

DECLARATION OF CONDOMINIUM

- of -

BAYSIDE TERRACE

A CONDOMINIUM

WHEREAS, BAYSIDE TERRACE, INC., a Florida corporation, hereinafter referred to as "THE OWNER", own certain real property herein described; and

WHEREAS, "THE OWNER" has improved said property by constructing thereon a thirty-five (35) unit multifamily structure known as BAYSIDE TERRACE, said structure having been constructed substantially in accordance with the plans prepared by JAIME MONSERRAT, Architect for a thirty-five (35) apartment building;

WHEREAS, "THE OWNER" proposes in accordance with the "Condominium Act", Chapter 711 Florida Statutes 1963, to establish by this Declaration a plan for the individual ownership of the area or space contained in the apartment units in said multifamily structure, and the common ownership by the individual and separate owners thereon, of all the remaining real property, which is hereinafter referred to as the "common elements";

NOW, THEREFORE, "THE OWNER" of the following described property situate, lying and being in Dade County, Florida, to-wit:

Lots 4 and 5, in Block 42, of BELLEVIEW
SUBDIVISION OF ALTON BEACH, according to
the Plat thereof, recorded in Plat Book
6, Page 114, of the Public Records of
Dade County, Florida,

hereby submits the above listed real property and improvements thereon to condominium ownership and hereby makes the following Declarations as to divisions, covenants, restrictions, limitations, conditions and uses to which the above described real property and improvements thereon, consisting of a thirty-five (35) unit multifamily structure and appurtenances, may be put, hereby specifying that said Declaration shall constitute covenants to run with the land and shall be binding on "THE OWNER",

its grantee, successor or assign or its grantees, successors or assigns, and all subsequent owners of all of any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

I. DEFINITIONS. As used herein and in the Bylaws attached hereto and in all amendments hereto, unless the context requires otherwise:

- (1) "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner;
- (2) "Association" or "Corporation" means the BAYSIDE TERRACE, INC., the entity responsible for the operation of the condominium;
- (3) "Bylaws" mean the bylaws for the government of the condominium as they exist from time to time;
- (4) "Common expenses" means the expenses for which the unit owners are liable to the association;
- (5) "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 the amount of common expenses;
- (6) "Condominium" is that form of ownership of condominium property under which units of improvements are subject to ownership by different owners, and there is appurtenant to each unit as part thereof an undivided share in the common elements;
- (7) "Condominium parcel" means a unit together with the undivided share in the common elements which is appurtenant to the unit;
- (8) "Condominium property" means and includes the land in a condominium, whether or not contiguous, and all improvements thereon and all easements and

rights appurtenant thereto intended for use in connection with the condominium;

- (9) "Limited common elements" means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units;
- (10) "Operation" or "operation of the condominium" means and includes the administration and management of the condominium property;
- (11) "Unit" means a part of the condominium property which is to be subject to private ownership, as designated on the exhibits attached to this Declaration;
- (12) "Unit owner" or "owner of a unit" means the owner of a condominium parcel;
- (13) "Declaration" or "Declaration of Condominium" or "Enabling Declaration" means this instrument, or as it may from time to time be amended;
- (14) "Mortgagee" means a bank, savings and loan association, insurance company, mortgage company, or individual business entity authorized to do business in Florida.

II. CONDOMINIUM PARCELS; APPURTENANCES; POSSESSION AND ENJOYMENT.

- (1) The 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.
- (2) There shall pass with a unit as appurtenances thereto:
 - (a) An undivided share in the common elements;
 - (b) 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;
 - (c) An undivided share in the common surplus.
- (3) 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.

- (4) The owner of the respective "condominium unit" shall not be deemed to own the undecorated and/or unfurnished surfaces of the perimeter walls, floors and ceilings surrounding his respective "condominium unit", nor shall owner be deemed to own pipes, wires, conduits, or other public utility lines running through said respective

"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 element".

Said owner, however, shall be deemed to own the walls, and partitions, which are contained in said owner's respective "condominium unit", and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc.

III. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS.

- (1) The undivided share in the common elements which is appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit whether or not separately described;
- (2) A share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit;
- (3) The shares in the common elements appurtenant to units shall remain undivided, and no action for partition of the common elements shall lie.

IV. COMMON ELEMENTS.

- (1) Common elements includes within its meaning the following items:
 - (a) The land on which the improvements are located and any other land included in the condominium property whether or not contiguous;
 - (b) All parts of the improvements which are not included within the units;

- (c) Easements through units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to units and the common elements;
- (d) An easement of support in every portion of a unit which contributes to the support of a building;
- (e) 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;
- (f) The property and installations in connection therewith required for the furnishing of services to more than one unit or to the common elements.

V. DESCRIPTION OF PROPERTY INVOLVED.

1. Attached hereto and made a part hereof is a survey of said land, prepared and certified to by M. B. GARRIS-JACK T. GARRIS, Registered Civil Engineer and Registered Land Surveyor, dated December 20, 1966, together with a graphic description of the improvements in which the units are located and a plot plan thereof. The identification, location, dimensions and size of each unit and the common elements appears thereon. Together with this Declaration, they are in sufficient detail to identify the common elements in each unit, their relative locations and approximate dimensions. The legend and notes contained thereon are incorporated herein and made a part hereof by reference.

2. Subject condominium is identified by the name 'BAYSIDE TERRACE.

VI. PERCENTAGE OF OWNERSHIP OF COMMON ELEMENTS AND VOTING RIGHTS.

For purposes of identification, each condominium parcel has been numbered. The undivided share owned by each unit owner in the common elements appurtenant to each unit, the percentage of sharing common expenses and owning common surplus shall be:

UNDIVIDED % INTEREST

2A	2.78
2B	2.74
2C	2.72
2D	2.78
2E	2.76
2F	2.72
2G	2.76 Sub Total % 19.26%
3A	2.82
3B	2.79
3C	2.76
3D	2.82
3E	2.80
3F	2.76
3G	2.80 Sub Total % 19.55%
4A	2.87
4B	2.84
4C	2.80
4D	2.87
4E	2.85
4F	2.80
4G	2.85 Sub Total % 19.88%
5A	2.95
5B	2.90
5C	2.86
5D	2.95
5E	2.92
5F	2.86
5G	2.92 Sub Total % 20.36%
6A	3.05
6B	2.99
6C	2.92
6D	3.05
6E	3.01
6F	2.92
6G	3.01 Sub Total % 20.95%
	<u>100.00%</u>

VII. AMENDMENTS OF DECLARATION.

(1) These Restrictions, Reservations, Covenants, Conditions and Easements may be modified or amended by executing with the formalities of a deed and recording such modification in the Public Records of Dade County, Florida, signed by three-fourths (3/4th) (75%) of the unit owners. No amendment shall change any condominium parcel nor a unit owner's proportionate share of the 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 voluntarily placed liens thereon, shall join in the execution of the amendment. No amendment shall be passed which shall impair or prejudice the rights and priorities of mortgagees. Unanimous consent of owners shall be necessary to change the vote or consent necessary to terminate the condominium project during the twenty (20) year period beginning on the date hereof;

(2) Invalidity of any of these Restrictions, Reservations, Covenants, Conditions and Easements or any provision contained in the plat of the condominium property or in a conveyance of a unit in the condominium by Judgment, Court Order or law shall in no wise affect any of the other provisions which shall remain in full force and effect;

(3) These Restrictions, Reservations, Covenants, Conditions and Easements shall be binding upon and inure to the benefit of unit owners and their grantees, heirs, personal representatives, successors, assigns and any and all parties claiming by, through or under any unit owner.

VIII. BYLAWS.

The operation of the condominium property shall be governed by the Bylaws of BAYSIDE TERRACE, a copy of which is attached hereto and made a part hereof as Appendix "A". No modification of or amendment to these Bylaws shall be deemed valid unless set forth in or annexed to a duly recorded amendment to this Declaration in accordance with the formalities set forth herein. No amendment to said Bylaws shall be adopted which would effect or

impair the validity or priority of any mortgage covering any condominium parcel.

IX. THE ASSOCIATION, ITS POWERS AND RESPONSIBILITIES.

- (1) The operation of the condominium shall be vested in BAYSIDE TERRACE, INC.
- (2) No unit owner, except as an officer of the association, shall have any authority to act for the association;
- (3) The powers and duties of the association shall include those set forth in the Bylaws referred to in Article VIII above, 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, duties granted to or imposed upon it by this Declaration, including:
 - (a) 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 other unit or units;
 - (b) The power to make and collect assessments and to lease, maintain, repair and replace the common elements;
 - (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by unit owners at all times.

X. MAINTENANCE; LIMITATION UPON IMPROVEMENT.

- (1) The maintenance of the common elements shall be the responsibility of the association;
- (2) There shall be no material alteration or substantial additions to the common elements except in a manner provided herein;
- (3) No unit owner shall make any alterations in the portions of the improvements of the condominium 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 containing his unit or impair any easement.

XI. COMMON EXPENSES AND COMMON SURPLUS.

- (1) 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 expense designated as common expense by this Declaration or the Bylaws;

- (2) Funds for the payment of common expenses shall be assessed against unit owners in the proportions or percentages of sharing common expenses provided in this Declaration;

- (3) The common surplus shall be owned by unit owners in the shares provided in this Declaration.

XII. ASSESSMENTS; LIABILITY; LIEN AND PRIORITY; INTEREST; COLLECTIONS.

- (1) 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 property. A unit owner, regardless of how title is acquired, shall be liable for all assessments coming due while he is the owner of a unit. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of such voluntary conveyance;
- (2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by abandonment of the unit for which the assessment was made;
- (3) Assessments and installments thereon not paid when

due shall bear interest from the date when due until paid, at the rate of six (6%) percent per annum until paid;

- (4) The association shall have a lien on each condominium parcel for any unpaid assessments and interest thereon against the owner of such condominium parcel, until paid. Such lien shall also include reasonable attorney's fees 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, and may settle and compromise same if in the best interests of the association. Said lien shall be effective as and in the manner provided for by the Condominium Act and shall have the priorities established by said Act.
- (5) 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 statute. The association may bid at any sale in same and apply as a cash credit against its bid all sums due the association covered by the lien being enforced.
- (6) Where the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the condominium parcel as a result of foreclosure of the first mortgage, or where an institutional first mortgagee of record accepts a deed to said condominium parcel in lieu of foreclosure, such acquirer of title, successors and assigns, shall not be liable for the share of common

expenses or assesemnt by the association pertaining to such condominium parcel or chargeable to the former suit owner of such parcel which became due prior to acquisition of title as a result of the foreclosure, or the acceptance of such deed in lieu of foreclosure. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectable from all of the unit owners including such acquirer, his successors and assigns.

(7) Any person who acquires an interest in a unit, except through foreclosure of a first mortgage of record (or deed in lieu thereof), 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 common elements until such time as all unpaid assessments due and owing by the former unit owner have been paid.

(8) 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.

(9) Nothing herein shall abridge or limit the rights or responsibilities of mortgagees of a condominium unit as set out in greater detail in the statutes made and provided for same.

XIII. TERMINATION OF CONDOMINIUM.

If all unit owners and the holders of all liens and mortgages affecting any of the condominium parcels execute and duly record an instrument terminating the condominium property, or if "very substantial" damage occurs as defined in the insurance clauses hereunder, said property shall be deemed to be subject to termination and thereafter owned in common by the unit owners. The undivided interest in the

property owned in common by each unit owner shall then become the percentage of the undivided interest previously owned by such owner in the common element.

XIV. EQUITABLE RELIEF.

In the event of substantial damage to or destruction of all or a substantial part of the condominium property, and in the event the property is not repaired, reconstructed or rebuilt within a reasonable period of time, any unit owner shall have the right to petition a court of equity having jurisdiction in and for Dade County, Florida, for equitable relief, which may, but need not necessarily include, a termination of the condominium and a partition.

XV. LIMITATION OF LIABILITY.

- (1) The liability of the owner of a unit for common expenses shall be limited to the amounts for which he is assessed from time to time in accordance with this

Declaration;

- (2) The owner of a unit shall have no personal liability for 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 his own unit to the same extent and degree that the owner of a house would be liable for an accident occurring within the house.

XVI. LIENS.

- (1) Subsequent to recording this Declaration no liens of any nature shall thereafter arise or be created against the condominium property as a whole as distinguished from individual units, except with the unanimous consent of the unit owners. During such period liens may arise or be created only against the separate condominium parcels;
- (2) Labor performed or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to the mechanics' lien law against the unit or condominium parcel of any unit owner not expressly consenting to

or requesting the 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 same might 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;

- (3) 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 his condominium parcel. Upon such payment, it shall be the duty of the lienor to release the lien of record for such condominium parcel.

XVII. REMEDIES FOR VIOLATION.

Each unit owner shall be governed by and conform with this Declaration and the Bylaws attached hereto. Failure to do so shall entitle the association or any unit owner to recover damages or obtain injunctive relief, or both, but such relief shall not be exclusive of other remedies provided by law.

XVIII. EASEMENTS.

- (1) Owners of units shall have as an appurtenance there- to a perpetual easement for ingress and egress to and from their units over stairs, terraces, balconies, walks and common elements;
- (2) All condominium property shall be subject to perpetual easements for encroachments presently existing or which may hereafter be caused by settlement or movement of the building or minor inaccuracies in construction, which encroachments shall continue until such encroachment no longer exists. If the condominium property be destroyed and then rebuilt, encroachments due to construction shall be permitted and a valid easement for said encroachments and the

maintenance thereof shall exist.

XIX. MEMBERSHIP IN ASSOCIATION.

- (1) BAYSIDE TERRACE, INC., a non-profit Florida corporation, was chartered, not only to hold legal title to the condominium property, but also to perform the acts and duties desirable for apartment house management for the units and common elements, and to levy and enforce collection of assessments necessary to perform said acts and duties;
- (2) All unit owners shall automatically be members of the association and said membership shall terminate when they no longer own said units;
- (3) Owners of each unit shall collectively be entitled to vote in accordance with voting privileges set forth in the Bylaws attached hereto as Appendix "A".

XX. ASSESSMENTS.

- (1) The Board of Directors of the association shall approve annual budgets in advance for each fiscal year, which budget shall project anticipated income and estimated expenses in sufficient detail to show separate estimates for taxes, if any, and insurance for the common elements, plus operating and maintenance expenses;
- (2) The percentage of the annual assessment chargeable for each fiscal year against each unit is set forth in Article VI above. One-half of the amount assessed against the unit shall be payable on the first (1st) day of May and first (1st) day of November of the fiscal year involved, but the Board of Directors has the power to establish other collection procedures. In addition, the association has the power to levy special assessments against each unit in their respective percentages, if a deficit should develop in the treasury for the payment of common expenses.

XXI. SALE, RENTAL, LEASE OR TRANSFER.

- (1) The association shall have the option to purchase or lease any unit upon the same terms and conditions as are offered by the unit owner to any third person. Prior to the sale, rental, lease or transfer of any unit to any person other than the transferor's spouse, or member of his immediate family, the unit 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, rental, lease or transfer is to be made and the terms and conditions thereof, and such other information as may be required by the Board of Directors. Failure to do so shall be deemed a breach of this Declaration and any transfer in contravention hereof shall be null and void and confer no title or interest to the intended purchaser, lessee or transferee. Within ten (10) days of receipt of said notice and such supplemental information as it requires, the Board of Directors shall either approve or disapprove of the proposed sale or transfer, in writing, and shall notify the owner of its decision. Failure by the association to act within said ten (10) days shall be tantamount to its consent.

- (2) In the event the Board of Directors disapproves of the proposed transaction, and if the unit owner still desires to consummate same, he shall, fifteen (15) days before such sale or transfer, give written notice to the secretary of the corporation of his intention to sell or transfer on a certain date and the bona fide price and other terms thereof, and the association shall promptly notify its members of the date, price and terms. The members of the association shall have the first right over non-members to purchase on the terms and conditions contained in the notice provided that they so notify the secretary of the association in writing, at least ten (10) days before the date of the intended sale, which information the association shall promptly

forward to the owner. Thereupon the owner may either accept the offer or withdraw, and/or reject the offer specified in the notice to the Board. Failure of any unit owners to accept the offer within said ten (10) days, or to close the transaction within fourteen (14) days shall be deemed consent to the transaction specified in the notice. 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 with whichever of the accepting members he chooses. If no written notice accepting the price and terms is received from any other member, the selling member may complete the sale on the day and at the price and terms given in his notice. If he fails to comply with the terms hereof any other member shall have the right to redeem from the purchaser, subject to his reimbursing the purchaser for any moneys expended, and immediately after such reimbursement, the purchaser shall convey all his right, title and interest to the member making the redemption.

(3) Units shall not be leased or subleased without the prior written approval of the Board of Directors. The Board shall have the right to require that a substantially uniform form of lease or sublease be used. Notwithstanding the lease or sublease of his unit, the liability of the unit owner shall continue.

(4) Should any condominium unit or parcel at any time become subject to an institutional first mortgage, the holder thereof, upon becoming the owner of said condominium parcel through foreclosure, deed in lieu of foreclosure, or other means, and its immediate grantee, shall have the unqualified right to sell, lease or otherwise transfer said unit, including the fee ownership thereof, without prior offer to the

Board of Directors, the provisions of Paragraph (1) above to be inapplicable.

- (5) Notwithstanding any other provisions herein, this article shall not be applicable to BAYSIDE TERRACE, INC., which is recognized as the developer of the condominium project, and which corporation is irrevocably empowered to sell, lease or rent condominium units to any purchaser or lessee approved by it. The said developer shall have the right to transact any business necessary to consummate sales of units, including, but not limited to, the right to maintain models, have signs, employees in the offices, use the elevators and common elements, and to show apartments. Sales office, signs and all items pertaining to sales shall not be considered common elements and remain the property of the developer. In the event there are unsold parcels, developer retains the right to be the owner of unsold parcels under the same terms and conditions as all other parcel owners in said condominium, and developer, as parcel owner, shall contribute to the common expenses in the same manner as other parcel owners.

XXII. OBLIGATIONS OF MEMBERS.

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

- (a) Promptly pay the assessments levied by the association;
- (b) Maintain in good condition and repair his unit and all interior surfaces within or surrounding his apartment unit (such as the surfaces of the walls, ceilings, floors) whether or not a part of apartment or common elements, and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his unit;
- (c) Not use or permit the use of his unit for any purpose other than as a single family residence for himself and the adult members of his family and

social guests and maintain his unit in a clean and sanitary manner;

- (d) Keep pets or other animals in his unit and the common elements only under regulations established by the association;

- (e) Not to make or cause to be made any structural addition or alteration to his unit or to the common elements without prior written consent of the association and all mortgagees holding a mortgage on his unit;

- (f) Not to permit or suffer anything to be done or kept in his unit which will increase the insurance rates on his unit or the common elements, or which will obstruct or interfere with the rights of other members or annoy them by unreasonable noises or otherwise; nor shall a member commit or permit any nuisance, immoral or illegal act in his unit or on the common elements;

- (g) Conform to and abide by the Bylaws 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 him do likewise;

- (h) Make no alteration, decoration, repair, replacement or change of the common elements or to any outside or exterior portion of the building, whether within a unit or part of the common elements;

- (i) Allow the Board of Directors or the agents and employees of the association to enter any unit for the purpose of maintenance, inspection, repair, replacement of the improvements within units or the common elements, or in case of emergency threatening units or the common elements, or to determine compliance

with these Restrictions, Reservations, Covenants, Conditions and Easements and Bylaws of the corporation;

- (j) Show no sign, advertisement or notice of any type on the common elements or his unit, and erect no exterior antennas and aeriels except as provided uniform regulations promulgated by the association;
- (k) Not allow any children under twelve (12) years of age to reside on the premises except as permitted by the uniform regulations established from time to time by the association;

- (l) Make no repairs to any plumbing or electrical wiring within a unit except by plumbers or electricians authorized to do such work by the Board of Directors of the corporation. Plumbing and electrical repairs within a unit shall be paid for and be the financial obligation of the owners of the unit, whereas the corporation shall pay for and be responsible for repairs and electrical wiring within the common elements;

- (m) Return the condominium parcel for the purpose of ad valorem taxes to the respective taxing authorities having jurisdiction over them for separate assessment against his condominium parcel. For the purposes of ad valorem taxation, the interest of the owner of a condominium parcel in his condominium unit and in the common elements shall be considered 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 has been assigned to said unit as has been set forth in this Enabling Declaration. The total of all of said percentages equals 100% of the value of all of the land improvements thereon;

XXIII. ENFORCEMENT OF MAINTENANCE.

In the event the owner of a unit fails to maintain it as required above, or otherwise violates the provisions hereof, the association 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 improvement within the unit in good condition. After such assessment, the association shall have the right for its employees or agents to enter the unit and do the necessary work to enforce compliance with the above provision.

XXIV. LIMITED COMMON ELEMENTS.

There are limited common elements appurtenant to each of the units in this condominium, as shown and reflected by the Floor and Plot Plans, such as patios and balconies. These limited common elements are reserved for the use of the units appurtenant thereto to the exclusion of other units, and there shall pass with a unit as appurtenant thereto the exclusive right to use the limited common elements so appurtenant.

Expenses of maintenance and repair relating to the interior services of such limited common elements shall be borne by and assessed against the individual unit owner. Any expenses of maintenance, repair or replacement relating to the exterior surfaces of such limited common elements or involving structural maintenance, repair or replacement shall be treated as and paid for as a part of the common expenses of the association.

XXV.

LIABILITY INSURANCE.

The Board of Directors of the association shall obtain public liability insurance covering all of the common elements of the condominium and insuring the association and the common owners as its and their interests appear,

in such amounts as the Board of Directors may determine from time to time, provided that the minimum amount of coverage shall be \$100,000.00 - \$300,000.00. Premiums for the payment of such insurance shall be chargeable as common expense to be assessed against and paid equally by each of the unit owners. Each individual unit owner shall be responsible for purchasing liability insurance to cover accidents occurring with his own unit.

XXVI. CASUALTY INSURANCE.

- (1) Purchase of Insurance: The association shall obtain fire and extended coverage insurance and vandalism and malicious mischief insurance, insuring all of the insurable improvements within the condominium, together with such other insurance as the association deems necessary in and for the interest of the association, all unit owners, and their mortgagees, as their interests may appear, in a company Triple A - best rating or better, in an amount which shall be equal to the maximum insurable replacement value as determined annually, and the premiums for such coverage and other expenses in connection with said insurance shall be assessed against the unit owners as part of the common expenses.

- (2) Loss Payable Provisions: 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. Said policies shall provide that all insurance proceeds payable on account of loss or damage shall be payable to the association and to institutional first mortgagees, said proceeds to be expended or disbursed in the manner hereinbelow set forth.

- (3) Loss Within Single Unit: If loss shall occur within

a single unit or units without damage to the common elements, the insurance proceeds shall be delivered over to the unit owner and his first mortgagee, if any. The unit owner shall thereupon be fully responsible for the restoration and repair of the unit.

(4) Loss Less Than "Very Substantial": Where a loss or damage occurs to more than one unit, 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":

(a) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.

(b) If the damage or loss is limited to the common elements, with no or minimal damage or loss to any individual unit, and if such damage or loss to the common elements is less than \$5,000.00, the insurance proceeds shall be endorsed over to the association, who shall promptly contract for the repair and restoration of the damage.

(c) 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 \$5,000.00, the insurance proceeds shall be endorsed over to the association, provided, however, that upon request of any institutional mortgagee: (1) all corporate officers and employees handling the insurance proceeds and any additional deficiency assessment funds shall be bonded to the full extent of such moneys; and (2) said moneys shall be deposited in a special account, all withdrawals therefrom and contracts for the repairs and restoration of the property to be approved by a designee of a "majority" of institutional first mortgagees holding mortgages upon any portion of the condominium property. (The term "majority" means the holder of mortgage deeds, the aggregate balance of which is more than one-half of the total institutional first mortgage indebtedness then owing on the various units).

- (d) 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.
- (e) If the net proceeds of 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 equally for that portion of the deficiency as is attributable to his 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 individual damaged unit(s), then the Board of Directors shall levy the assessment for the total deficiency against all of the unit owners equally as though all of said damage had occurred to the common elements.
- (f) 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 thirty (30) 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 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 mortgages 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 his unit shall be subject to special assessment for such sum.
- (5) "Very Substantial" Damage: As used in this Declaration, or in any other context dealing with this condominium, the term "very substantial" damage shall mean loss or damage whereby two-thirds (2/3) or more of the apartment units are rendered not tenable, or loss or damage whereby sixty-six and two-thirds (66 2/3%) percent or more of the total amount of insurance coverage

(placed as per paragraph XXVI (1) becomes payable. Should such "very substantial" damage occur, then:

(a) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.

(b) The provisions of paragraph XXVI (4) (f) shall not be applicable to any institutional first mortgagee who shall have the right, if its mortgage so provides, to require application of the insurance proceeds to the payment or reduction of its mortgage debt. The Board of Directors shall ascertain as promptly as possible, the net amount of insurance proceeds available for restoration and repair.

(c) Thereupon, a membership meeting shall be called by the Board of Directors, to be held not later than sixty (60) days after the casualty, to determine the wishes of the membership with reference to the abandonment of the condominium project, subject to the following:

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 sufficient to cover the cost thereof so that special assessment will be required, then if a majority of the membership vote against such special assessment and 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 16 of the Condominium Act. In the event the majority of the voting members vote in favor of the special assessment, the association shall immediately levy such assessment and thereupon, the association shall proceed to negotiate and contract for such repairs and restoration, subject to the provisions of paragraph (4) (c) and (d) above. To the extent that any insurance proceeds are required to be paid over to any mortgagee, and in the event it is determined not to abandon the condominium project and to vote such 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. In the event any dispute shall arise as to whether or not "very substantial" damage has occurred, it is agreed that such finding jointly made by the Board of Directors of the association and by the insurer shall be binding upon all unit owners.

- (6) Association's Power to Compromise Claims: The association is hereby irrevocably agent for each unit owner for the purpose of compromising and settling claims arising under insurance policies purchased by the association.

XXVII. MISCELLANEOUS.

- (1) If any provision of this Declaration, or of the Bylaws attached hereto, or of the Condominium Act, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder of this Declaration, the Bylaws attached hereto, or the Condominium Act, and of the application of any such provision, section, sentence, clause, phrase, or word in other circumstances shall not be affected thereby.

- (2) Whenever notices are required to be sent hereunder, the same shall be sent to the unit owners by certified mail at their place of residence in the condominium building, unless the owner has, by written notice duly receipted for, specified a different address. Notices to the association shall be delivered by certified mail at the primary office of the association at 1670 BAY ROAD, MIAMI BEACH, FLORIDA. Notice to the developer, BAYSIDE TERRACE, INC., a Florida corporation, shall be mailed to it by certified mail to BAYSIDE TERRACE, INC., c/o FRANK & STRELKOW, Attorneys, 1335 Lincoln Road, Miami Beach, Florida. All notices shall be deemed and considered sent when mailed. Any party may change his or

its mailing address by written notice.

- (3) The Remedy for Violation provided for by Section 23 of the 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 the Bylaws, upon a finding by the court that the violation complained of is willful and deliberate, the unit owner so violating shall reimburse the association for reasonable attorney's fees incurred by it in bringing such action, as determined by the court.

- (4) Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the plural shall include the singular and the singular shall include the plural. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the operation of a condominium in accordance with the laws made and provided for same. As used herein, the term "member" means and refers to any person, natural or corporate, who is a unit owner, and the term "association" as defined in Article I hereof, is used synonymously with "corporation" and refers to BAYSIDE TERRACE, INC.

IN WITNESS WHEREOF, BAYSIDE TERRACE, INC., has caused these presents to be signed in its name by its President and its corporate seal affixed, attested by its Secretary, this 16th day of August, 1967.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Donald C. Slossberg
Ruby N. Clark

STATE OF CONNECTICUT)
COUNTY OF HARTFORD) :SS

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to take acknowledgments, SAUL A. SLOSSBERG, and NAT WALD, the President and Secretary, respectively, of the BAYSIDE TERRACE, INC., a Florida corporation, and severally acknowledged to and

BAYSIDE TERRACE, INC.
Florida corporation
By: *Saul A. Slossberg* President
Attest: *Ruby N. Clark* Secretary