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RECORDED AND VERIFIED
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A SUMMER PLACE CONDOMINIUM

DECLARATION OF CONDOMINIUM

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NORTH CAROLINA

NEW HANOVER COUNTY

DECLARATION OF CONDOMINIUM

OF

A SUMMER PLACE CONDOMINIUM

THIS DECLARATION and the exhibits which are attached hereto and made a part hereof by this reference, are made and executed this 31st day of July, 1984, by D-G ENTERPRISES, LTD., a North Carolina corporation, hereinafter called the "Developer", for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Unit Ownership Act.

WITNESSETH :

WHEREAS, the Developer is the owner of a certain real property in the Town of Wrightsville Beach, New Hanover County, North Carolina, more particularly described and defined in Exhibit A, attached hereto and made a part hereof; and

WHEREAS, the Developer desires to submit by this Declaration the property described on Exhibit A to the provisions of the Unit Ownership Act of North Carolina, North Carolina General Statutes Chapter 47A, as amended, (hereinafter referred to as the "Act"), thereby creating a condominium known as A Summer Place Condominium.

WHEREAS, the Developer is the owner of a multi-unit building and certain other improvements heretofore constructed on the property described on Exhibit A, and it is the desire and intention of the Developer to divide the property into condominium units as those terms are defined under the provisions of the North Carolina Unit Ownership Act, and to sell and to convey the same to various purchasers subject to the covenants, conditions, obligations, and restrictions herein reserved to be kept and observed;

NOW, THEREFORE, the Developer does hereby publish and declare that all of the property described in the attached Exhibit A, is held, and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following restrictions, covenants, conditions, uses, limitations, and obligations, all of which are declared and agreed to be in furtherance of the plan for the improvement of such property and the division thereof into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to the Developer, its successors and assigns, and any person acquiring and owning an interest in the real property and in such property by the acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by the grantee or whether or not such person shall otherwise consent in Declarations, and shall be deemed to have assented to the same.

I.

DEFINITIONS

The Condominium consists of Condominium Units and Common Areas and Facilities, as said terms are hereinafter defined.

Condominium Units as the term is used herein shall mean and comprise the twelve (12) identified Dwelling Units which are designated in Exhibit C, to this Declaration of Condominium, excluding, however, all spaces and improvements lying:

A. Behind the interior surfacing material (sheet rock) of all perimeter walls, interior bearing walls and/or bearing partitions.

B. Above the interior surfacing material (sheet rock) of the ceilings.

C. Beneath the subflooring material of all floors;

and further excluding all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to Condominium Units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires, and conduits through the interior surfacing material for walls and ceilings and subflooring surfacing material for floors. All pipes, ducts, wires, conduits and other such facilities shall become a part of the respective Condominium Units at such point of entry. All exterior doors, window frames, panes, hardware and screens shall be part of the respective Condominium Units, provided, however, that the exterior decoration and painting of the exterior surface of such doors and window frames shall be the responsibility of the Association, as hereinafter defined.

All portions of the property not encompassed and included within the various Condominium Units are part of the Common Areas and Facilities. Certain portions of the Common Areas and Facilities are reserved for the use of a particular Condominium Unit or particular Condominium Units to the exclusion of other Units and are designated as "Limited Common Areas and Facilities". Limited Common Areas and Facilities and the Condominium Unit or Units to which they are reserved are as follows:

(1) The patios which are located immediately to the front of each Unit and interior access to which can be had only through a Unit are Limited Common Areas and Facilities and use of such Areas shall be limited to the Unit Owner or Occupant whose Unit affords such interior access. The patios bear the same designation on Exhibit C as the Unit to which they are attached.

(2) The walkways and stairways located in each Building are Limited Common Areas and Facilities and use of such Areas shall be limited to the Unit Owners or Occupants whose Units have direct access to and from such walkways and stairways.

(3) The parking spaces as shown on Exhibit C shall be Limited Common Area to the Unit which has the same number.

The terms "Building", "Common Areas and Facilities", "Common Expenses",

"Common Profit", "Condominium", "Declaration", "Recordation", "Unit" or "Condominium Unit", "Unit Designation", and "Unit Owner", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning set out in Section 3 of Chapter 47A of the General Statutes of North Carolina, known as the Unit Ownership Act.

"Management Firm" shall mean the company or firm responsible for the management of the condominium under a Management Agreement with the Association. The terms "Managing Agent" and "Management Agent", as used herein, shall be synonymous with the term "Management Firm" as herein defined.

II.

ESTABLISHMENT OF CONDOMINIUM

Developer is the owner of the fee simple title to that certain real property situate in the Town of Wrightsville Beach, New Hanover County, State of North Carolina, and which property is more particularly described in Exhibit A attached hereto and incorporated herein by reference and on which property there have been constructed one three-story building containing a total of twelve (12) condominium living units and their supporting facilities and other appurtenant improvements. There are no basements. The Buildings are of wood siding and framing, drywall ceilings and interior walls, concrete slab first flooring and wood second and third flooring, and Developer does hereby submit the above described property and improvements to condominium ownership under the provisions of Chapter 47A of the General Statutes of North Carolina (Unit Ownership Act), and hereby convert the same to be a condominium to be known and identified as A SUMMER PLACE CONDOMINIUM (hereinafter "Condominium").

III.

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Annexed hereto and expressly made a part hereof as Exhibits "B" and "C" consisting of five pages, is a survey of the land and graphic description and plot plans of the improvements constituting the Condominium, indentifying the Condominium Units, Limited Common Areas, and Common Areas and Facilities, as said terms are hereinafter defined, and their respective locations and dimensions. Each Condominium Unit is identified by specific numerical designation on said Exhibit "C", and no condominium Unit bears the same designation as any other Condominium Unit.

IV.

APPURTENANT INTEREST IN COMMON PROPERTY

Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each said Condominium Unit shall own, as an appurtenance to the ownership of each said Condominium Unit, an undivided interest in the Common Property. The undivided interest appurtenant to each Condominium Unit shall be as set forth in Exhibit "D" attached hereto. The percentage of proportional interest of

the respective Units in the Common Areas and Facilities has been determined by a ratio formulated upon the approximate relation that the fair market value of the Unit at the date of the Declaration bears to the then aggregate fair market value of all of the Units having an interest in said Common Areas and Facilities. The fair market value of each Unit and the fair market value of all the Units shall be determined by the Developer, and this determination shall be binding upon all Unit Owners. The percentage of undivided interest in the Common Property assigned to each Condominium Unit shall not be changed except with the unanimous consent of all of the Owners of all of the Condominium Units.

V.

RESTRICTION AGAINST FURTHER SUBDIVIDING OF
CONDOMINIUM UNITS AND SEPARATE CONVEYANCE
OF APPURTENANT COMMON PROPERTY

No Condominium Unit may be divided or subdivided into a smaller Dwelling Unit or smaller Units than as shown on Exhibit "C" hereto, nor shall any Condominium Unit or portion thereof, be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the undivided interest in Common Property appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any conveyance, mortgage or other instrument which purports to effect the conveyance, devise or encumbrance, or which purports to grant any right, interest or lien in, to or upon a Condominium Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Condominium Unit and its appurtenant undivided interest in Common Property, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Condominium Unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any Condominium Unit, which described said Condominium Unit by the numerical designation assigned thereto in Exhibit "C" without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Property. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Property by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety.

VI.

THE CONDOMINIUM SUBJECT TO RESTRICTIONS

The Condominium Units, Common Property, and Limited Common Areas shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein, governing the use of said Condominium Units, Common Property, and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common

Property, and said Condominium Units, Common Property, and Limited Common Areas are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the Condominium.

VII.

PERPETUAL NON-EXCLUSIVE EASEMENT IN
COMMON PROPERTY

The Common Property shall be, and the same is hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Owners of Condominium Units. Notwithstanding anything above provided in this Article, A.S.P. Homeowners Association, Inc. hereinafter indentified, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit may be entitled to use Common Property, including the right to make permanent and temporary assignments of unassigned parking spaces, and to establish regulations concerning the use thereof.

VIII.

EASEMENT FOR UNINTENTIONAL AND NON-
NEGLIGENT ENCROACHMENTS

In the event that any Condominium Unit shall encroach upon any Common Property, or any other Condominium Unit or Units, for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owner, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Property or upon any Condominium Unit for so long as such encroachment shall naturally exist. If any Condominium Unit or Common Property shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Common Property encroachments of portions of the Common Property upon any Condominium Unit, or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Common Property, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

IX.

RESTRAINT UPON SEPARATION AND PARTITION
OF COMMON PROPERTY

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Property in common with the Owners of all other Condominium Units, and that it is in the interest of all Owners that the ownership of the Common Property be retained in common by the Owners, it is hereby declared that the percentage of the undivided interest in the Common Property appurtenant to each Condominium Unit

shall remain undivided and no Owner of any Condominium Unit shall bring or have any right to bring any action for partition or division.

X.

ADMINISTRATION OF THE CONDOMINIUM BY
A.S.P. HOMEOWNERS ASSOCIATION, INC.

To efficiently and effectively provide for the administration of the Condominium by the Owners of Condominium Units, a non-profit North Carolina corporation, known and designated as A.S.P. Homeowners Association, Inc. has been organized, and said corporation shall administer the operation and management of the Condominium, and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-Laws. A true copy of said Article of Incorporation and By-Laws are annexed hereto and expressly made a part hereof as Exhibits "E" and "F" respectively. The Owner or Owners of each Condominium Unit shall automatically become members of said corporation upon his, their or its acquisition of an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property, and the membership of such Owners or Owner shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of the means by which such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance to membership in said corporation, or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, said A.S.P. Homeowners Association, Inc. shall have and is hereby granted the authority and power to enforce the provisions of this Declaration of Condominium to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Property as the Board of Directors of said corporation may deem to be in the best interests of the corporation. A.S.P. Homeowners Association, Inc. is hereinafter referred to as "Association".

XI.

RESIDENTIAL USE RESTRICTIONS
APPLICABLE TO CONDOMINIUM UNITS

The buildings and each of the units shall be used for residential purposes, which shall include the rental of individual units on a daily basis by the owner(s) thereof for lodging accommodations using the same methods as in a motel, and other uses reasonably incidental thereto, including meetings by persons owning or occupying such units, and offices for the sale or rental of units and their furnishings. All guests for rooms rented must sign in at a registration desk located in the main office, or another designated area, where daily rentals and billings will be handled. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the managing agent or Board of Directors. Nothing shall be done or kept in any unit or in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Management Firm or Board of Directors. No sign of any kind

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shall be displayed to the public view on or from any unit or the Common Area without the prior consent of the Management Firm or Board of Directors. No animals, livestock or poultry of any kind shall be raised, bred or kept in any unit or in the Common Area except as may be permitted by the rules and regulations adopted by the Association. No noxious or offensive activity shall be carried on in any unit or in the Common Area, nor shall anything be done therein which may be or become an annoyance to the other owners. There shall be no violation of the rules for the use of the Common Area adopted by the Board of Directors. So long as the Developer shall retain ownership of any units, it may utilize any such unit or units for sales or rentals offices, models or other usage for the purpose of selling or renting units within said project. The Developer may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease.

XII.

USE OF COMMON PROPERTY SUBJECT TO RULES
OF ASSOCIATION

The use of Common Property by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association.

XIII.

THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES:
RESTRICTION AGAINST NUISANCES

No immoral, improper offensive or unlawful use shall be made of any Condominium Unit or of the Common Property, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. Corporate members other than the "Developer" shall only permit the use of a Condominium Unit owned by it, by its principal officers or directors, or other guests, or lessees, provided, that such corporate member shall annually sign and deliver to Association a written statement designating the name of the party or parties entitled to use such Condominium Unit, together with a written covenant of the party or parties entitled to use such Condominium Unit, together with a written covenant of the party or parties entitled to use such Condominium Unit in favor of the Association whereby such party or parties agree to comply with the terms and provisions of this Declaration of Condominium, and of the rules and regulations which may be promulgated by Association from time to time, acknowledging that the party's or parties' right to use such Condominium Unit shall be existent only so long as the corporation shall continue to be a member of Association. Upon demand by Association to any corporate member to remove any party given permission to use a Condominium Unit owned by such corporate member, for failure of such user to comply with the terms and provisions of the Declaration of Condominium and/or of the rules and regulations of the Association or for any other reason, the corporate member shall forthwith cause such user to be removed, failing which, the Association,

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as agent of the Owner, may take such action as it may deem appropriate to accomplish the removal of such user, and all such action by the Association, shall be at the cost and expense of the Owner who shall reimburse Association therefore upon demand, together with such Attorney's Fees as the Association may have incurred in the process of removal.

XIV.

RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES

In case of any emergency originating in or threatening any Condominium Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the Managing Agent, shall have the right to enter such Condominium 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 Condominium Unit, if required by the Association, shall deposit under the control of the Association a key to such Condominium Unit.

XV.

RIGHT OF ENTRY FOR MAINTENANCE OF COMMON PROPERTY

Whenever it is necessary to enter any Condominium Unit for the purpose of performing any maintenance, alteration or repair to any portion of the Common Property, the Owner of each Condominium Unit shall permit other Owners or their representatives, or the duly constituted and authorized Agent of the Association, to enter such Condominium Unit for such purpose, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

XVI.

LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY CONDOMINIUM UNITS

No owner of a Condominium Unit shall permit there to be made any structural modification or alteration in such Condominium Unit without first obtaining the written consent of the Association which consent may be withheld in the event that a majority of the Board of Directors of said Association shall determine, in their sole discretion that such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety. No Owner shall cause any improvements or changes to be made on the exterior of the Condominium, including painting or other decoration, or the installation of electrical wiring, television or radio antennae, machines or air conditioning units, which may protrude through the walls or roof of the Condominium, or in any manner change the appearance of any portion of the building not within the walls of such Condominium Unit, without the written consent of the Association being first had and obtained.

XVII.

RIGHT OF ASSOCIATION TO ALTER AND
IMPROVE PROPERTY AND ASSESSMENT THEREFORE

Association shall have the right to make or cause to be made such alterations or improvements to the Common Property which do not prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of said Association, and the cost of such alterations or improvements shall be assessed as common expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners of a Condominium Unit or Condominium Units requesting the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Condominium Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of Association.

XVIII.

MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS

Every Owner must perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium either in its entirety or in a part belonging to other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Condominium Unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Condominium Unit. Such Owner shall further be responsible and liable for maintenance, repair and replacement of any and all wall, ceiling and floor surfaces, painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit. Whenever the maintenance, repair and replacement of any items for which the Owner of a Condominium Unit is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by Association, the proceeds of the insurance received by Association, shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement shall, by reason of the applicability of any deductibility provisions of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The Owner of a Condominium Unit who has exclusive use of a patio constituting Limited Common Areas shall maintain such patio at his own expense. All exterior doors, window frames, panes, hardware and screens are a part of the respective Condominium Units and shall be maintained by the respective Unit Owner, except for periodic painting and other repairs caused by normal wear and tear provided in Article I.

XIX.

WORKING CAPITAL

At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to two months common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies and the common areas and facilities furnishings and equipment, etc. At the time of selection of the regular management agent, the interim management agent shall pay to the account of the Association all unused funds and shall provide an accounting of all revenues and expenditures. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments.

XX.

MAINTENANCE AND REPAIR OF COMMON PROPERTY
BY ASSOCIATION

The Association, at its own expense, shall be responsible for the maintenance, repair and replacement of all of the Common Property, including those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Property for the furnishing of utility and other services to the Condominium Units and said Common Property, and should any incidental damage be caused to any Condominium Unit by virtue of any work which may be done or caused to be done by Association in the maintenance, repair or replacement of any Common Property, the said Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Condominium Unit Owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his family, guests, or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provisions of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

XXI.

AUTHORITY TO PURCHASE INSURANCE

Insurance policies upon the property (except title insurance and as hereinafter allowed) shall be purchased by the Association in the name of the Managing Agent or Board of Directors of the Association, as Trustee for the Condominium Unit Owners, for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear and shall provide for the issuance of certificates or mortgage endorsements to the holders of mortgages on the Condominium Units or any of them, and if insurance companies

will agree, shall provide that the insurer waives its rights of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests. Each Condominium Unit Owner shall obtain insurance, at his own expense, affording coverage upon his personal property.

XXII.

INSURANCE COVERAGE TO BE MAINTAINED: USE
AND DISTRIBUTION OF INSURANCE PROCEEDS

A. The following insurance coverage shall be maintained in full force and effect by Association covering the operation and management of the Condominium, meaning the Condominium Units and Common Property, to-wit:

(1) Casualty insurance covering the buildings and all improvements upon the land and all personal property included within the property, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against: (a) loss or extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the building, including but not limited to vandalism, malicious mischief, and windstorm damage.

(2) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, including but not limiting the same to legal liability, hired automobile, non-owned automobile and off-premises employee coverages.

(3) All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a Condominium Unit Owner.

B. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expenses.

C. All insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear and shall be paid to the Association. The Association shall hold such proceeds in trust for the benefit of the Association, the Condominium Unit Owners and their respective mortgagees in the following shares:

(1) Proceeds on account of damage to Common Property shall be that undivided share for each Condominium Unit Owner and his mortgagee, if any, which is set forth on Exhibit "D".

(2) Proceeds on account of damages to Condominium Unit shall be held in the following undivided shares:

(a) Partial destruction when the Condominium is to be restored: for the Owners of damaged Condominium Units in proportion to the costs of

repairing the damage suffered by each damaged Condominium Unit.

(b) Total destruction of the Condominium or where the Condominium is not to be restored: for all Condominium Unit Owners, the share of each being that share as set forth in Article IV.

D. In the event a mortgagee endorsement has been issued as to a Condominium Unit the share of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interest may appear, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of reconstruction or repair.

E. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial Condominium Unit Owners in the following manner:

(1) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Condominium Unit Owners, all remittances to Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of the Condominium Unit and may be enforced by him.

(2) If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Condominium Unit Owners, remittances to Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit Owner and may be enforced by him.

XXIII.

RECONSTRUCTION OR REPAIR OR CASUALTY DAMAGE:
DAMAGE TO COMMON PROPERTY: DAMAGE TO
CONDOMINIUM UNITS

A. If any part of the Common Property shall be damaged by casualty, the determination of whether or not to reconstruct or repair the same shall be made as follows:

(1) Partial destruction shall be deemed to mean destruction which renders less than two thirds (2/3) of the Condominium Units untenable and in the event of partial destruction, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous act of all of the Condominium Unit Owners at a meeting of the members of the Association and which shall be called prior to commencement of such reconstruction or repair.

(2) Total destruction shall be deemed to mean destruction which renders two-thirds (2/3) or more of the Condominium Units untenable and in the event of total destruction the Common Property shall not be reconstructed or repaired if at a meeting which shall be called within