

DECLARATION OF CONDOMINIUM

SUNSET, A CONDOMINIUM

FORT MYERS BEACH, LEE COUNTY, FLORIDA

1. **RECITAL** - This condominium was established by the Declaration dated January 31, 1978 and recorded in the Lee County Public Records in O.R. Book 1342, Page 2265. Submission of the land to the condominium form of ownership by that document and the easements therein created remain effective as does the condominium survey plat recorded in Condominium Plat Book 5, Page 338, Lee County, Florida Public Records and the Surveyor's Certificate of Completion. Except as to the provisions noted, this Declaration supersedes and replaces the original.
2. **PLAN OF DEVELOPMENT** - Sunset, a Condominium contains 66 units in one 11 story building.
3. **NAME - ASSOCIATION** - The name of the condominium is Sunset, a Condominium, the name of the Association which administers it is Sunset, Inc. which is incorporated as a Florida not-for-profit corporation.
4. **DEFINITIONS** - The terms used herein shall have the meanings stated in the Condominium Act (Florida Statutes, Chapter 718) and as follows, unless the context otherwise requires:
 - 4.1 **ASSESSMENT** - The share of the funds required for the payment of common expenses which from time to time is assessed against a unit owner.
 - 4.2 **ASSOCIATION** - The Corporation responsible for the operation of the condominium for the benefit of all owners in the condominium.
 - 4.3 **ASSOCIATION PROPERTY** - All property, real or personal, owned by the Association.
 - 4.4 **BOARD OF DIRECTORS OR DIRECTORS OR BOARD** - The Board of Directors responsible for the administration of the Association.
 - 4.5 **CHARGE OR SPECIAL CHARGE** - The obligation of a unit owner to pay or reimburse money to the Association which cannot be secured as an assessment pursuant to F.S. 718.116, but which shall give rise to a cause of action against the unit owner pursuant to this Declaration.
 - 4.6 **COMMON ELEMENTS** - The portions of the property submitted to condominium ownership and not included in the units as defined in Florida Statute 718.108, including:
 - 4.7 **THE LAND.**
 - 4.8 All parts of the improvements which are not included within the units.
 - 4.9 **EASEMENTS.**
 - 4.10 Installations for the furnishing of services to more than one unit or to the common elements, such as electricity, water and sewer.

- 4.11 **COMMON EXPENSES** - All expenses and assessments properly incurred by the Association for the Condominium and such expenses as may be declared to be common expenses by this Declaration or the By-Laws.
- 4.12 **COMMON SURPLUS** - The excess of all receipts of the Association over the common expenses.
- 4.13 **CONDOMINIUM DOCUMENTS** - This Declaration and its attached exhibits which set forth the nature of the property rights in the Condominium and the covenants running with the land which govern these rights. All the Condominium Documents shall be subject to the provisions of the Declaration and their order of precedence shall be as follows:(1)Declaration; (2)Corporate Charter;(3)By-laws; (4)Rules and Regulations.
- 4.14 **CONDOMINIUM PARCEL** - A unit together with the undivided share in the common elements which is appurtenant to the unit.
- 4.15 **CONDOMINIUM PROPERTY** - The lands and personal property, both tangible and intangible, subject to condominium ownership, whether or not contiguous and all improvements thereon and all easements and rights appurtenant thereto.
- 4.16 **DEVELOPER** - SUNSET, LTD., the partnership which established this Condominium.
- 4.17 **THE EXHIBITS TO THIS DECLARATION ARE AS FOLLOWS:**
- A. The Condominium Survey Plat.
 - B. The Condominium Association Amended and Restated By-laws.
 - C. The Association Amended and Restated Rules and Regulations.
 - D. The Amended and Restated Corporate Charter.
- 4.18 **FAMILY** - means one natural person or a group of two or more natural persons each of whom is related to each of the others by blood, marriage or adoption (exclusive of household servants); or not more than two persons not so related, who reside together as a single no-profit housekeeping unit.
- 4.19 **GUEST** - means any person who is physically present in or occupies a unit on a temporary basis at the invitation of the unit owner without the payment of consideration.
- 4.20 **INSTITUTIONAL FIRST MORTGAGEE** - means the mortgagee (or its assignee) of a first mortgage upon a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage banker, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, any agency of the United States of America and the Developer. The term also refers to any holder of a first mortgage against a condominium parcel which mortgage is guaranteed or insured, as evidenced by a recorded instrument by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns.
- 4.21 **LEASE** - means the grant by a unit owner of a temporary right of use of the owner's unit for a valuable consideration.
- 4.22 **LIMITED COMMON ELEMENTS** - Those portions of the common elements which are reserved for the use of a certain unit or units to the exclusion of other

units.

- 4.23 **OCCUPANT or OCCUPY** - when used in connection with a unit, means any person who is physically present in a unit on two or more consecutive days, including staying overnight.
- 4.24 **OPERATION** - The administration and management of the condominium property.
- 4.25 **PERSON** - An individual, corporation, trust or other legal entity capable of holding title to real property.
- 4.26 **SINGULAR, PLURAL, GENDER** - Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and use of any gender shall be deemed to include all genders.
- 4.27 **UNIT** - A part of the condominium property which is subject to exclusive ownership as described in this Declaration.
- 4.28 **UNIT NUMBER** - The letter, number or combination thereof which is designated upon the Condominium Plot Plan and which is used as the identification of a unit.
- 4.29 **UNIT OWNER** - The owner of a condominium parcel.
- 4.30 **VOTING INTEREST** - means the voting rights distributed to the Association members pursuant to F.S. 718.104(4)(i).

5 UNITS SHALL BE CONSTITUTED AS FOLLOWS:

- 5.1 **REAL PROPERTY** - Each unit and all appurtenances thereto, for all purposes, constitute a separate parcel of real property, which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the Condominium property, subject only to the provisions of the Condominium Documents and applicable laws.
- 5.2 **BOUNDARIES** - Each unit shall be bounded as to both horizontal and perimetrical boundaries as below defined, whether they exist now or are created by construction, settlement or movement of the buildings, or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows and shall be determined in the following manner .
- 5.3 **HORIZONTAL BOUNDARIES** - The upper and lower boundaries of the units shall be:
- 5.4 **UPPER BOUNDARY** - The planes of the underside of the finished undecorated surface of the ceiling slab of the unit.
- 5.5 **LOWER BOUNDARY** - The planes of the upperside of the finished undecorated surface of the floor slab the unit, extended to meet the perimetrical boundaries.
- 5.6 **PERIMETRICAL BOUNDARIES** - The perimetrical boundaries shall be the finished undecorated interior surfaces of the perimeter walls of the unit as shown on the Condominium Plot Plan and the planes of the interior surfaces of the unit's windows, doors and other openings that abut the exterior of the building or common elements, and where there is a balcony or porch, the perimetrical and horizontal boundaries shall be extended to include the same.
- 5.7 **EXCLUSIVE USE** - Each unit owner shall have the exclusive use of such owner's unit.
- 5.8 **OWNERSHIP** - The ownership of each unit shall carry with it, as appropriate,

and whether or not separately described, all of the right, title and interest of a unit owner in the Condominium property which shall include, but not be limited to:

- 5.9 **COMMON ELEMENTS** - An undivided share of the common elements.
 - 5.10 **LIMITED COMMON ELEMENTS** - The exclusive use (or use in common with one or more other designated units) of the following limited common elements that may exist: Under-building parking spaces and those items set forth in Section 6.2.1. exterior to a unit to be maintained by a unit owner.
 - 5.11 **ASSOCIATION MEMBERSHIP** and an undivided share in the common surplus of the Association.
 - 5.12 **EASEMENT TO AIR SPACE** - 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 be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.
 - 5.13 **EASEMENTS** - The following easements in the original Declaration of Condominium are retained and non-exclusive easements from the Association to (as applicable) each unit owner, to utility companies, unit owners 'families in residence, guests, invitees and to governmental and emergency services, are hereby granted and created:
 - 5.13.1 **INGRESS AND EGRESS** - Easements over the common elements for ingress and egress to units and public ways.
 - 5.13.2 **MAINTENANCE • REPAIR AND REPLACEMENT** - Easements through the units and common elements for maintenance, repair and replacements.
 - 5.13.3 **UTILITIES** - Easements through the common elements and units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services and utilities to utility customers , other units and the common elements.
 - 5.13.4 **PUBLIC SERVICES** - Access to the condominium property and to the units for emergency, regulatory, law enforcement and other public services in the lawful performance of their duties.
- 6 **MAINTENANCE RESPONSIBILITY** - The responsibility for maintenance of the Condominium shall be as follows:
- 6.1 **BY THE ASSOCIATION** - The Association shall maintain, repair and replace at the Association's expense the common elements and limited common elements exclusive of surface treatments, decorations or other additions by unit owners and also exclusive of the items listed in Paragraph 6.2.1. to be maintained by the unit owner, and:
 - 6.1.1 **STRUCTURAL** - Those portions of the unit which contribute to the support of the building including, but not limited to, the perimeter walls, columns, roof and floors. Also, wiring, piping, ductwork and other mechanical, electrical or other installations or equipment serving the common elements or more than one unit.
 - 6.1.2 **NEGLIGENCE** - Provided that if the maintenance and repair and replacement of any of the common elements, the items in 6.1.1. above or other units shall be made necessary because of the negligence, act or omission of a unit owner, his family, lessees,

invitees and guests, it shall be a liability of the unit owner. Such work may be done by the Association at the expense of the unit owner, and the cost shall be secured as a charge.

6.1.3 DAMAGE - All incidental damage caused to a unit by work done or ordered by the Association exclusive of unavoidable damage to surface treatments or decorations, shall be promptly repaired by and at the expense of the Association.

6.2 BY THE UNIT OWNER - The responsibility of the unit owner shall be as follows:

6.2.1 SPECIFIC ITEMS - To maintain, repair and replace at his expense, all portions of the unit except the portions to be maintained, repaired and replaced by the Association. The unit owner's responsibility specifically includes windows and glass panels, hurricane shutters, doors except exterior surface paint or stain, screens, frames, hardware, appliances, fixtures, switches, air handlers, wiring, piping, ductwork and plumbing serving only the particular unit, whether located inside or outside the unit.

6.2.2 EXTERIOR APPEARANCE - A unit owner shall not paint or otherwise decorate or change the appearance of any portion of the building not within the interior walls of the unit or which is visible from the exterior of the unit, unless the written consent of the Association is obtained in advance. (This shall not be construed to require approval for placing appropriate furniture on balconies or porches, but does include blinds or shutters including but not limited to hurricane shutters of all types. Unless otherwise approved, curtains, blinds and drapes shall be white or off-white or soft pastel in color or lined with materials of these colors.

6.2.3 NO ALTERATION OF COMMON ELEMENTS - No owner shall make any alterations in the portions of the improvements 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 easements; provided that two units within the same ownership and adjacent, either horizontally or vertically, may be connected by doorways or stairways through common elements walls or floors; provided that approval in writing is obtained in advance from the Association and that all applicable government agencies approve and grant permits and that the entire expense including subsequent maintenance and restoration is borne by such owner. The Association may require approval from engineers or other professionals as a prerequisite.

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COMMON ELEMENTS

7.1 COMMON ELEMENTS - The common elements shall be owned by the unit owners in such undivided shares of one sixty-sixth (1/66th) part of the whole per unit.

7.2 NO PARTITION - No action for partition of the common elements shall lie.

- 7.3 **USE** - Each unit owner and the Association 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 other unit owners.
- 7.4 **MATERIAL ALTERATIONS AND ADDITIONS** - Except for changes made by an owner with Association approval per 6.2.2. or 6.2.3. or by the Board of Directors alone, for the integrity of the condominium property, material alteration of or substantial additions to the common elements or to Association property including the purchase, acquisition, sale, conveyance or mortgaging of such property may be effectuated only by vote of a majority of the voting interests of the Condominium at a meeting called for the purpose . The Board of Directors may lease or grant licenses for the use of common elements or Association property if it will benefit the members of the Association.
- 8 **FISCAL MANAGEMENT** - The fiscal management of the Condominium including budget, fiscal year, charges, assessments, and collection of assessments shall be as set forth herein and in the By-Laws (Exhibit B).
- 9 **ADMINISTRATION** - The administration of the Condominium shall be by the Board of Directors and its powers and duties shall be as set forth herein and in the By-Laws.
- 10 **INSURANCE** - In order to adequately protect the unit owners, the Association, the Condominium property and the Association property required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:
- 10.1 **DUTY AND AUTHORITY TO OBTAIN** - The Board of Directors shall use its best efforts to obtain and maintain adequate insurance. In all insurance purchased by the Association, the name of the insured shall be the Association and the unit owners and their mortgagees (without naming them), as their interests shall appear and shall provide for the issuance of certificates of insurance and mortgagee endorsements to any or all of the holders of institutional first mortgages.
- 10.2 **BASIC INSURANCE** - Insurance covering all of the buildings and improvements as well as all Association property, in an amount determined annually by the Board of Directors. Provided, however, that as used herein, the word building does not include unit wall, ceiling or floor coverings nor electrical fixtures, appliances, air conditioning or heating equipment, water heaters or built-in cabinets. Such insurance to afford the following protection:
- 10.2.1 **PROPERTY** - Replacement cost coverage for loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.
- 10.2.2 **FLOOD** - Up to the replacement cost for each building and insurable improvements as available through the National Flood Insurance

Program.

- 10.2.3 **LIABILITY** - Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as required by the Board of Directors of the Association, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.
- 10.2.4 **AUTOMOBILE** - Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles in such limits of protection and with such coverage as may be required by the Board of Directors of the Association.
- 10.2.5 **WORKERS' COMPENSATION** - Regardless of the number of employees, the Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.
- 10.2.6 **FIDELITY BONDING** - The Association shall obtain and maintain blanket fidelity bonding for each person who is authorized to sign checks and the President, Secretary and Treasurer of the Association in an amount not less than the minimum required by the Condominium Act from time to time as determined by the Association's annual budget including reserves. The Association shall bear the cost of bonding.
- 10.2.7 **DIRECTORS AND OFFICERS LIABILITY INSURANCE** - The Association shall obtain and maintain adequate Directors and officers liability insurance utilizing the broad form of policy coverage for all Directors and officers and, if available, committee members of the Association.
- 10.2.8 **OPTIONAL COVERAGE** - The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interests of the Association and unit owners.
- 10.3 **DESCRIPTION OF COVERAGE** - A detailed summary of the coverage included in the master policies shall be available for inspection by unit owners upon request.
- 10.4 **WAIVER OF SUBROGATION** - If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its rights to subrogation as to any claim against unit owners, the Association, or their respective servants, agents or guests.
- 10.5 **SHARES OF INSURANCE PROCEEDS** - All proceeds of insurance policies purchased by the Association shall be payable to the Association. The duty of the Association shall be to receive such proceeds and hold and disburse them for the purposes stated herein in the following shares:
 - 10.5.1 **COMMON ELEMENTS** - Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.
 - 10.5.2 **UNITS** - Proceeds on account of damage to units shall be held in as many undivided shares as there are damaged units, the share of each owner being in proportion to the cost of restoring the damage

suffered by each such unit.

- 10.5.3 MORTGAGEES** - If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units except to the extent that insurance proceeds exceed the actual costs of repair or restoration of the damaged improvements, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty. The Association shall pay all policy deductible amounts.
- 10.6 DISTRIBUTION OF INSURANCE PROCEEDS** - Proceeds of insurance policies received by the Association shall be distributed for the benefit of the unit owners in the following manner:
- 10.7 COST OF RECONSTRUCTION OR REPAIR** - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the Association.
- 10.8 FAILURE TO RECONSTRUCT OR REPAIR** - 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 after expenses shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.
- 10.9 ASSOCIATION AS AGENT** - The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association.
- 11 RECONSTRUCTION OR REPAIR AFTER CASUALTY** - If any part of the Condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:
- 11.1 DAMAGE TO UNITS** - Where loss or damage is only to those parts of a unit for which the responsibility of maintenance and repair is that of the unit owner, any Association insurance proceeds on account of the damage, less the deductible, shall be distributed to such contractors, suppliers and personnel for work done, materials supplied or services required for reconstruction or repair. Payments shall be in such amounts and at such times as the unit owner(s) may direct. The owners of damaged units shall be responsible for reconstruction and repair and shall bear the cost thereof, if any, in excess of the insurance proceeds.
- 11.2 DAMAGE TO COMMON ELEMENTS - LESS THAN "VERY SUBSTANTIAL"**- Where loss or damage occurs to the common elements, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore or rebuild the damage caused by the loss (unless governmental laws and regulations, including but not limited to restrictions on rebuilding seaward of the then current Coastal Construction Control line, prevent repair, restoration or rebuilding, in which case the

procedures for adjustment in the number of units in the condominium as a result of condemnation shall apply), and the following procedures shall apply:

- 11.2.1 **ESTIMATES** - The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost reconstruction and repair, and shall negotiate and contract for the work.
- 11.2.2 **INSURANCE INSUFFICIENT** - If the net proceeds of insurance plus available reserves are insufficient to pay for the cost of reconstruction and repair of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the proceeds available for reconstruction and repair of the property.
- 11.2.3 **"VERY SUBSTANTIAL" DAMAGE** - As used in this Declaration, the term "very substantial " damage shall mean loss or damage whereby three-fourths (3/4) or more of the total units are rendered uninhabitable. Should such "very substantial " damage occur, then:
- 11.2.4 **OWNERS' MEETING** - A meeting of the Association 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 reconstruction or termination of the Condominium, subject to the following:
- 11.2.5 **INSURANCE SUFFICIENT** - If the insurance proceeds and reserves available for reconstruction and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the Condominium property shall be reconstructed or repaired unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of units, in which case the Condominium shall be terminated pursuant to Paragraph 16.2.
- 11.2.6 **INSURANCE INSUFFICIENT**- If the insurance proceeds and reserves available for reconstruction and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless two-thirds of the voting interests of the Association vote in favor of such special assessment and against termination of the Condominium, it shall be terminated pursuant to Paragraph 16.2. If two-thirds of the voting interests of the Association approve the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate and contract for such reconstruction and repairs. The special assessment shall be added to the proceeds of insurance and reserves available for reconstruction and repair of the property.
- 11.2.7 **DISPUTES** - If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

- 11.3 APPLICATION OF INSURANCE PROCEEDS** - It shall be presumed that the first monies disbursed for reconstruction and repair shall be from the insurance proceeds and they shall first be applied to reconstruction of the common elements and Association property and then to the units; if there is a balance in the funds held by the Association after the payment of all costs of reconstruction and repair, such balance shall be distributed to the Association. Provided, however, if special assessments were made pursuant to Paragraph 11.2 .6. hereof, then all or a part of such balance shall be returned to the unit owners paying said assessments pro-rata, according to the amount each paid, up to the full amount each paid, then to the Association.
- 11.4 EQUITABLE RELIEF** - In the event of substantial damage to the condominium property, and if the property is not reconstructed or repaired within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that reconstruction or repair has occurred within a reasonable period of time if substantial work is convened within six (6) months following the damage or destruction and is completed within a reasonable time thereafter.
- 11.5 PLANS AND SPECIFICATIONS** - Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or in lieu thereof, according to plans and specifications approved by the Board of Directors and by the owners of two-thirds of the voting interests of the Association.
- 12 USE RESTRICTIONS** - The use of the property of the Condominium shall be in accordance with the Rules and Regulations attached hereto and incorporated herein as Exhibit "C" and the following provisions:
- 12.1 LAWFUL USE** - All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair upon Condominium property shall be the same as the responsibility for the repair and maintenance of the property as expressed earlier in this Declaration.
- 12.2 RULES AND REGULATIONS** - The rules and regulations attached hereto as Exhibit "C" and made a part hereof by reference concerning the use of the Condominium property including the units may be amended from time to time by a majority of the voting interests. Copies of the regulations and amendments shall be furnished by the Association to all unit owners. No new or amended regulation may be enforced prior to distribution to the owners. Changes in the Rules and Regulations shall not require amendment of this Declaration and may, but need not be recorded in the Public Records.
- 12.3 USE OF THE UNITS** is restricted to single family residential purposes only. These use restrictions shall not be construed in such a manner as to prohibit a unit owner from maintaining his personal professional library, keeping his personal business or professional records or accounts or

handling his personal, business or professional telephone calls or correspondence in and from his unit. Such uses are expressly declared customarily incident to the principal residential use. All guests and owners must be registered with the Association upon arrival and unregistered guests may be denied use of recreational facilities and amenities. During the time that a unit is leased, the unit owner shall not be entitled to the use of the common elements or recreational facilities in the condominium.

12.4 ASSOCIATION'S ACCESS TO UNITS - The Association has an irrevocable right of access to the units during reasonable hours when necessary for the purpose of maintenance, repair and replacement of the common elements or of any portion of a unit to be maintained by the Association pursuant to this Declaration or for making emergency repairs which are necessary to prevent damage to the common elements or to another unit or units. The Association's right of access to a unit shall be exercised after reasonable notice to the unit owners, unless such notice is not possible or practical under the circumstances, and with due respect for the occupants' rights to privacy and freedom from unreasonable annoyance, as well as with reasonable precautions to protect the personal property within the unit. The Association requires and shall retain a pass-key to all units. No unit owner shall alter any lock, nor install a new lock, the effect of which would be to prevent access by the Association when the unit is unoccupied, unless the unit owner provides the Association with a key.

12.5 PARKING - There shall be appurtenant to each unit at all times one parking space which shall pass with the title thereto. The allocation was made initially by the Developer by an unrecorded written instrument given a unit purchaser upon closing. Two or more unit owner may exchange the parking spaces allocated to their units by submitting to the Board of Directors a written request for exchange, signed and witnessed as to both parties, and surrendering their initial or current allocation instruments to the Board. The Board of Directors shall thereupon execute and deliver to such unit owners new allocation instruments signed in the name of the Association by an officer of the Board of Directors and bearing the Association seal, reflecting the changed allocations. Such changed allocations shall have the same force and effect as the ones they replaced.

12.6 PETS - TENANTS AND GUESTS -

(A) Pet must be leashed (hand held) at all times outside of unit. Pet is not permitted in pool area.

(B) Pet must behave properly. Excessive noise or unreasonable disturbances will not be tolerated. If condition continues owner will be requested to remove pet from Sunset property.

(C) Any mess made by pet must be cleaned up immediately by owner.

(D) Owner is responsible monetarily for damage to Sunset property done by pet.

(E) Renter/guest is prohibited from having a pet. If unit owner

permits renter/guest a pet, owner's written authorization must be received in Sunset office prior to each rental occurrence (a blanket letter will not suffice). Owner will be responsible to inform renter/guests of pet rules.

Note: Unit owner's existing pets are grandfathered at time of this amendment.

12.7 Omitted

12.8 FLOORING - The living room, dining room and bedroom floors shall be covered with carpeting over padding except that a unit owner who shall elect to install in any portion of his unit (other than in baths and the kitchen) hard surface floor covering (i.e., tile, slate, ceramic, parquet, etc.) shall be first required to install a sound absorbent under-cushion of, or equivalent to, 1/4 inch of cork to prevent the transmission of noise to other units, and shall obtain written approval of the Directors prior to making such installation. If such prior approval is not obtained, the Directors may, in addition to exercising all the other remedies provided for in this Declaration for breach of any of the provisions hereof, require such unit owner to cover all non-conforming work with carpeting, or may require removal of such non-conforming work, at the expense of the offending unit owner.

12.8.1 STRUCTURAL INTEGRITY OF LANAIS -The structural integrity of lanais constructed of steel reinforced concrete is adversely affected by water intrusion and rusting aggravated by the water retention qualities of indoor-outdoor carpet and unglazed ceramic tile and its grout. For this reason no indoor-outdoor carpet may be used on lanais, and all tile and its bedding and grout must be of such materials and so applied as to be waterproof. The Board of Directors must give prior written approval to such installations and may require post-installation engineering inspection and approval and modification. The use of throw rugs is permitted provided they are taken indoors during rains and when the owner is not in residence.

12.9 EXCLUSIVE USE - COMMON FACILITIES - The Association may lease to unit owners for appropriate temporary periods of time those portions of the common elements or Association property rationally appropriate and desirable for exclusive use for private functions.

12.10 NUISANCES PROHIBITED - Unit owners and their tenants and invitees shall not engage in any practice, exhibit any behavior nor permit any condition to exist that shall, in the exclusive judgment of the Board of Directors, constitute a nuisance.

13 LEASE, CONVEYANCE, DISPOSITION, FINANCING - The purpose and object of this Section is to maintain a quiet, tranquil and single family oriented atmosphere with the residents living in compatible coexistence with other financially responsible persons who are of like mind and acceptable both in character and

comportment. This objective is considered to be both important and justified because of the necessity of sharing facilities and because of the large personal financial investment of each owner. Therefore, the lease, conveyance, disposal and financing of the units by any owner (subject to the exceptions provided in Section 17.1) shall be subject to the following provisions.

13.1 ASSOCIATION APPROVAL REQUIRED - No owner may sell, lease give or dispose of a unit or any interest therein in any manner without the written approval of the Association. Only entire units may be leased and no lease may be for less than two weeks. The maximum occupancy is six persons per unit unless the unit owner is in residence. All leases must and shall be deemed to contain the agreement of the tenants to abide by all of the covenants of the condominium documents and must and shall be deemed to provide that a violation of the documents is a breach and event of default of the lease and grounds for damages, termination and eviction and that the lessee and the owner agree that the Association may proceed directly against such lessee(s) and that the lessee (s) shall be responsible for the Association's costs and expenses, including attorney's fees, at all trial and appellate levels. If such costs and fees are not immediately paid by the lessee(s), the Unit Owner shall pay them and such funds shall be secured as a charge. Each Unit Owner by acceptance of the deed to a unit and by the terms of this declaration appoints the Association as owner's agent to bring actions in owner's name and at owner's expense including injunction, damages, term nation and eviction. The rules and regulations must be provided to the lessee(s) by or on the behalf of the unit owner at or before the commencement of the lease term.

13.2 MORTGAGE APPROVAL - No owner may mortgage or finance his unit in any manner without the written approval of the Association except to an institutional mortgagee as defined in Paragraph 4.20, provided that a unit owner who sells his unit needs no approval to take back a purchase money mortgage.

13.3 APPROVAL PROCEDURE - The approval of the Association shall be obtained as follows:

13.3.1 WRITTEN NOTICE - Written notice shall be given the Association by the owner of his intention to sell, transfer in any fashion or encumber his interest. The notice shall include the name and address of the proposed acquirer or lender and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. The Association may require such other and further information as it deems reasonably necessary and may impose a transfer fee not to exceed \$100.00 per applicant other than husband and wife or parent/dependent child or as permitted by law from time to time. The Association shall not approve any sale, transfer or lease until such time as all unpaid assessments, late charges and all court costs and attorneys fees (if any) incurred by the Association and due and owing for the unit have been paid.

13.3.2 SALE - The Association must, within 15 days after receipt of all the information required above, either approve the transaction, disapprove for cause, or, except in the case of disapproval for

cause, upon the written demand of the owner, furnish an alternate purchaser it approves or the Association may itself elect to purchase, and the owner must sell to such alternate or to the Association upon the same terms set forth in the proposal given the Association or the owner may withdraw his proposed sale. In exercising its power of disapproval the Association must act reasonably and in a fair and non-discriminatory manner and withhold approval only for a reason or reasons rationally related to the protection, preservation and proper operation of the condominium and the purposes as set forth in the first paragraph of this Section 13. If the Association fails or refuses within the allotted time to notify the owner of either approval or disapproval in writing, or if it fails to provide an alternate purchaser or make an election to purchase the unit itself when required to do so, then the Association shall conclusively be presumed to have approved the transaction, and the Association shall, upon demand, provide a recordable certificate of approval.

13.3.3 CLOSING DATE - The sale shall be closed within 60 days after an alternate purchaser has been furnished or the Association has elected to purchase.

13.3.4 NOTICE OF DISAPPROVAL - If the Association disapproves the proposed transaction (subject to the qualifications contained in Paragraph 13.3.2. regarding a sale) notice of disapproval shall be promptly sent in writing to the owner or interest holder, and the transaction shall not be made.

13.4 NOTICE OF SUIT - An owner shall give notice to the Association of every suit or other proceedings which may affect the title to his unit, such notice to be given immediately after the owner receives knowledge thereof.

13.5 JUDICIAL SALES - are exempt from this Section.

13.6 UNAPPROVED TRANSACTIONS - Any transaction which is not approved pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

14 COMPLIANCE AND DEFAULT - Each unit owner, each tenant and other invitee shall be governed by, and shall comply with the provisions of, the Condominium Act as amended from time to time, this Declaration, including its exhibits, the Association Charter and the Association By-laws.

14.1 REMEDIES - Failure to comply shall be grounds for relief, which relief may include, but shall not be limited to, an action to recover damages or injunctive relief or both. Actions may be maintained by the Association or by any unit owner.

14.2 COSTS AND FEES - In any such proceeding, including appeals, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney fees.

14.3 OWNER COMPLAINTS - In the event of a complaint by an owner against the Association, the Board of Directors or a member thereof, such owner, prior to the institution of any proceedings, shall give written notice by certified mail in detail of the complaint to the Board of Directors. The

Board shall give a substantive response to the complainant, notify the complainant that a legal opinion has been requested, or notify the complainant that advice has been requested from the Bureau of Condominiums. The failure to act within 30 days and to notify the unit owner within 30 days after the action taken precludes the Board from recovering attorney's fees and costs in any subsequent litigation, administrative proceedings, or arbitration arising out of the complaint. If unresolved, a dispute as defined in F.S. 718.1255(1) must be arbitrated in mandatory non-binding arbitration proceedings prior to commencing litigation.

14.4 NO WAIVER OF RIGHTS - The failure of the Association or any owner to enforce any covenant, restriction or other provision of the Condominium Documents shall not constitute a waiver of the right to do so thereafter as to subsequent or other instances.

15 AMENDMENTS - Amendments to any of the Condominium Documents shall be in accordance with the following:

15.1 REQUIREMENTS - An Amendment may be proposed either by the Board of Directors or by a written petition signed and dated by at least 25% of the voting interests, and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed in recordable form signed by the President or Vice President of the Association that it has been enacted by the affirmative vote of the required percentage of the voting interests (which vote may be evidenced by later written approval of voters not present), and the separate written joinder of mortgagees where required and shall include the recording data identifying the location of the Declaration as originally recorded and which shall become effective when recorded in the public records.

15.2 CORRECTORY AMENDMENT - Whenever it shall appear that there is a defect, error or omission in any of the Condominium Documents, amendment of which will not materially adversely affect the property rights of the unit owners, a majority of the voting interests shall be the required percentage.

15.3 REGULAR AMENDMENTS - An amendment which does not change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to such unit, change the proportion or percentage by which the owner of the parcel shares the common expenses and own the common surplus or materially adversely affects the property rights of owners may be enacted by a majority of the voting interests.

15.4 EXTRAORDINARY AMENDMENT - An amendment which will have the effect of doing any of the things not permitted in Paragraph 15.3. above shall require the affirmative vote of all the record owners of the affected units and all record owners of liens thereon and an overall affirmative vote of 75% of the voting interests. This Section shall be deemed to include enlargement of, material alteration of, or substantial additions to the common elements only if the same will have a material adverse effect on the owner's

property rights, which shall otherwise be treated as a regular amendment.

15.5 WRITTEN AGREEMENTS - Any approval of unit owners on any matter called for by this Declaration, its Exhibits or any statute to be taken at a meeting of unit owners is hereby expressly allowed to be taken instead by written agreement, without a meeting (which agreement may be in counterparts), subject to F.S. 718.112(2)(d)(4).

16 TERMINATION - The Condominium may be terminated in the following manner:

16.1 AGREEMENT - The Condominium may be terminated at any time by approval, in writing, of seventy-five percent (75%) of the voting interests of the Association.

16.2 VERY SUBSTANTIAL DAMAGE - If the Condominium, as a result of casualty, suffers "very substantial damage" and it is not decided as therein provided that it will be reconstructed or repaired, the Condominium form of ownership will thereby terminate without agreement.

16.3 GENERAL PROVISIONS - Upon termination, the former unit owners shall become the owners, as tenants in common, of all Condominium and Association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements. The mortgagee or lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other properties and rights which he may receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Lee County, Florida.

16.4 NEW CONDOMINIUM - The termination of the Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

16.5 PARTITION; SALE - Following termination, the Condominium and Association property may be partitioned and sold upon the application of any unit owner. Provided, however, that if following a termination, the owners of two-thirds (2/3rds) of the voting interests of the Association determine to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In such event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

16.6 LAST BOARD - The members of the last Board of Directors shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association, notwithstanding the fact that the Association itself may be dissolved upon a termination.

16.7 PROVISIONS SURVIVE TERMINATION - The provisions of this Paragraph 16 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by this paragraph have been completed.

17 RIGHTS OF MORTGAGEES

17.1 PARTIAL EXCUSAL FROM PRIOR ASSESSMENTS AND APPROVAL OF PURCHASERS - A first mortgagee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed, but in no event shall the mortgagee be liable for more than 6 months of the unit's unpaid common expenses or assessments accrued before the acquisition of the title to the unit by the mortgagee or 1 percent of the original mortgage debt, whichever amount is less. Such mortgagee may take title to the unit and re-sell the unit without the approval of the Association. This paragraph shall be deemed amended so as to incorporate the provisions of F.S. 718.116 as amended from time to time.

17.2 RIGHTS TO INFORMATION - Upon receipt by the Association from any institutional mortgagee, Guarantor or Insurer of a copy of the mortgage held by such mortgagee, Guarantor or Insurer on a Unit, together with a written request from such mortgagee or an Insurer or Guarantor of such mortgagee specifying the address to which the following items are to be sent, the Association shall timely send to such mortgagee, Insurer or Guarantor the following, and for which the Association may charge a reasonable fee:

- 17.2.1 FINANCIAL STATEMENT** - A copy of a financial statement of the Association for the immediately preceding fiscal year; and
- 17.2.2 INSURANCE CANCELLATION** - Written notice of the cancellation or termination by the Association of any policies of insurance covering the Association Common Areas or any improvements thereon, or any fidelity bonds of the Association; and
- 17.2.3 DAMAGE TO CONDOMINIUM** - Written notice of any damage or destruction to the improvements located on the Association Common Elements or Association property which affects a material portion of the project or the unit securing its mortgage; and
- 17.2.4 EMINENT DOMAIN** - Written notice of condemnation or eminent domain proceeding affecting a material portion of the project or the unit securing its mortgage; and
- 17.2.5 DELINQUENT ASSESSMENTS** - Written notice of failure by an Owner owning a Unit encumbered by a first mortgage held by such institutional mortgagee, Guarantor or Insurer to pay any Assessments where such failure or delinquency has continued for a period of sixty (60) days .
- 17.2.6 FAILURE TO NOTIFY** - The failure of the Association to send any such notice to any such mortgagee, Guarantor or Insurer shall have no effect on any meeting, act or thing which was to have been the subject of such notice nor affect the validity thereof.

18 ENFORCEMENT OF ASSESSMENT LIENS - Liens for assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property and the Association may al so bring an action to recover a money judgment. After a judgment of foreclosure has been entered the

unit owner during his occupancy, if so ordered by the Court, shall be required to pay a reasonable rental. If the unit is rented or leased during the pendency of a foreclosure action, the Association shall be entitled to the appointment of a receiver to collect the rent. The Association shall have all the powers provided in F.S.718.116 and shall be entitled to collect interest at the highest lawful rate (currently 18% per annum) on unpaid assessments and reasonable attorneys' fees, including appeals, and costs incident to the collection of such assessment or enforcement of such lien, with or without suit.

18.1 CREATION AND ENFORCEMENT OF CHARGES - The Association shall have a cause of action against unit owners to secure payment to the Association by unit owners of all charges, costs and expenses to the Association which cannot be secured as assessments, regular or special, under F. S. 718.116. The charge shall bear interest at the highest lawful rate, and shall carry with it costs and attorney's fees, including appeals, incurred in collection.

19 ASSOCIATION MEMBERSHIP - The qualification of members and the manner of their admission shall be as provided in the By-laws.

20 COMMON EXPENSES AND COMMON SURPLUS - Each unit's share shall be the same as the share of ownership of the common elements set forth in Paragraph 7.1.

21 CONDEMNATION:

21.1 DEPOSIT OF AWARDS WITH ASSOCIATION - The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

21.2 DETERMINATION WHETHER TO CONTINUE CONDOMINIUM - Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

21.3 DISBURSEMENT OF FUNDS - If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty . If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, the owners of condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special charges shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

21.4 ASSOCIATION AS AGENT - The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating

with the condemning authority for the purpose of realizing just compensation for the taking.

21.5 UNIT REDUCED BUT TENANTABLE - If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

21.5.1 RESTORATION OF UNIT - The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

21.5.2 DISTRIBUTION OF SURPLUS - The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

21.6 UNIT MADE UNTENANTABLE - If the taking is of any entire unit or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

21.6.1 PAYMENT OF AWARD - The fair market value of the unit immediately prior to the taking, as determined by agreement between the unit owner and the Association or by arbitration in accordance with Section 21.6.4. following, shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and the Mortgagee(s).

21.6.2 ADDITION TO COMMON ELEMENTS - If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by all unit owners in the manner approved by the Board of Directors.

21.6.3 ADJUSTMENT OF SHARES IN COMMON ELEMENTS - The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements in equal shares among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as fractions of the reduced total.

21.6.4 ARBITRATION - If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one M .A .I. appraiser, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction The party selecting the appraiser shall pay the cost of appraisals.

- 21.7 TAKING OF COMMON ELEMENTS** - Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.
- 21.8 AMENDMENT OF DECLARATION** - The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation, shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Association, without the consent of any unit owner or mortgagee being required for any such amendment.
- 22 VOTING** - Each unit shall have one full indivisible vote in all matters.
- 23 TIME SHARE PROHIBITED** - No time share estates may be created in this Condominium.
- 24 SEVERABILITY AND NON-WAIVER** - If any provision of this Declaration or its exhibits as now constituted or as later amended or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby. The failure of the Association in any instance to enforce any covenant or provision of this Declaration or any of the condominium documents shall not constitute a waiver of its right to do so thereafter in other instances.

This AMENDED AND RESTATED DECLARATION OF CONDOMINIUM and exhibits hereto made and entered into this 21st day of January, 1993.