common elements, or which will obstruct or interfere with the rights of other unit owners or annoy them by unreasonable noises or otherwise; nor shall a member commit or permit any nuisance, immoral or illegal act in unit owner's unit or on the common elements.

D. Conform to and abide by the By-Laws and uniform rules and regulations in regard to the use of the unit and common elements which may be adopted in writing from time to time by the Board of Directors of the Association, and to see that all persons using owner's property by, through or under owner do likewise.

E. Make no alteration, decoration, repair, replacement or change of the common elements or limited common elements, or to any outside or exterior portion of the building, except as set forth hereinbefore.

F. Show no sign, advertisement or notice of any type on the common elements or owner's unit, except as may be provided for in the rules and regulations of the Association.

G. Make no repairs to any plumbing or electrical wiring except within a unit. Plumbing and electrical repairs within a unit shall be the financial obligation of the owner of the unit and paid for forthwith. The Association shall pay for and be responsible for plumbing repairs and electrical wiring within the common elements.

H. Return the "condominium parcel" for the purpose of ad valorem taxes to the respective taxing authorities having jurisdiction over them for separate assessment against owner's condominium parcel. For the purposes of ad valorem taxation, the interest of the unit owner in owner's "condominium unit" and in the "limited common elements" appurtenant thereto and in the "common elements" shall be considered as a unit. The value of said unit shall be equal to the percentage of the value of the entire condominium, including land and improvements, as have been assigned to said unit in this Declaration. The total of all of said percentages equals 100% of the value of all of the land and improvements thereon.

#### XX. Insurance

A. Liability Insurance -- The Board of Directors of the Association shall obtain public liability and property damage insurance covering all real property owned by the Association and all of the common elements of the Condominium, and insuring the Association, unit owners and institutional mortgagees, as it and their interests may appear, in such amounts as the Board of Directors of the Association may determine from time to time, provided that the minimum amount of coverage shall be \$100,000.00/\$300,000.00/\$10,000.00. Said insurance coverage shall include, but not be limited to, water damage, legal liability, hired automobile, non-owned automobile, and off-premises employee coverages. All liability insurance shall contain a cross-liability endorsement to cover the liability of all the unit owners, as a group, to any one unit owner. Premiums for the payment of such insurance shall be paid by the Association and charged as a common expense.

B. Casualty Insurance -- Purchase of Insurance -- The Association shall obtain fire and extended coverage insurance (and flood insurance if legally required by institutional lenders) and vandalism and malicious mischief insurance, insuring all of the insurable improvements within the condominium, including personal property owned by the Association, in and for the interest of the Association, all unit owners and their mortgagees, as their interests may appear, with a company acceptable to the standards set by the Board of Directors of the Association in an amount equal to the maximum insurable replacement value, as determined annually by the Board of Directors of the Association. The premiums for such coverage and other expenses in connection with said insurance placement shall be paid by the Association and charged as a common expense. The company or companies with whom the Association shall place its insurance coverage, as provided in this Declaration, must be good and responsible companies, authorized to do business in the State of Florida. Insurance shall be obtained from companies whose ratings meet the financial and policyholder's standards of the institutional mortgagee having the highest dollar value of mortgages encumbering units in the Condominium.

C. Loss Payable Provisions -- Insurance Trustee --

The Insurance Trustee shall be a banking institution having trust powers and doing business in the State of Florida. The Board of Directors of the Association shall select the Insurance Trustee. All policies purchased by the Association shall be for the benefit of the Association, all unit owners and their mortgagees, as their interests may appear. Such policies shall be deposited with the Insurance Trustee, who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof. Said policies shall provide that all insurance proceeds payable on account of loss or damage shall be payable to the Insurance Trustee. The Insurance Trustee shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds, nor for the form or content of the policies. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the unit owners and their respective mortgagees (sometimes hereinafter collectively referred to as "beneficial owners"), in the following shares, but such shares need not be set forth upon the records of the Insurance Trustee:

1. Common Elements -- Proceeds on account of damage to common elements shall be an undivided share for each unit owner, such share being the same as the undivided share in the common elements appurtenant to unit owner's unit.

2. Condominium Units -- Proceeds on account of condominium units shall be in the following undivided shares:

a. Partial destruction, when units are to be repaired and restored for the owners of the damaged units, in proportion to the cost of repairing the damage suffered by each unit owner.

b. Total destruction of condominium improvements, or where "very substantial" damage occurs and the condominium improvements are not to be restored, as provided hereafter in this Article for the owners of all Condominium units, each owner's share being in proportion to owner's share in the common elements appurtenant to owner's Condominium unit.

3. Mortgagees -- In the event an institutional mortgage encumbers a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner, as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired.

D. Distribution of Proceeds -- Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners and expended or disbursed after first paying or making provision for the payment of the expenses of the Insurance Trustee, in the following manner:

1. Reconstruction or Repair -- If the damage for which the proceeds were paid is to be repaired and restored, the remaining proceeds shall be paid to defray the cost thereof, as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all 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 mortgagee. Said remittance shall



be made solely to an institutional first mortgagee, when requested by such institutional first mortgagee, whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt.

2. Failure to Reconstruct or Repair -- If the damage for which the proceeds were paid shall not be repaired and restored, any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all 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 mortgagee. Said remittance shall be made solely to an institutional first mortgagee, when requested by such institutional first mortgagee, whose mortgage provides that it has the right to require application of the insurance proceeds to the payment of its mortgage debt. In the event of the loss or damage to personal property belonging to the Association, and should the Board of Directors of the Association determine not to replace such personal property as may be lost or damaged, the proceeds shall be disbursed to the beneficial owners as surplus in the manner elsewhere stated.

3. Certificate -- In making distribution to unit owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association, executed by the President and Secretary of the Association, as to the names of the unit owners and their respective shares of distribution. Upon request of the Insurance Trustee, the Association forthwith shall deliver such certificate. In addition, the Insurance Trustee may rely on such certificate as to whether or not the damaged property is to be repaired and restored and as to the payee and the amount to be paid from said proceeds.

E. Loss Within a Single Unit -- If loss shall occur within a single unit or units, without damage to the common elements, the insurance proceeds shall be distributed to the beneficial unit owner(s), remittance 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 mortgagee. Said remittance shall be made solely to an institutional first mortgagee when requested by such institutional first mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt. The unit owner shall thereupon be fully responsible for the restoration of the unit.

F. Loss Less Than "Very Substantial" -- Where a loss or damage occurs to more than one unit and/or to the common elements, or to any unit or units and the common elements, but said loss is less than "very substantial" (as hereinafter defined), it shall be obligatory upon the Association and the unit owners to repair, restore and rebuild the damage caused by said loss. Where such loss or damage is less than "very substantial":

1. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repairing and restoration.

2. If the damage or loss is limited to the common elements, with minimum or no damage or loss to any individual unit, and if such damage or loss to the common elements is less than \$3,000.00, the insurance proceeds shall be endorsed by the Insurance Trustee over to the Association, and the Association shall promptly contract for the repair and restoration of the damage.

3. If the damage or loss involves individual units encumbered by institutional first mortgages, as well as the common elements, or if the damage is limited to the common elements alone but is in excess of \$3,000.00, the insurance proceeds shall be disbursed by the Insurance Trustee for the repair and restoration of the property upon the written direction and approval of the Association; provided, however, that upon the request of an institutional first mortgagee, the written approval shall also be required of the institutional first mortgagee owning and holding the first recorded mortgage encumbering a condominium unit, so long as it owns and holds any mortgage encumbering the condominium unit. At such time as the aforesaid institutional first mortgagee is not the holder of a mortgage on a unit, then its right to approval and designation shall pass to the institutional first mortgagee then having the highest dollar indebtedness on units in the condominium property. Should written approval be required, as aforesaid, it shall be said mortgagee's duty to give written notice thereof to the Insurance Trustee. The Insurance Trustee may rely upon the certificate of the Association and the aforesaid institutional first mortgagee, if said institutional first mortgagee's written approval is required, as to the payee and the amount to be paid from said proceeds. All payees shall deliver paid bills and waivers of mechanics' liens to the Insurance Trustee and execute any affidavit required by law or by the Association or the aforesaid institutional first mortgagee. In addition to the foregoing, the institutional first mortgagee whose approval may be required, as aforesaid, shall have the right to require the Association repair (or for the actual cost thereof if the work has actually been done), the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to the unit owners' share in the common elements, for that portion of the deficiency as is attributable to the cost of restoration of the common elements, and against the individual unit owners for that portion of the deficiency as is attributable to unit owner's individual unit; provided, however, that if the Board of Directors finds that it cannot determine with reasonable certainty the portion of the deficiency attributable to specific individually damaged unit(s), then the Board of Directors shall levy the assessment for the total deficiency against all of the unit owners in proportion to the unit owners' share in the common elements, just as though all of said damage had occurred in the common elements. The special assessment funds shall be delivered by the Association to the Insurance Trustee and shall be added by said Insurance Trustee to the proceeds available for the repair and restoration of the property.

4. Subject to the foregoing, the Board of Directors shall have the right and obligation to negotiate and contract for the repair and restoration of the premises.

5. If the net proceeds of the insurance are insufficient to pay for the estimated cost of restoration and repair (or for the actual cost thereof if the work has actually been done), the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to the unit owners' share in the common elements, for that portion of the deficiency as is attributable to the cost of restoration of the common elements, and against the individual unit owners for that portion of the deficiency as is attributable to unit owner's individual unit; provided, however, that if the Board of Directors finds that it cannot determine with reasonable certainty the portion of the deficiency attributable to specific individually damaged unit(s), then the Board of Directors shall levy the assessment for the total deficiency against all of the unit owners in proportion to the unit owners' share in the common

elements, just as though all of said damage had occurred in the common elements. The special assessment funds shall be delivered by the Association to the Insurance Trustee and shall be added by said Insurance Trustee to the proceeds available for the repair and restoration of the property.

6. In the event the insurance proceeds are sufficient to pay for the cost of restoration and repair, or in the event the insurance proceeds are insufficient but additional funds are raised by special assessment within 90 days after the casualty, so that sufficient funds are on hand to fully pay for such restoration and repair, then no mortgagee shall have the right to require the application of insurance proceeds as to the payment of its loan; provided, however, that this provision may be waived by the Board of Directors in favor of any institutional first mortgagee upon request therefor at any time. To the extent that any insurance proceeds are required to be paid over to such mortgagee, the unit owner shall be obliged to replenish the funds so paid over, and said unit owner and unit owner's unit shall be subject to special assessment for such sum.

G. "Very Substantial" Damage -- As used in this Declaration, or any other context dealing with this Condominium, the term "very substantial" damage shall mean loss or damage whereby 3/4 or more of the total unit space in the Condominium is rendered untenable, or loss or damage whereby 75% or more of the total amount of insurance coverage placed becomes payable. Should such "very substantial" damage occur, then:

1. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration thereof and the net amount of insurance proceeds available for restoration and repair.

2. Thereupon, a membership meeting shall be called by the Board of Directors of the Association, to be held not later than 60 days after the casualty, to determine the wishes of the membership with reference to abandonment of the Condominium project, subject to the following:

a. If the net insurance proceeds available for restoration and repair, together with the funds advanced by unit owners to replace insurance proceeds paid over to institutional first mortgagees, are sufficient to cover the cost thereof, so that no special assessment is required, then the condominium property shall be restored and repaired, unless 2/3 of the total votes of the members of the condominium shall vote to abandon the condominium project, in which case the condominium property shall be removed from the provisions of the law, in accordance with Section 718.117 of the Condominium Act.

b. If the net insurance proceeds available for restoration and repair, together with funds advanced by unit owners to replace insurance proceeds paid over to institutional first mortgagees, are not sufficient to cover the cost thereof, so that a special assessment will be required, then if a majority of the total votes of the members of the Condominium vote against such special assessment and vote to abandon the Condominium project, then it shall be so abandoned and the property removed from the provisions of the law in accordance with Section 718.117 of the Condominium Act. In the event a majority of the total votes of the members of the Condominium vote in favor of special assessment, the Association shall immediately levy such assessments, and thereupon, the Association shall proceed to negotiate and contract for such repairs. The special assessment funds shall be delivered by the Association to the Insurance Trustee

and added by said Insurance Trustee to the proceeds available for the repair and restoration of the property. The proceeds shall be disbursed by the Insurance Trustee for the repair and restoration of the property, as provided in Article XX D. hereinabove. To the extent that any insurance proceeds are paid over to such mortgagee, and in the event it is determined not to abandon the Condominium project and to vote a special assessment, the unit owner shall be obliged to replenish the funds so paid over to his mortgagee, and said unit owner and his unit shall be subject to special assessment for such sum.

c. In the event any dispute shall arise as to whether or not "very substantial" damage has occurred, it is agreed that such a finding made by the Board of Directors of the Association shall be binding upon all unit owners.

H. Surplus -- It shall be presumed that the first monies disbursed in payment of costs of repair and restoration shall be from the insurance proceeds, and if there is a balance in the funds held by the Insurance Trustee after the payment of all costs of the repair and restoration, such balance may be retained as a reserve, or wholly or partly distributed, at the discretion of the Board of Directors, unless the institutional first mortgagee having the highest dollar-indebtedness on units in the condominium property shall require distribution. In the event of distribution, then the Insurance Trustee shall distribute any such balance to the beneficial owners of the fund in the manner elsewhere stated.

I. Plans and Specifications -- Any repair and restoration must be substantially in accordance with the plans and specifications for the original buildings, or as the buildings were last constructed, or according to the plans approved by the Board of Directors of the Association, which approval shall not be unreasonably withheld. If any material or substantial change is contemplated, the approval of all institutional first mortgagees shall also be required. The Insurance Trustee is not obligated or required to inquire into or determine any matters concerning the plans or specifications of any repairs, restorations or rebuilding.

J. Association's Power to Compromise Claim -- The Association is hereby irrevocably appointed agent for each unit owner for the purpose of compromising and settling claims arising under insurance policies purchased by the Association, and to execute and deliver releases therefor upon the payment of claims.

K. A workmen's compensation policy shall be obtained by the Association to meet the requirements of law.

L. Each individual unit owner shall be responsible for purchasing, at unit owner's expense, liability insurance to cover accidents occurring within unit owner's unit, and for purchasing insurance upon unit owner's personal property, and living expense insurance, and such insurance, where applicable, shall contain waiver of subrogation, if available.

M. If available, and where applicable, the Board of Directors of the Association shall endeavor to obtain policies which provide that the insurance company waives its right of subrogation as to any claims against unit owners, the Association and their respective servants, agents and guests.

XXI. Eminent Domain or Condemnation Proceedings

If eminent domain or condemnation proceedings are successfully litigated against all or any part of the condominium property, the entire eminent domain or condemnation award is to be secured to the Association in accordance with the ratio of ownership herein provided as it pertains to the common elements, and disbursed to unit owners and their mortgagees as their interests appear of record. The Association shall give prompt written notice to each holder of a mortgage of record of any such eminent domain or condemnation proceedings, and shall take no action in any such proceedings that will disturb any mortgagee's lien priority.

XXII. Rules and Regulations

A. As to Common Elements -- The Board of Directors may, from time to time, adopt or amend previously adopted administrative rules and regulations governing the details of the operation, use, maintenance and control of the common elements of the Condominium and any facilities or services made available to the unit owners. The Board of Directors shall, from time to time, post in a conspicuous place on the Condominium property, a copy of the rules and regulations adopted, from time to time, by the Board of Directors.

B. As to Condominium Units -- The Board of Directors may, from time to time, adopt or amend previously adopted rules and regulations governing and restricting the use and maintenance of the condominium unit(s) provided, however, that copies of such rules and regulations are furnished to each unit owner prior to the time the same become effective, and where applicable or desirable, copies thereof shall be posted in a conspicuous place on the condominium property.

C. Rules and Regulations -- The rules and regulations shall be deemed in effect until amended by the Board of Directors, and shall apply to and be binding upon all unit owners. The unit 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, lessees and persons over whom they exercise control or supervision. In order to change, amend or vary old or present rules and regulations and/or adopt new rules and regulations, the same shall be duly passed by at least a 51% majority vote or consent of the Board of Directors; however, no vote of the membership is required. A change, amendment or adoption of a rule and regulation does not require an amendment to the Declaration of Condominium or of the By-Laws. The Rules and Regulations, in full force and effect as of the date of this Declaration are attached hereto as Exhibit "E" and made a part hereof as though set out in full.

XXIII. Maintenance Contracts

If there shall become available to the Condominium Association a program of contract maintenance for all appliances and/or all air-conditioning compressors serving individual condominium units which the Association determines is for the benefit of the Condominium unit owners to consider, then, upon resolution of the unit owners by a majority of those voting at a special meeting of the Association at which a quorum is present, or by a

majority of their whole number in writing, the Condominium Association may enter into such contractual undertakings. The expenses of such contractual undertakings to the Association shall be a common expense. If, on the other hand, the Condominium Association determines that the program may be undertaken by the Association for the benefit of Condominium unit owners who elect to be included in the program, then the Association may undertake the program without consent of the membership being required as aforesaid, and the costs of such contractual undertakings shall be borne exclusively by the unit owners electing to be included in the program, and shall not be a common expense of the Association, but the Association may arrange for the collection of the contract costs from the individual owners electing to be included therein, may execute the contractual undertaking involved upon such terms and conditions as the Association deems proper and require from the unit owners electing in such written undertakings, as the Association shall deem proper, to evidence the said unit owners' obligations to the Association for their proportionate share of the costs of such program.

XXIV. Termination of Condominium

The provisions for termination contained in Article XX, in the event of "very substantial" damage, are in addition to the provisions for voluntary termination provided for by The Condominium Act, as amended. In addition, the Condominium may be voluntarily terminated if the proposed voluntary termination is submitted to a meeting of the members, pursuant to notice, and is approved in writing within 90 days of said meeting by 3/4 of the total vote of the members of the Association and by all holders of institutional first mortgages encumbering units in the Condominium.

XXV. Assignability of Rights of Developer

The rights and privileges reserved in this Declaration of Condominium and the Exhibits hereto in favor of the Developer are freely assignable, in whole or in part, by the Developer to any party who may be hereafter designated by the Developer to have and exercise such rights, and such rights may be exercised by the nominee, assignee or designee of the Developer and/or exercised by the successor or successors-in-interest of the Developer and/or the successor or successors-in-interest or the nominees, assignees or designees of the nominees, assignees or designees of the Developer.

XXVI. Execution of Documents Required by Dade County, Florida

The Developer's plan for the development of this Condominium may require, from time to time, the execution of certain documents required by Dade County, Florida. To the extent that said documents require the joinder of any or all property owners in this Condominium, each of said owners, does irrevocably give and grant to the Developer, or any of its officers, individually, full power-of-attorney to execute said documents as his agent and in his place and stead.

**XXVII. Changes in Developer-Owned Units**

Developer shall have the right, without the vote or consent of the Association, to:

A. Make alterations, additions or improvements in, to and upon units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary.

B. Change the layout or number of rooms in any Developer-owned units.

C. Change the size and/or number of Developer-owned units by subdividing one or more Developer-owned units into two or more separate units, combining separate Developer-owned units (including those resulting from such subdivision or otherwise) into one or more units, or otherwise.

D. Reapportion among Developer-owned units affected by such change in size or number pursuant to the preceding clause, their appurtenant interests in the common elements and share of the common expenses; provided, however, that the percentage interest in the common elements of any units (other than Developer-owned units) shall not be changed by reason thereof unless the owners of such units shall consent thereto and; provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction.

The provisions of this paragraph may not be added to, amended or deleted without the prior written consent of the Developer.

**XXVIII. Additional Provisions**

A. Should any dispute or litigation arise between any of the parties whose rights and/or duties are affected or determined by this Declaration or any of the Exhibits attached hereto, said dispute or litigation shall be determined pursuant to the laws of the State of Florida.

B. In the event that any of the terms, provisions or covenants of the Declaration or any of the Exhibits attached hereto are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holdings will not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable herein.

C. Notwithstanding anything to the contrary herein contained, unless institutional mortgagees have given their prior written approval, the Association shall not be entitled to: (1) change the prorata interest or obligations of any unit for purposes of levying assessments and charges and determining shares of common elements and common surplus of the Condominium; (2) partition or subdivide any unit or the common elements of the Condominium; nor (3) by act or omission seek to abandon the Condominium regime, except as may be provided by statute in case of substantial loss to the units and common elements of the Condominium.

D. The remedies for violation provided for in the Condominium Act shall be in full force and effect. In addition



thereto, should the Association find it necessary to bring court action to bring about the compliance with the law, this Declaration and By-Laws, upon a finding by the Court that the violation complained of is willful and deliberate, the unit owner so violating same shall reimburse the Association for reasonable attorneys' fees incurred by it in bringing such action, as determined by the Court.

E. The failure of the Developer, or the Association, or any unit owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, the By-Laws or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

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

G. Notwithstanding anything to the contrary herein, nothing shall prevent the combining of units in the condominium, but said combined units shall retain their original appurtenant shares of the common elements, expenses, surplus and voting rights.

H. Captions used in these documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of the documents.

I. Upon written request, mortgagees of the units herein shall have the right to examine the books and records of the Association.

XXIX. Non-Liability of Developer.

Notwithstanding anything herein contained to the contrary, it is expressly understood and agreed that each and all of the warranties, representations, covenants, undertakings and agreements herein made on the part of the Developer, while in form purporting to be the warranties, representations, covenants, undertakings and agreements of said Developer, as Trustee, are nevertheless each and every one of them made and intended not as personal warranties, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intent of binding said Trustee personally, but are made and intended solely for the purpose of binding only that portion of the Trust Property specifically described herein. This instrument is executed and delivered by said Developer, as Trustee, not in his own right, but solely in the exercise of the powers conferred upon him as such Trustee; and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or be enforceable against said Developer on account of this instrument or on account of any warranty, representation, covenant,



undertaking or agreement of the said Trustee in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, DEVELOPER has executed this Declaration of Condominium this 20th day of April, 1979.

Signed, sealed and delivered in the presence of:

DEVELOPER:

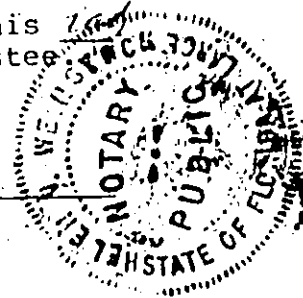
Sidon A. Burstein  
Jack D. Burstein

Jack D. Burstein  
JACK D. BURSTEIN, Trustee

STATE OF FLORIDA )  
COUNTY OF DADE ) SS:

The foregoing instrument was acknowledged before me this 20th day of April, 1979, by JACK D. BURSTEIN, Trustee

Sidon A. Burstein  
Notary Public,  
State of Florida at Large  
My Commission Expires:



NOTARY PUBLIC  
STATE OF FLORIDA  
COMMISSION EXPIRES 12/17/1983

EXHIBIT A  
TO  
DECLARATION OF CONDOMINIUM  
AMERICAN GARDENS, A CONDOMINIUM

LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY

EXHIBIT "A"

Lots 10, 11 and 12, less the East 2.5 feet thereof, in Block 9, of ALTOS DEL MAR NO. 3, according to the Plat thereof, as recorded in Plat Book 8, at Page 41, of the Public Records of Dade County, Florida.

EXHIBIT B  
TO  
DECLARATION OF CONDOMINIUM  
AMERICAN GARDENS, A CONDOMINIUM

---

PLOT PLAN, SURVEY AND GRAPHIC DESCRIPTION

FOR: AMERICAN CANNES CONDOMINIUM

URGENT NO. 00724

DATE: November 14, 1978

FILED NO. S-18724

CLERK NOTE:  
FOR DECLARATION OF CONDOMINIUM  
SEE OFFICIAL RECORD BK. 10371 PG. 1506

J. B. FORD CO.

CONDOMINIUM DECLARATION OF PROPERTY INTERESTS

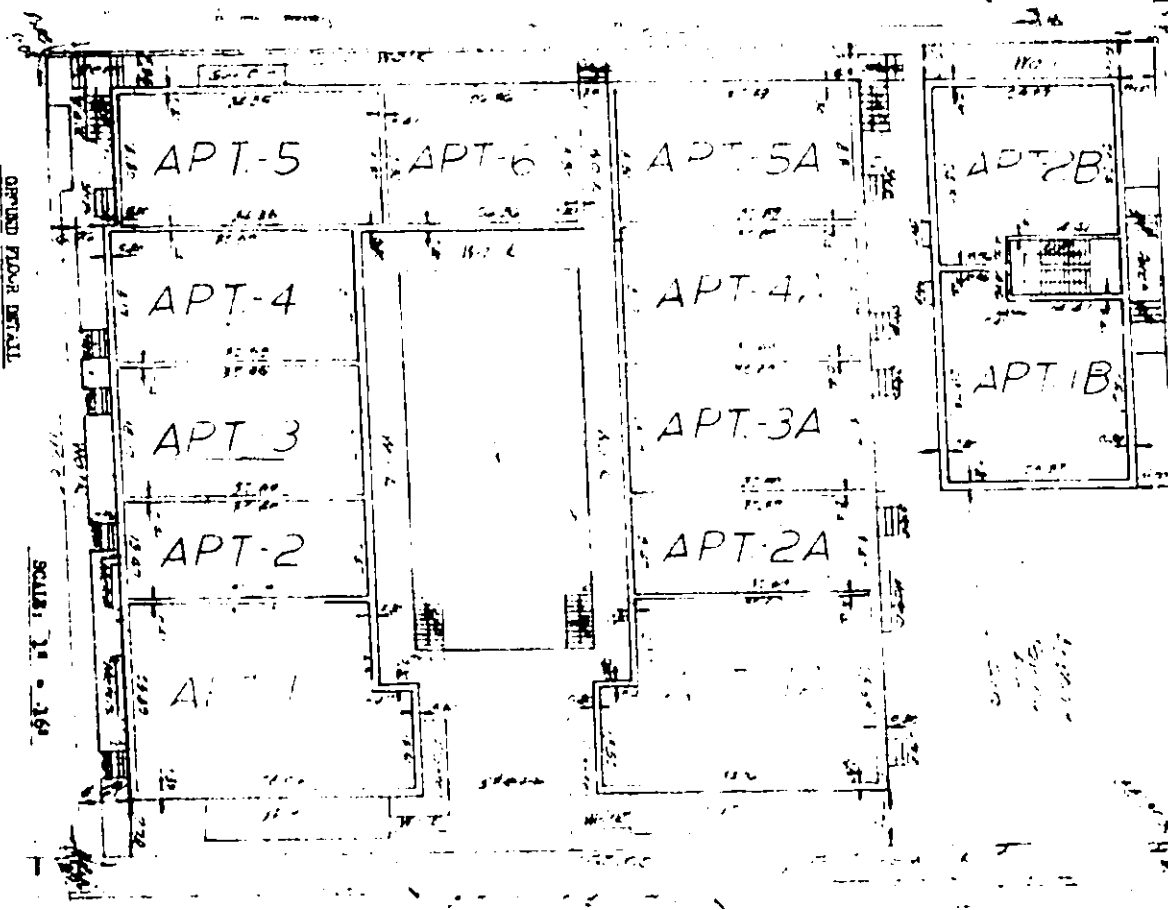
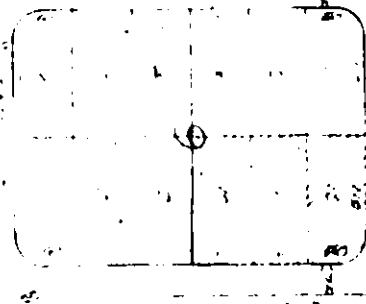
Lots 10, 11, and 12, Block 10, Subdivision 1, as shown on the plat of the same, recorded in Plat Book 8, at Page 41 of the Public Record of Dade County, Florida.

I HEREBY CERTIFY that this sheet and sheet No. 2, attached to the original Declaration of Condominium, prepared under Order No. 10228, together with the writing of the Condominium Declaration, to which this is attached, is a correct representation of the improvements described and there can be obtained therefrom the identification, location, dimensions and size of the Condominium and of each unit. Thereafter, reference is made herein to "Condominium", the use of the word "Condominium" is synonymous with the use of the word "unit" in the Condominium Declaration.

C. W. LABB  
Registered Land Surveyor  
State of Florida

Indicates Mean Sea Level within 16.40 feet.  
Ground level of Apartments have an elevation of 6.02 (7.72) and a ceiling elevation of 16.40.

LOCATION: 1001  
Scale: 1" = 100'



GROUND FLOOR DETAIL

SCALE: 1" = 10'

Sheet 1 of 2 Sheets

THE AMERICAN GARDEN COMPANY

ORANGE PD, FLORIDA

DATE: November 11, 1978

FLORIDA BOOKS 5-48724

J. B. FORD CO.  
C. W. FORD  
201 N. W. 1st Ave.  
Miami, Fla.  
Phone 444-4444

Second Floor Apartments have a floor elevation of 11.427' and a ceiling elevation of 2.821' (see level datum)

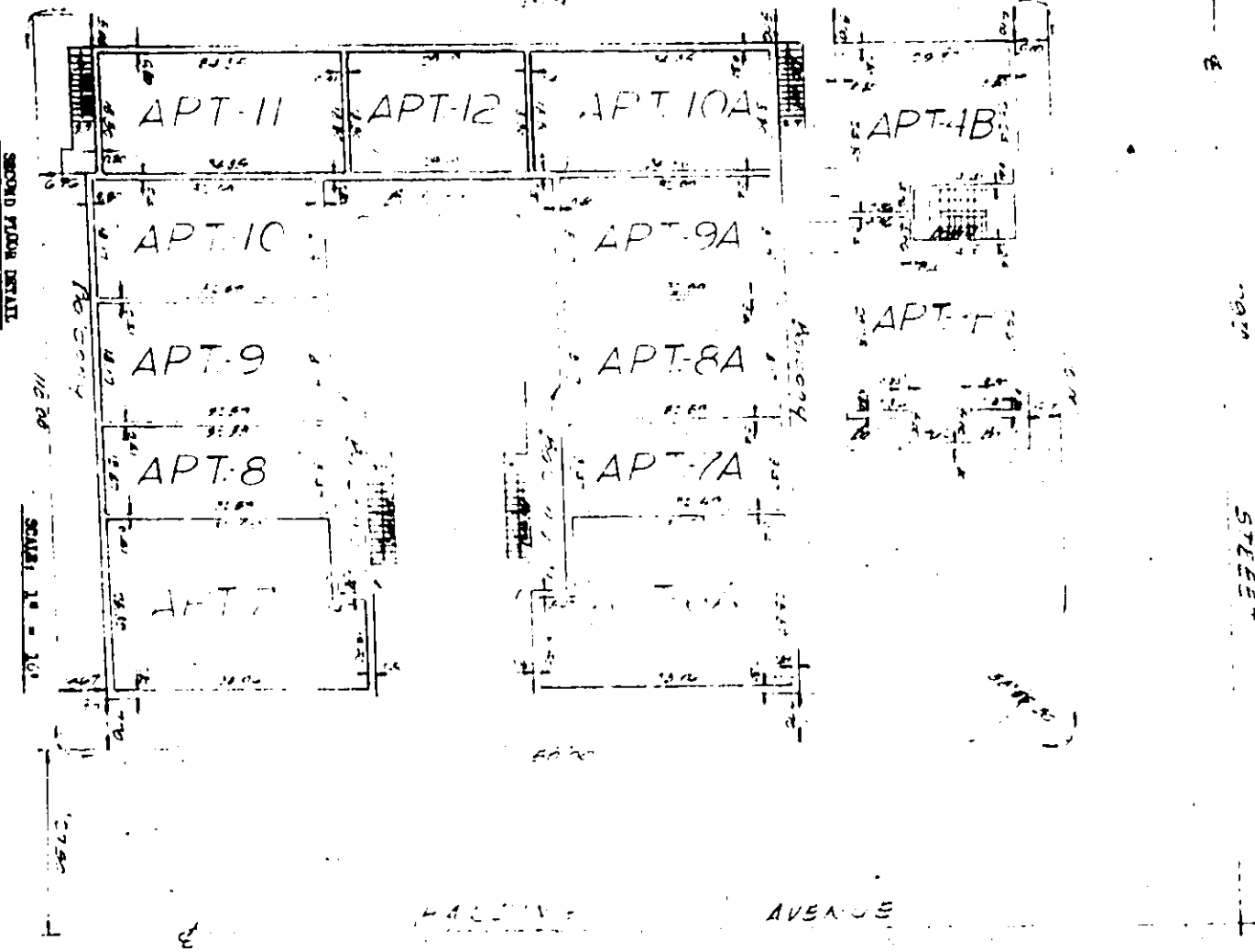


EXHIBIT C  
TO  
DECLARATION OF CONDOMINIUM  
AMERICAN GARDENS, A CONDOMINIUM

ARTICLES OF INCORPORATION OF  
AMERICAN GARDENS CONDOMINIUM ASSOCIATION, INC.

# State of Florida

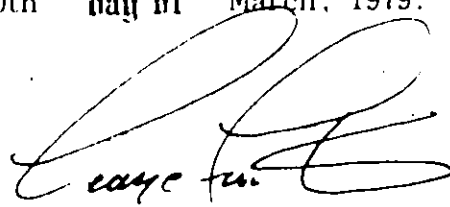


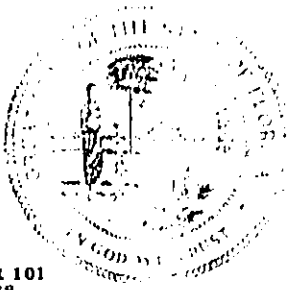
## Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of AMERICAN GARDENS CONDOMINIUM ASSOCIATION, INC., a corporation not for profit organized under the Laws of the State of Florida, filed on March 28, 1979, as shown by the records of this office.

The charter number for this corporation is 746491.

Given under my hand and the Great  
Seal of the State of Florida, at  
Tallahassee, the Capital, this the  
30th day of March, 1979.

  
Secretary of State



CER 101  
12-78



FILED

MAR 29

SEAL  
TALLAHASSEE

## ARTICLES OF INCORPORATION

OF

## AMERICAN GARDENS CONDOMINIUM ASSOCIATION, INC.

We, the undersigned, for the purpose of forming a not-for-profit corporation in accordance with the laws of the State of Florida, acknowledge and file these Articles of Incorporation in the Office of the Secretary of the State of Florida.

ARTICLE INAME

The name of this corporation shall be AMERICAN GARDENS CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall herein be referred to as the "Association".

ARTICLE IIPURPOSES AND POWERS

The purposes for which this corporation is formed are as follows:

A. The operation and management of AMERICAN GARDENS, a Condominium (referred to herein as "the Condominium") described in Article I of the Association's By-Laws and to undertake the performance of, and carry out the acts and duties incident to, the administration of the Condominium in accordance with the terms, provisions, conditions and authorizations contained in these Articles, the Association's By-Laws and the Declaration of Condominium recorded among the Public Records of Dade County, Florida; and to acquire, own, operate, mortgage, lease, sell and trade property, whether real or personal, as may be necessary or convenient in the administration of the Condominium.

B. To borrow money and issue evidences of indebtedness in furtherance of any or all of the objects of its business; to secure the same by mortgage, deed of trust, pledge or other lien.

C. To carry out the duties and obligations and receive the benefits given the Association by the Declaration of Condominium.

D. To establish By-Laws and Rules and Regulations for the operation of the Association and to provide for the formal administration of the Association; to enforce the Condominium Act of the State of Florida, the Declaration of Condominium, the By-Laws and Rules and Regulations of the Association.

E. To contract for the management of the Condominium and to delegate to the party with whom such contract has been entered into the powers and duties of the Association, except those which require specific approval of the Board of Directors or members.

F. 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 these Articles, the Declaration of Condominium, the By-Laws and the Condominium Act. The Association shall also have all of the powers of Condominium Associations under and pursuant to Chapter 718, Florida Statutes, the Condominium Act, and shall have all of the powers reasonably necessary to implement the purposes of the Association.

ARTICLE III

MEMBERS

A. Each unit owner in the Condominium shall automatically be a member of the Association. Membership will commence upon acquiring title to a unit and shall end upon the sale of said unit. Membership certificates are not required and will not be issued. Membership in the Association is limited to those persons owning a unit in the Condominium.

B. On all matters as to which the membership shall be entitled to vote, as hereinafter provided, there shall be only one vote for each unit, which vote shall be exercised in the manner provided by the Declaration of Condominium and the By-Laws.

C. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

ARTICLE IV

EXISTENCE

This Association shall have perpetual existence.

ARTICLE V

SUBSCRIBERS

The names and addresses of the Subscribers are as follows:

JACK BURSTEIN  
7840 Harding Avenue  
Miami Beach, Florida

GARY A. KORN  
1108 Kane Concourse  
Bay Harbor Islands, Florida

BLANCHE GITNICK  
1108 Kane Concourse  
Bay Harbor Islands, Florida

ARTICLE VI

DIRECTORS

A. The Condominium and Association affairs shall be managed by a Board of Directors composed of three persons, in accordance with Article III of the Association's By-Laws.

B. The number of Directors to be elected, the manner of their election and their respective terms shall be as set forth in Article III of the Association's By-Laws. Should a vacancy occur on the Board, the remaining Directors shall select a member to fill the vacancy until the next annual meeting of the membership.

C. All Officers shall be elected by the Board of Directors in accordance with the By-Laws at the regular annual meeting of the Board of Directors, as established by the By-Laws, to be held

immediately following the annual meeting of the membership. The Board of Directors shall elect from among the members a President, Vice President, Secretary and Treasurer, and such other officers as it shall deem desirable consistent with the Association's By-Laws.

## ARTICLE VII

### OFFICERS

Subject to the direction of the Board, the affairs of the Association shall be administered by the Officers designated in the By-Laws, who shall serve at the pleasure of said Board of Directors. The names and addresses of the Officers who shall serve until the first election of Officers pursuant to the provisions of the By-Laws are as follows:

| <u>Name</u>     | <u>Title</u>            | <u>Address</u>                                  |
|-----------------|-------------------------|-------------------------------------------------|
| JACK BURSTEIN   | President               | 7840 Harding Ave.<br>Miami Beach, Fla.          |
| GARY A. KORN    | Vice President          | 1108 Kane Concourse<br>Bay Harbor Islands, Fla. |
| BLANCHE GITNICK | Secretary/<br>Treasurer | 1108 Kane Concourse<br>Bay Harbor Islands, Fla. |

## ARTICLE VIII

### INITIAL BOARD OF DIRECTORS

The following persons shall constitute the initial Board of Directors and they shall serve until the first election of Directors and in accordance with the provisions of Article III of the Association's By-Laws:

| <u>Name</u>     | <u>Address</u>                               |
|-----------------|----------------------------------------------|
| JACK BURSTEIN   | 7840 Harding Avenue, Miami Beach, Fl.        |
| GARY A. KORN    | 1108 Kane Concourse, Bay Harbor Islands, Fl. |
| BLANCHE GITNICK | 1108 Kane Concourse, Bay Harbor Islands, Fl. |

## ARTICLE IX

### BY-LAWS

The By-Laws of the Association shall be adopted by the initial Board of Directors. The By-Laws may be amended, altered or rescinded by the Board of Directors in accordance with the By-Laws, except that no portion of the By-Laws may be altered, amended, or rescinded in such a manner as will prejudice the rights of the Developer described therein or mortgagees of units without their prior written consent.

## ARTICLE X

### AMENDMENTS TO ARTICLES

Amendments to these Articles shall be proposed and adopted in the following manner:

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

B. A resolution for the adoption of a proposed amendment may be proposed either by 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, provided such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided:

(1) Such approval must be by not less than 66 2/3% of the entire membership of the Board of Directors and by not less than 51% of the votes of the entire members of the Association; or

(2) By not less than 75% of the votes of the entire membership of the Association.

C. Provided, however, that no amendment shall make any changes in the qualifications for membership nor the voting rights of the members, without approval in writing by all members and the joinder of all record owners of mortgages upon condominium units. No amendment shall be made that is in conflict with the Condominium Act or the Declaration of Condominium.

D. A copy of each amendment adopted shall be filed with the Secretary of State, pursuant to the provisions of the applicable Florida Statutes, and a copy certified by the Secretary of State shall be recorded in the public records of Broward County, Florida.

#### ARTICLE XI

##### INDEMNIFICATION

Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees reasonably incurred by or imposed upon him in connection with any proceeding or any settlement thereof to which he may be a party, or in which he may become involved by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duty; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors 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 of the rights to which such Director or Officer may be entitled.

#### ARTICLE XII

##### INITIAL REGISTERED OFFICE, AGENT AND ADDRESS

The principal office of the Association shall be 7840 Harding Avenue, Miami Beach, Florida, or at such other place, within or without the State of Florida as may be subsequently designated by the Board of Directors. The initial registered

office is at the above address and the initial registered agent therein is JACK BURSTEIN.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 5<sup>th</sup> day of March, 1979.

Signed, sealed and delivered in the presence of:

E. Richard Alldredge  
William A. Dantz

Jack Burstein  
JACK BURSTEIN  
GARY A. KORN  
GARY A. KORN  
Blanche Gitnick  
BLANCHE GITNICK

STATE OF FLORIDA )  
COUNTY OF DADE ) SS:

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of MARCH, 1979, by JACK BURSTEIN, GARY A. KORN and BLANCHE GITNICK.

William A. Dantz  
Notary Public  
State of Florida at Large  
My commission expires

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES MAR. 23, 1979.  
BONDED THRU MAYNARD BONDING AGENCY

EXHIBIT D  
TO  
DECLARATION OF CONDOMINIUM  
AMERICAN GARDENS, A CONDOMINIUM

BY-LAWS OF AMERICAN GARDENS  
CONDOMINIUM ASSOCIATION, INC.

BYLAWS  
OF  
AMERICAN GARDENS CONDOMINIUM ASSOCIATION, INC.  
A NOT-FOR-PROFIT FLORIDA CORPORATION

ARTICLE I  
IDENTITY

1. The name of this corporation is AMERICAN GARDENS CONDOMINIUM ASSOCIATION, INC.

2. The principal office of the corporation is 7840 Harding Avenue, Miami Beach, Florida.

ARTICLE II  
PURPOSES

This corporation is organized for the purpose of being a condominium association within the meaning of the Condominium Act of the State of Florida, and in turn for the purpose of operating, governing, administering and managing the property and affairs of the Condominium, to-wit: AMERICAN GARDENS, a Condominium and to exercise all powers granted to it as a corporation under the laws of the State of Florida, these By-Laws, the Articles of Incorporation and the Declaration of Condominium to which these By-Laws are attached, and further to exercise all powers granted to a condominium association under the Condominium Act, and to acquire, hold, convey and otherwise deal in and with real and personal property in its capacity as a condominium association.

ARTICLE III  
DIRECTORS AND OFFICERS

1. Directors.

A. The affairs of the corporation shall be managed by a Board of Directors composed of three (3) persons. The members of the first Board of Directors are designated in the Articles of Incorporation. They shall serve until fifteen (15%) percent of the units are sold, at which time one (1) of them shall be replaced by a Director elected by the unit owners other than the Developer. Unit owners other than the Developer shall be entitled to elect two (2) Directors either three (3) months after ninety (90%) percent of the units have been sold; three (3) years after fifty (50%) of the units have been sold; or when all of the units have been completed, some of them have been conveyed to Purchasers and none of the units are being offered for sale by the Developer in the ordinary course of business, whichever shall be the first to occur. The Developer shall be entitled to elect at least one (1) Director as long as the Developer holds for sale in the ordinary course of business at least five (5%) percent of the units in the Condominium.

B. Directors shall be elected by the members at the annual meeting of members and shall hold office until the next annual meeting and until their successors are elected and shall qualify.

C. At least fourteen (14) days before the annual meeting, a complete list of members entitled to vote at such election, together with the addresses of each, shall be prepared by the Secretary. Such list shall be maintained at the office of the corporation for fourteen (14) days prior to the election, for the examination of every member of the Corporation and shall be produced and kept at the time and place of election, subject to the inspection of any member who may be present. At the first annual meeting of the members, Directors shall be elected for a term of one (1) year.

D. Directors shall be elected as follows:

(i) Nominations shall be from the floor at the annual membership meeting, and a vote shall be had by written, secret ballot. There shall be no cumulative voting. The election of each Director shall be separate and shall require a plurality of the votes of those persons voting in each election. All of the Directors shall be elected at the same meeting.

(ii) Directors shall be members of the Corporation, except that this provision shall not apply to the persons designated to be the first Board of Directors by Article VIII of the Articles of Incorporation.

## 2. Officers.

The officers of the Corporation shall consist of a President, a Vice President, a Secretary, and a Treasurer, any of whom may be members of the Board of Directors, and such other officers as the Board of Directors may appoint. The Officers named in the Articles of Incorporation shall serve until the first annual meeting of the Board of Directors, and at such meeting the Board of Directors shall elect the aforesaid Officers. Officers elected at the first annual meeting of the Board of Directors shall hold office until the next and ensuing annual meeting of the Board of Directors or until their successors shall have been elected and shall qualify.

## 3. Resignation, Vacancy, Removal, Compensation.

A. Any Director or Officer of the Corporation may resign at any time, by instrument in writing. Resignations shall take effect at the time specified therein, and if no time is specified, at the time of receipt by the President or Secretary of the Corporation. The acceptance of a resignation shall not be necessary to make it effective.

B. When a vacancy occurs on the Board of Directors, the vacancy shall be filled by the remaining members of the Board of Directors at their next meeting, by electing a person who shall serve until the next annual meeting of the members.

When a vacancy occurs in an office for any cause before an Officer's term has expired, the office shall be filled by the Board of Directors at its next meeting by electing a person to serve for the unexpired term.

C. A majority of members of the Corporation present at any regular or special meeting duly called, may remove any Director, with or without cause, except that Directors elected by the Developer shall not be affected by this provision.

D. Upon an affirmative vote of a majority of the members of the Board of Directors, any Officer may be removed either



with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting called for such purpose.

E. No compensation shall be paid to Directors or Officers for their services as Directors or Officers.

ARTICLE IV  
POWERS AND DUTIES OF THE CORPORATION AND THE EXERCISE THEREOF

The Corporation shall have all powers granted to it by law, the Declaration of Condominium to which these By-Laws are attached, the Condominium Act as the same may be amended from time to time, and the Articles of Incorporation, all of which powers shall be exercised by its Board of Directors unless the exercise thereof is otherwise restricted by the Declaration of Condominium, these By-Laws, or by law; and the aforementioned powers of the Corporation shall include, but not be limited to, the following:

A. All of the powers specifically provided for in the Declaration of Condominium and the Condominium Act.

B. The power to levy and collect assessments, based on a budget formally adopted by the Board of Directors.

C. The power to expend monies collected for the purpose of paying the common expenses of the Corporation.

D. The power to purchase equipment, supplies and material required in the maintenance, repair, replacement, operation and management of the common elements.

E. The power to insure and keep insured the buildings and improvements of the Condominium as provided for and limited by the Declaration of Condominium.

F. The power to employ the personnel required for the operation of the common elements and the Corporation.

G. The power to pay utility bills for utilities serving the common elements.

H. The power to contract for the management of the Condominium and to delegate to such management company all of the power and duties of the Corporation, except those items which must be approved by the members.

I. The power to make reasonable rules and regulations and to amend them from time to time, and to see that all members are notified of such changes in the rules and regulations as may be enacted.

J. The power to improve the Condominium property, subject to the limitations of the Declaration of Condominium.

K. The power to enforce by any legal means the provisions of the Articles of Incorporation, the By-Laws, the Declaration of Condominium, and the Rules and Regulations duly promulgated by the Corporation.

L. The power to collect delinquent assessments by suit or otherwise, and to abate nuisance and enjoin or seek damages from unit owners for violation of the provision of the Condominium Documents.

M. The power to pay all taxes and assessments which are liens against the common elements.

N. The power to deal with and approve or disapprove all conveyances or leases of condominium units as provided for under the Declaration of Condominium, and pursuant thereto.

O. The power to select depositories for the corporation funds, and to determine the manner of receiving, depositing and disbursing corporate funds, and the form of check and the person or persons by whom the same shall be signed, when not signed as otherwise provided by these By-Laws.

P. The power to possess, enjoin, and exercise all powers necessary to implement, enforce and carry into effect the powers above described, including the power to acquire, hold, mortgage, convey and deal in real and personal property.

Q. The power to enter into, ratify, modify and amend each and every of the agreements and undertakings contemplated by and contained within the Declaration of Condominium to which these By-Laws are attached.

R. The power to subscribe to and enter into a contract with any person, firm, corporation or real estate management agent of any nature or kind to provide for the maintenance, operation, repair and upkeep of the Condominium property.

1. Said contract may provide that the total operation of said managing agent, firm, or corporation shall be at the cost of this Corporation. Said contract may further provide that the managing agent shall be paid from time to time a reasonable fee, either stated as a fixed fee or as a percentage of the total cost of maintenance, operation, repair and upkeep, or of the total funds of this Corporation handled and managed by the managing agent.

2. Nothing in this subparagraph or in the Declaration of Condominium shall be deemed to require the corporation to maintain the interior of any condominium unit, or, to enter into any contract or undertaking to provide for the maintenance or upkeep of the interior of the condominium units of the Condominium.

#### ARTICLE V DUTIES OF OFFICERS

1. The President shall:

A. Act as Presiding Officer at all meetings of the Corporation and of the Board of Directors.

B. Call special meetings of the Board of Directors and of members.

C. Sign all checks, contracts, promissory notes, deeds, and other instruments on behalf of the Corporation, except those which the Board of Directors specifies may be signed by other persons.

D. Perform all acts and duties usually required of an executive to insure that all orders and resolutions of the Board of Directors are carried out.

E. Appoint committees and be an ex-officio member of all committees, and to render an annual report at the annual meeting of members.

2. The Vice President shall:

A. Act as Presiding Officer at all meetings of the Corporation and of the Board of Directors when the President is absent.

B. Perform other acts and duties required of the President, in the absence of the President.

C. Perform such other duties as may be required of him by the Board.

D. Sign checks on behalf of the Corporation in the absence of the President.

3. Should the President and Vice President be absent from any meeting, the remaining Directors shall select a person to act as chairman of the meeting.

4. The Secretary shall:

A. Attend all regular and special meetings of the members of the Corporation and of the Board of Directors and keep all records and minutes of proceedings thereof or cause the same to be done.

B. Have custody of the corporate seal and affix same when necessary or required.

C. Attend to all correspondence on behalf of the Board of Directors, prepare and serve notice of meetings, keep membership books, and receive all applications for membership, for transfer and lease of units, and present such applications to the Board of Directors for consideration.

D. Perform such other duties as the Board may determine and on all occasions in the execution of his duties, act under the supervision, control and direction of the Board of Directors.

E. Have custody of the minute book of the meetings of the Board of Directors and members which minute book shall at all times be available at the office of the Corporation for the information of the Directors and Officers, and act as transfer agent to record transfers and rules and regulations in the corporate books.

5. The Treasurer shall:

A. Receive such monies as shall be paid into his hands for the accounts of the Corporation and disburse funds as may be ordered by the Board, taking proper vouchers for such disbursements, and be custodian of all securities, contracts, leases, and other important documents of the corporation which he shall keep safely deposited.

B. Supervise the keeping of accounts of all financial transactions of the Corporation in books belonging to the Corpor-

ation, and deliver such books to his successor. He shall prepare and distribute to all of the members of the Board of Directors, at least ten (10) days prior to each annual meeting of the Board of Directors, and whenever else required, a summary of the financial transactions and condition of the Corporation for the preceding year. He shall make a full and accurate report of the matters and business pertaining to his office to the members at the annual meeting and make all reports required by law.

C. The Treasurer may have the assistance of an accountant or auditor, who shall be employed by the Board of Directors. In the event the Corporation enters into a management agreement, it shall be proper to delegate such of the Treasurer functions to the management agent as is deemed appropriate by the Board of Directors.

#### ARTICLE VI MEMBERSHIP

1. Membership in the Corporation is limited to owners of the Condominium units. Membership is automatically conferred upon acquisition of Condominium units, as evidenced by the filing of a deed to such unit, or as provided in the Declaration of Condominium for transfer of membership upon the death of a unit owner. Membership is an incident of ownership and is not separately transferable.

2. The owner of a unit shall be entitled to cast one vote at all meetings of the members. If a condominium unit is owned by more than one owner, co-partners or a corporation, there shall nevertheless be only one membership assigned to such unit, and the vote for such membership shall be cast by the person designated in writing by all of the owners of said units, and in the absence of such a writing, such vote shall not be counted.

3. Membership in the Corporation may be transferred only as an incident to the transfer of title to the condominium unit and shall become effective upon the recording of a deed to such condominium unit.

4. Membership shall terminate upon the transfer of title to a condominium unit.

#### ARTICLE VII MEETINGS, SPECIAL MEETINGS, QUORUMS, PROXIES.

##### 1. Meetings of Members.

A. Annual meetings: The first annual meeting of the Corporation shall be held at the office of the Corporation one (1) year after the date of the adoption of these By-Laws. Thereafter, the annual meeting of the Corporation shall be held at the office of the Corporation on the third Monday of the month in which these By-Laws were adopted. At such meetings there shall be elected by ballot of the members, a Board of Directors, in accordance with the requirements of these By-Laws. The members may also transact such other business of the Corporation as may properly come before the meeting.

B. Special meetings: It shall be the duty of the President to call a special meeting of the Corporation as directed by resolution of the Board of Directors or upon a peti-

tion signed by twenty (20%) percent of the members having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice thereof unless by consent of eighty (80%) percent of the members present, either in person or by proxy.

C. Notice of meetings: It shall be the duty of the Secretary to mail a notice of the annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each member of record, at his address as it appears on the membership book of the corporation, or, if no address appears, at his last known place of address, at least fourteen (14) but not more than forty (40) days prior to such meeting. The Secretary shall retain the post office certificate of mailing as proof of such mailing. The mailing of the notice in the manner provided in this paragraph shall be considered notice served. Notice of meetings shall also be posted at a conspicuous place at the Condominium property, at least forty-eight (48) hours in advance of each meeting, except in cases of emergency.

D. Quorum: The presence, either in person or by proxy, of fifty (50%) percent of the members of record of the Corporation shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of members.

E. Adjourned meetings: If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may, except as otherwise provided for by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

F. At every meeting of the members, each member present, either in person or by proxy, shall have the right to cast one vote on each question. Where a unit is owned by more than one person, all of said owners shall deliver to the Secretary a certificate designating the person exercising the voting right. The vote of the majority of those present, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Declaration of Condominium a different vote is required, in which case such express provision shall govern and control. All voting shall be by secret ballot.

G. Proxies: A member may appoint a proxy. Any proxy must be filed with the Secretary before the appointed time of each meeting and such proxy shall be valid only for the particular meeting designated in the proxy. No person individually, or in combination with his spouse, shall be entitled to hold more than five (5) proxies.

H. Waiver and consent: Nothing herein shall be construed to prevent a member from waiving notice of meeting or acting by written agreement without a meeting, and such waiver and action by written agreement is hereby expressly permitted.

## 2. Meetings of Directors:

A. Organizational meeting: The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order

to legally constitute such meeting, provided a majority of the whole Board of Directors shall be present.

B. Annual meeting: The annual meeting of the Board of Directors shall be held at the office of the Corporation, immediately preceding the annual meeting of members. The Board of Directors may establish a schedule of regular meetings to be held at such place as the Directors may designate, in which event no notice need be sent to the Directors once said schedule has been adopted.

C. Special meetings: Special meetings of the Board of Directors may be called by the President, on three (3) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice upon the written request of at least two (2) Directors.

D. Notice of annual meetings: Notice of the annual meeting of the Board of Directors shall be given to each Director personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting. All meetings shall be open to unit owners. Notice of all meetings shall be conspicuously posted at the Condominium property at least forty-eight (48) hours prior to the meeting, except in cases of emergency.

E. Waiver of notice: Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

F. Quorum: At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

G. Consent: The Board of Directors may act by written consent, without a meeting, provided that a majority of the Board of Directors consents to the action so taken.

#### ARTICLE VIII PROCEDURE

1. Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Declaration of Condominium, the Articles of Incorporation, the By-Laws of the Corporation or with Statutes of Florida.

2. The order of business at annual members' meetings and as far as practical at other members' meetings will be:

- A. Election of Chairman;
- B. Roll Call;
- C. Proof of Notice of Meeting; or Waiver of Notice;
- D. Reading of Minutes of Prior Meeting;
- E. Officers' Reports;
- F. Committee Reports;
- G. Election of Inspectors of Election;
- H. Elections;
- I. Unfinished Business;
- J. New Business; and Adjournment.

ARTICLE IX  
ASSESSMENTS AND MANNER OF COLLECTION

1. The Board of Directors has the sole power to and shall from time to time fix and determine the amounts necessary to pay the common expenses of the Condominium. The common expenses include those expenses described in the Declaration of Condominium and any other expenses designated as common expenses by the Board of Directors, under the authority and sanction of the Declaration of Condominium and the Condominium Act.

2. Funds for the payment of common expenses shall be assessed against and shall be a lien against the Condominium units in the proportion or percentage of sharing common expenses provided in the Declaration of Condominium.

3. Regular assessments shall be paid by the members on a monthly basis, payable on the first day of each and every month.

4. Special assessments should they be required by the Board of Directors, shall be levied and paid in the same manner as regular assessments, unless the Declaration of Condominium shall otherwise provide.

5. When the Board of Directors has determined the amount of any assessments, the Secretary shall transmit a statement of such assessment to each Condominium unit owner. Assessments are payable at the office of the Corporation.

Assessments are necessarily made upon projections and estimates of the Board of Directors, and may be in excess of, or less than the sums required to meet the cash requirements of the Condominium, in which event the Board of Directors may increase or diminish the amount of an assessment and make such adjustments in cash, or otherwise as they shall deem proper, in their sole discretion, including the assessment of each member of his proportionate share for any deficiency. Notice of all changes in assessments shall be given to all unit owners.

6. Assessments shall not include charges for utilities separately charged and metered to each apartment, nor charges for alterations, repairs, maintenance, improvements, or decorating within the interior of any unit.

7. Assessments are due on the date stated in the notice of assessment, and thereafter shall bear interest at ten (10%) percent per annum if not paid within ten (10) days from the date stated in the notice of assessment.

8. In the event an assessment is not paid within ten (10) days of the date same shall be due and payable, the Corporation, through the Board of Directors, may proceed to enforce and collect said assessments from the delinquent unit owner in any manner provided for by the Condominium Act, the Declaration of Condominium and these By-Laws. Each Condominium owner shall be individually responsible for the payment of assessments against his unit and for the payment of reasonable attorneys' fees and costs incurred by the Corporation in the collection of sums due and the enforcement of any lien held by the Corporation.

#### ARTICLE X FISCAL MATTERS

1. Fiscal year: The Fiscal year of the Corporation shall begin in January of each year, provided, however, that the Board of Directors shall be authorized to change to a different fiscal year at such time as the Board of Directors shall deem it advisable.

2. Depositories: The funds of the Corporation shall be deposited in a savings and loan association or bank or banks in Dade, Broward or Palm Beach County, Florida, in an account for the Corporation under resolutions duly approved by the Board of Directors, and shall be withdrawn only over the signature of the authorized Officers. Said funds shall be used only for Corporate purposes.

If necessary, and demanded by Mortgagees, separate accounts shall be established to maintain and disburse escrow funds required by Mortgagees to meet mortgage requirements as to establishment of escrows for real estate taxes and insurance respecting Condominium units.

3. Fidelity bonds: Fidelity bonds shall be required by the Board of Directors from all Officers and employees of the Corporation, and from any contractor handling or responsible for Corporation funds. The premium for such bonds shall be paid for by the Corporation.

4. Records: The Corporation shall maintain accounting records according to good accounting practice, which records shall be opened to inspection by unit owners at reasonable times. Such records shall include a record of receipts and expenditures for each unit owner which shall designate the name and address of the unit owner, the amount of each assessment, the amounts paid upon the account and the balance due, in a register for the names for any mortgage holders or lien holders who have notified the Corporation of their liens, and to which lien holders the Corporation will give notice of default, if required.

5. Annual statement: The Board of Directors shall present at each annual meeting, a full and clear statement of the business and condition of the corporation.

6. Insurance: The Corporation shall procure, maintain and keep in full force and effect, all insurance required by the Declaration of Condominium pursuant to the provisions of the Declaration of Condominium.



ARTICLE XI  
ADMINISTRATIVE RULES AND REGULATIONS

The Board of Directors may, from time to time, adopt rules and regulations governing the details of the operation and use of the common elements, and such other rules and restrictions as are designed to prevent unreasonable interference with the use of the units, limited common elements and common elements by the members and all members shall abide thereby, provided that said rules and regulations shall be equally applicable to all members and uniform in their application and effect.

ARTICLE XII  
VIOLATIONS AND DEFAULTS

In the event of a violation, other than nonpayment of an assessment by a unit owner, of any of the provisions of the Declaration of Condominium, these By-Laws, the Rules and Regulations of the Corporation, the Articles of Incorporation or any provision of the Condominium Act, the Corporation, after reasonable notice to cure not to exceed ten (10) days, shall have all rights and remedies provided by law, including without limitation (and such remedies shall or may be cumulative) the right to sue for damages, the right to such injunctive relief, and in the event of the failure to pay assessments, the right to foreclose its lien provided in the Condominium Act and in every such proceeding, the unit owner at fault shall be liable for court costs and the corporations' reasonable attorneys' fees. If the corporation elects to enforce its lien by foreclosure, the condominium unit owner shall be required to pay a reasonable rent for his condominium unit during litigation and the corporation shall be entitled to the appointment of a receiver to collect such rent. A suit to collect unpaid assessments may be prosecuted by the corporation without waiving the lien securing such unpaid assessments.

ARTICLE XIII  
AMENDMENT OF BY-LAWS

Subject always to the provisions of the Declaration of Condominium, these By-Laws may be amended, modified or rescinded in accordance with the Declaration of Condominium or by a resolution duly adopted by a majority of the Board of Directors at any duly called meeting of the Board of Directors, and thereafter submitted to the members at any duly convened meeting of the members and approved by a seventy-five (75%) vote of the members present or by proxy, provided there is a quorum, and further provided that notice of such meeting of members specifying the proposed change is given in the notice of the meeting, and further provided that the voting requirements of the Declaration of Condominium are met in full, in the appropriate cases. Notice may be waived in writing by any member. Any member of the Corporation may propose an amendment to the Board, and the Board shall act upon such proposal, at its next meeting.

No amendment shall discriminate against any unit owner nor any class or group of unit owners unless the unit owners so affected shall consent. No amendment shall be made that is in conflict with the Articles of Incorporation or the Declaration of Condominium.

A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the By-Laws, which certificate shall be executed by the Officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and a copy of the amendment are recorded in the Public Records of Dade County, Florida.

ARTICLE XIV  
VALIDITY

If any By-Law, Regulation, or Rule shall be adjudged invalid, such fact shall not effect the validity of any other By-Law, Rule or Regulation.

The foregoing was adopted as the By-Laws of AMERICAN GARDENS CONDOMINIUM ASSOCIATION, INC., a not-for-profit Florida corporation, under the laws of the State of Florida at a meeting of the members of said Corporation duly noticed, at which all members were present, by the unanimous vote of the members on the \_\_\_\_\_ day of \_\_\_\_\_, 1978.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

3

EXHIBIT E  
TO  
DECLARATION OF CONDOMINIUM  
AMERICAN GARDENS, A CONDOMINIUM

RULES AND REGULATIONS

## EXHIBIT "E"

AMERICAN GARDENS,  
A CONDOMINIUMRULES AND REGULATIONS

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 Condominium Association and shall apply to and be binding upon all unit owners. The unit 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, lessees, persons for whom they are responsible and persons over whom they exercise control and supervision. Violation of these Rules and Regulations may subject the violator to any and all remedies available to the Condominium Association and other unit owners pursuant to the terms of the Declaration of Condominium, the Articles of Incorporation of the Condominium Association and the By-Laws of the Condominium Association. Violations may be remedied by the Condominium Association by injunction or other legal means and the Association shall be entitled to recover in said actions any and all court costs incurred by it, together with reasonable attorney's fees against any person violating the 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 previously adopted 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 unit owners. Any waivers, consents or approvals given under these Rules and Regulations by the Board of Directors shall be revokable at any time and shall not be considered as a waiver, consent or approval of identical or similar situations unless notified in writing by the Board of Directors. THE RULES AND REGULATIONS ARE AS FOLLOWS:

1. RULES AND REGULATION:

A. Violations should be reported, in writing, to the Board of Directors of the Association.

B. Violations will be called to the attention of the violating owner by the Board of Directors.

C. Disagreements concerning violations will be presented to and be judged by the Board of Directors who will take appropriate action.

D. Unit Owners are responsible for compliance by their guests or lessees with the Rules and Regulations.

2. FACILITIES: The facilities of the condominium are for the exclusive use of unit owners, their lessees and guests accompanied by a unit owner. Any damage to the buildings, recreational facilities or other common areas or equipment caused by any resident or his guest shall be repaired at the expense of the unit owner.

3. NOISE: Radios, televisions and other instruments which may create noise should be turned down to a minimum volume between the hours of 10:30 P.M. and 8:00 A.M. All other unneces-

sary noises, such as bidding good night to departing guests and slamming car doors, between these hours, should be avoided.

4. OBSTRUCTIONS: Sidewalks, entrances, driveways, passages, patios, courts, vestibules, stairways, corridors and halls must be kept open and shall not be obstructed in any manner. Rugs or mats must not be placed outside of doors in corridors. No sign, notice or advertisement shall be inscribed or exposed on or at any window or any part of the condominium, except such as shall have been approved in writing by the Association, nor shall anything be projected out of any window in the condominium without similar approval. No radio or television aerial or antenna shall be attached to, or hung from the exterior of the condominium or the roof thereon.

5. CHILDREN: Children are not to play in the public halls or stairways. Reasonable supervision must be exercised when children are playing on the grounds.

6. DESTRUCTION OF PROPERTY: Neither unit owners, their dependents, nor guests shall mark, mar, damage, destroy, deface or engrave any part of the building. Unit owners shall be financially responsible for any such damage.

7. EXTERIOR APPEARANCE: The exterior of the condominium and all other areas appurtenant to the condominium shall not be painted, decorated or modified by any unit owner in any manner without the prior consent of the Association, which consent may be withheld on purely aesthetic grounds within the sole discretion of the Association. No awnings, window guards, light reflective material, hurricane or storm shutters, ventilators, fans or air conditioning devices shall be used in or about the condominium except as shall have been approved by the Association, which approval may be withheld on purely aesthetic grounds within the sole discretion of the Association. Balcony floors may be painted any color desired or covered with carpeting or tile; otherwise, uniform exterior colors may not be altered.

8. CLEANLINESS: All garbage and refuse from the condominium shall be deposited with care in garbage containers intended for such purpose at such times and in such manner as the Association shall direct. All disposals shall be used in accordance with instructions given to the unit owner by the Association.

9. BALCONIES: Plants, pots, receptacles and other movable objects must not be kept, placed or maintained on ledges of balconies or on terraces. No objects shall be hung from balconies, patios or window sills. No cloth, clothing, rugs or mops shall be hung open or shaken from windows, doors and balconies or terraces. Unit owners shall remove all loose objects or movable objects from the balconies and terraces during the hurricane season. Unit owners shall not throw cigars, cigarettes or any other object from balconies or terraces. No cooking shall be permitted on any balcony or terrace of an apartment. Unit owners shall not allow anything to be thrown or to fall from windows, doors, balconies or terraces. No sweepings or other substances shall be permitted to escape to the exterior of the building from the windows, doors, balconies or terraces.

10. HALLWAYS: Garbage cans, laundry, dry cleaning, supplies or other articles shall not be placed in the halls or on staircase landings. No unit owner shall allow doors to the corridor to remain open for any purpose other than for immediate ingress and egress.

11. STORAGE AREAS: Unit owners are responsible to see that nothing is placed in the storage areas which would create a fire hazard.

12. EMERGENCY ENTRY: In case of any emergency originating in or threatening any unit, regardless of whether the unit owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it 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 and to facilitate entry in the event of any such emergency, the owner of each unit, if required by the Association, shall deposit with the Association a key to such unit.

13. PLUMBING: Water closets and other plumbing shall not be used for any other purposes 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 of same shall be borne by the unit owner causing the damage.

14. ROOF: Unit owners, their lessees, their families and guests are not permitted on the roof for any purpose whatsoever.

15. SOLICITATION: There shall be no solicitation by any person anywhere in the building for any cause, charity, or for any other purpose whatsoever, unless specifically authorized by the Board of Directors.

16. FIRE DOORS: Unit owners are not to use Fire Doors for ingress or egress.

17. HURRICANE PREPARATIONS: Each unit owner or lessee who plans to be absent from his unit during the hurricane season must prepare his unit prior to departure by:

A. Removing all furniture and plants from his patio or balcony.

B. Designating a responsible firm or individual to care for his unit during his absence in the event that the unit should suffer hurricane damage and furnish the Association with the name of such firm or individual. The designated firm or individual shall contact the Association for permission to install or to remove hurricane shutters.

The foregoing Rules and Regulations are imposed are for the mutual benefit of all. Violations of these Rules are to be reported to the Board of Directors who will call the matter to the attention of the violating unit 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.

AMERICAN GARDENS CONDOMINIUM  
ASSOCIATION, INC.

By: \_\_\_\_\_  
President

EXHIBIT F  
TO  
DECLARATION OF CONDOMINIUM  
AMERICAN GARDENS, A CONDOMINIUM

SHARE IN COMMON EXPENSES, COMMON ELEMENTS  
AND COMMON SURPLUS

EXHIBIT "F"

SHARE IN COMMON ELEMENTS, COMMON  
EXPENSES AND COMMON SURPLUS

The share, expressed as a percentage, of the common elements, common expenses and common surplus that is appurtenant to each Type A Unit is .047761. The Type A Units are:

1 1A 6A 7

The share, expressed as a percentage, of the common elements, common expenses and common surplus that is appurtenant to each Type B Unit is .028358. The Type B Units are:

2 2A 7A 8

The share, expressed as a percentage, of the common elements, common expenses and common surplus that is appurtenant to each Type C Unit is .034328. The Type C Units are:

6 12

The share, expressed as a percentage, of the common elements, common expenses and common surplus that is appurtenant to each Type D Unit is .037313. The Type D Units are:

3 3A 4 4A 5 5A 8A 9 9A 10 10A 11

The share, expressed as a percentage, of the common elements, common expenses and common surplus that is appurtenant to each Type E Unit is .050746. The Type E Unit is the following:

3B

The share, expressed as a percentage, of the common elements, common expenses and common surplus that is appurtenant to each Type F Unit is .050746. The Type F Unit is the following:

1B

The share, expressed as a percentage, of the common elements, common expenses and common surplus that is appurtenant to each Type G Unit is .038810. The Type G Units are the following:

2B 4B

SUMMARY:

| Type of Unit | No. | Percentage Share of Common<br>Elements, Common Expenses<br>and Common Surplus | Extension   |
|--------------|-----|-------------------------------------------------------------------------------|-------------|
| A            | 4   | .047761                                                                       | .191044     |
| B            | 4   | .028358                                                                       | .113432     |
| C            | 2   | .034328                                                                       | .068656     |
| D            | 12  | .037313                                                                       | .447756     |
| E            | 1   | .050746                                                                       | .050746     |
| F            | 1   | .050746                                                                       | .050746     |
| G            | 2   | .038810                                                                       | .077620     |
|              | 26  |                                                                               | 100.000000% |



CONSENT OF MORTGAGEE TO DECLARATION OF CONDOMINIUM

CHARLES BURSTEIN and GENE BURSTEIN, his wife, the owners and holders of a Mortgage encumbering the Real Property described in Exhibit "A" attached to the Declaration of Condominium of AMERICAN GARDENS, a Condominium, according to the Declaration of Condominium thereof, to which this document is attached, consent to the Declaration of Condominium thereof and agree that the lien of their Mortgage, to the extent of the encumbrance upon the land described in Exhibit "A" attached to the Declaration of Condominium, shall be upon all of the condominium parcels of AMERICAN GARDENS, a Condominium, according to the Declaration thereof, together with all of their appurtenances and to the undivided shares of the common elements.

Nothing contained herein shall be deemed to or in any way limit or affect the Mortgage held by CHARLES BURSTEIN and GENE BURSTEIN, his wife, or the priority of the liens created thereby, and the sole purpose of this document is to acknowledge the consent of said Mortgagees to the Declaration of Condominium as hereinabove provided.

EXECUTED this 23rd day of April, 1979.

Witnesses:

Kris E. Bennett  
Allen W. Minstock

Charles Burstein  
CHARLES BURSTEIN

Kris E. Bennett  
Allen W. Minstock

Gene Burstein  
GENE BURSTEIN

STATE OF FLORIDA )  
 ) SS  
COUNTY OF DADE )

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

BEFORE ME, this 23 day of April, 1979, the undersigned authority, personally appeared CHARLES BURSTEIN and GENE BURSTEIN, his wife, who, after being first duly sworn, deposed and said that they executed the foregoing Consent of Mortgagee for the uses and purposes therein expressed.

Allen W. Minstock  
Notary Public  
State of Florida at Large,  
My Commission Expires:  
NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES  
BONDED THREE MONTHS FROM DATE

## CLERK NOTE:

FOR CONDOMINIUM PLANS SEE OFFICIAL  
RECORDS CONDOMINIUM PLAN BK. 74 Page 4

RICHARD P. BRINKER, CLERK  
CIRCUIT & COUNTY COURT

By D. J. Kestock D.C.