

19250

DECLARATION OF CONDOMINIUM
OF MADEIRA VILLA II, a condominium

2800 Oceanshore Boulevard
Ormond Beach, Florida

MADE this 26th day of May, 1971, by JOHN LEDBETTER, individually and as Trustee, under the provisions of a certain Trust Agreement, dated the 30th of October, 1970, joined by his wife, JOYCE H. LEDBETTER, called the Developer for themselves, their successors, grantees and assigns.

WHEREIN the Developer makes the following declarations;

1. Purpose. The purpose of this Declaration is to submit the lands described in this instrument and improvements on such lands to the condominium form of ownership and use in the manner provided by Chapter 711, Florida Statutes 1969, hereafter called The Condominium Act.

1.1. Name and Address. The name by which this condominium is to be identified is MADEIRA VILLA II, a condominium, and its address is 2800 Oceanshore Boulevard, Ormond Beach, Florida.

1.2. The Land. The lands owned by Developer which by this instrument are submitted to the condominium form of ownership, are the following-described lands lying in Volusia County, Florida:

Lots Two (2), Three (3), and Four (4), Surfside Estates per map in Map Book 27, Page 287, Public Records of Volusia County, Florida. Together with and subject to an easement appurtenant to Lot One

with all riparian and littoral rights appertaining thereto; Surfside Estates, as per map in Map Book 27, at Page 287, Public Records of Volusia County, Florida.

which lands are called "the land."

DEFINITIONS

2. Definitions. The terms used in this Declaration and in its exhibits shall have the meanings stated in the Condominium Act (711.03 Florida Statutes 1969) and as follows unless the context otherwise requires:

2.1 Apartment means unit as defined by the Condominium Act.

2.2 Apartment Owner means unit owner as defined by the Condominium Act.

2.3 Association means MADEIRA VILLA Association, Inc., and its successors.

2.4 Common elements shall include the tangible personal property required for the maintenance and operation of the condominium, even though owned by the Association, as well as the items stated in the Condominium Act.

2.5 Common expenses include:

a. Expenses of administration; expenses of maintenance, operation, repair or replacement of the common elements and of the portions or apartments to be maintained by the Association.

b. Any valid charge against the condominium property as a whole.

c. Expenses declared common expenses by provisions of this Declaration of the Bylaws, including but not limited to losses from revenue-producing operations.

2.6 Condominium means all of the condominium property as a whole when the context so permits, as well as the meaning stated

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

2.8 Utility services as used in the Condominium Act and as construed with reference to this condominium, and as used in the Declaration and By-laws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning and garbage and sewer disposal.

DEVELOPMENT PLAN

3. Development plan. The condominium is described and established as follows:

3.1 A survey of the land showing the improvements on it is attached as Exhibit A, which comprises three sheets.

3.2 Plans. The improvements upon the land are constructed substantially in accordance with the plans and specifications for such prepared by Craig J. Gehlert, and designated as his Job No. 7109, a portion of which plans are attached in the foregoing exhibits.

3.3 Amendment of plans.

a. Alteration of apartment plans. Developer reserves the right to change the interior design and arrangement of all units, and to alter the boundaries between the units, as long as Developer owns the units so altered. No such change shall increase the number of apartments nor alter the boundaries of the common elements without amendment of this Declaration by approval of the Association, apartment owners and owners of mortgages in the manner elsewhere provided. If Developer shall make any changes in units so authorized, such changes shall be reflected by an amendment of this Declaration. If more than one unit is concerned, the Developer shall apportion between the units the shares in the common elements appurtenant to the units concerned.

b. Amendment of Declaration. An amendment of this Declaration reflecting such authorized alteration of apartment plans by Developer need be signed and acknowledged only by the Developer and need not be approved by the Association, apartment owners or lienors or mortgagees of apartments or of the condominium, whether or not elsewhere required for an amendment.

3.4 Easements

a. Easements are reserved through the condominium property as may be required for utility services in order to serve the condominium adequately; provided, however, such easements through an apartment shall be only as shown on the plans and specifications for the apartment building, or as the building is constructed, unless approved in writing by the apartment owner.

b. Lots Two (2), Three (3) and Four (4), Surfside Estates, per map in Map Book 27, at Page 287, public records of Volusia County, Florida are hereby declared to include an easement appurtenant to, and over the following described realty, owned by Developer: Lot One (1) and the Northerly 250 feet of Lot "B", together with all riparian and littoral rights appertaining thereto, Surfside Estates, as per map in Map Book 27, at Page 287, public records of Volusia County, Florida.

c. Lot One (1) and the Northerly 250 feet of Lot "B", together with all riparian and littoral rights appertaining thereto, Surfside Estates, as per map in Map Book 27, at Page 287, public records of Volusia County, Florida, are hereby declared to include an easement appurtenant to, and over the following described realty, owned by Developer: Lots Two (2), Three (3) and Four (4), Surfside Estates, per map in Map Book 27, at Page 287, public records of Volusia County, Florida.

d. The purposes of said easements are: To construct, operate, maintain, modify, inspect, repair, replace and enjoy by owners of the Dominant estate, their tenants, servants, visitors, licensees, agents or employees, in common with all persons having the like right, at all times hereafter, all utility services, water lines, sewer or disposal lines, gas lines, landscaping, trees, grass, swimming pool and accessories, club room and furniture, fixtures and accessories, laundry room, sidewalks, driveways,

Said easements include the right of ingress and egress over the property subservient thereto and is non-exclusive, but may be used and enjoyed in common by both the Owners of the Dominant and Subservient Estate.

3.5 Improvements -- general description.

a. Apartment building. The condominium includes an apartment building consisting of a ground floor, and one additional floor, making a total of two floors.

b. Other improvements.

The condominium includes gardens and landscaping, automobile parking areas and other facilities located substantially as shown upon the plans and which are part of the common elements.

3.6 Apartment boundaries. Each apartment, which term as used in this subsection concerning boundaries shall include maids' rooms, shall include that part of the building containing the apartment that lies within the boundaries of the apartment, which boundaries are as follows:

a. Upper and lower boundaries. The upper and lower boundaries of the apartment shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(1) Upper boundary--the horizontal plane of the lower surfaces of the ceiling slab;

(2) Lower boundary--the horizontal plane of the lower surfaces of the floor slab.

b. Perimetrical boundaries. The perimetrical boundaries of the apartment shall be the following boundaries extended to an intersection with the upper and lower boundaries:

(1) Exterior building walls -- the intersecting vertical planes adjacent to and which include the exterior walls of the apartment building bounding an apartment and fixtures thereon, and when there is attached to the building a balcony, loggia, terrace, canopy, stairway or other portion of the building serving only the apartment being bounded, such boundaries shall be the intersecting vertical planes adjacent to and which include all of such structures and fixtures thereon. In the case of ground floor apartments, such boundaries shall include the terraces serving such apartments.

(2) Interior building walls -- the vertical planes of the center line of walls bounding an apartment extended to intersections with other perimetrical boundaries with the following exceptions:

(1) When walls between apartments are of varying thickness, or abut a column or shaft, the plane of the center line of a bounding wall shall be extended to an intersection with the connecting bounding plane without regard to the plane of the center line of an intervening column or shaft.

(11) When walls of different thickness abut with a flush side so that their center lines do not intersect, the plane of the center line of the thinner wall shall be extended into the thicker wall for a distance which is one-half the thickness of the thinner wall, and the boundary shall thence run at a right

3.7 Common elements. The common elements include the land and all other parts of the condominium not within the apartments and include but are not limited to the following items as to which the Association shall have the powers indicated:

a. Automobile parking areas. Automobile parking other than the one garage space which is part of each apartment unit, will be made available to apartment owners. The Association shall have authority to make reasonable charges for the parking of automobiles in such parking area and the same will be available pursuant to the regulations of the Association.

b. Use; charges. The foregoing and all the other common elements shall be available for use by all apartment owners without discrimination. Such use will be without charge except when specifically authorized by this Declaration, except that the Association when authorized by its regulations may charge for the exclusive use of facilities from time to time if such exclusive use is made available to all apartment owners.

THE APARTMENTS

4. The apartments. The apartments and private garage spaces of the condominium are described more particularly and the rights and obligations of their owners established as follows:

4.1 Apartment numbers. There are 13 apartments in the apartment building each with its own private parking garage. The apartments are numbered from 1 to 13 inclusive, beginning with

4.2 Appurtenances to apartments. The owner of each apartment shall own a share and certain interests in the condominium property, which share and interests are appurtenant to his apartment, including but not limited to the following items that are appurtenant to the several apartments as indicated:

a. Common elements and common surplus. The undivided share in the land and other common elements and in the common surplus which are appurtenant to each apartment is as follows:

An undivided 1/13th share to each Apartment

13 such apartments = $13 \times 1/13$ Total 100%

b. Automobile parking space. The common elements include parking areas for automobiles of the apartment owners in addition to the private garages. Parking areas will not be assigned but will be available for use pursuant to the regulations of the Association.

c. Association membership. The membership of each apartment owner in the Association and the interest of each apartment owner in the funds and assets held by the Association.

4.3 Liability for common expenses. Each apartment owner shall be liable for a proportionate share of the common expenses, such share being the same as the undivided share in the common elements appurtenant to his apartment.

5. Maintenance, alteration and improvement. Responsibility for the maintenance of the condominium property, and restrictions upon its alterations and improvement, shall be as follows:

5.1 Apartments.

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

(1) All portions of an apartment, except interior surfaces, contributing to the support of the apartment building, which portions shall include but not be limited to load-bearing columns and load-bearing walls.

(2) ~~All conduits, ducts, plumbing, wiring and other~~ facilities for the furnishing of utility services contained in the portions of an apartment maintained by the Association; and all such facilities contained within an apartment that service part or parts of the condominium other than the apartment within which contained, and;

(3) All incidental damage caused to an apartment by such work shall be repaired promptly at the expense of the Association.

b. By the apartment owner. The responsibility of the apartment owner shall be as follows:

(1) To maintain, repair and replace at his expense all portions of his apartment except the portions to be maintained, repaired and replaced by the Association. Such shall be done without disturbing the rights of other apartment owners.

(2) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the apartment building.

(3) To promptly report to the Association any defect or need for repairs for which the Association is responsible.

c. Alteration and improvement. Except as elsewhere reserved to Developer, neither an apartment owner nor the Association shall make any alteration in the portions of an apartment building that are to be maintained by the Association, or remove any portion of such, or make any additions to them, or do anything that would jeopardize the safety or soundness of the apartment building or impair any easement, without first obtaining approval in writing of owners of all apartments in which such work is to be done and the approval of the board of directors of the Association. A copy of plans for all such work prepared by an architect licensed to practice in this state shall be filed with the Association prior to the start of the work.

5.2 Common elements.

a. By the Association. The maintenance and operation of the common elements shall be the responsibility of the Association and a common expense.

b. Alteration and improvement. After the completion of the improvements included in the common elements contemplated by this Declaration, there shall be no alteration nor further improvement of the real property constituting the common elements without

prior approval in writing by the owners of not less than 75% of the common elements except as provided by the Bylaws.

Any such alteration or improvement shall not interfere with the rights of any apartment owners without their consent. The cost of such work shall not be assessed against a bank, life insurance company or savings and loan association that acquires its title as the result of owning a mortgage upon the apartment owned, unless such owner shall approve the alteration or improvement, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings. The share of any cost not so assessed to the other apartment owners in the shares that their shares in the common elements bear to each other. There shall be no change in the shares and rights of an apartment owner in the common elements altered or further improved, whether or not the apartment owner contributes to the cost of such alteration or improvements.

6. Assessments. The making and collection of assessments against apartment owners for common expenses shall be pursuant to the Bylaws and subject to the following provisions:

6.1 Share of common expense. Each apartment owner shall be liable for a proportionate share of the common expenses, and shall share in the common surplus, such shares being the same as the undivided share in the common elements appurtenant to the apartments owned by him. Provided, however, that if services are made available to apartment owners from a revenue-producing operation, such as but not limited to the operation of a restaurant, bar, or other business, the cost of such services shall be assessed against the owners of the units in which such services are provided.

no assessment on account of such services shall be made against a bank life insurance company or savings and loan association that acquires its title as a result of owning a first mortgage upon an apartment, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; but this shall not preclude such an assessment against an occupant of an apartment owned by such an institution for services voluntarily accepted by the occupant. The shares of any cost or loss not so assessed to the other apartment owners in the shares that their shares in the common elements bear to each other.

6.2 Interest; application of payments. Assessments and installments on such assessments paid on or before ten days after the date when due shall not bear interest, but all sums not paid on or before ten days after the date shall bear interest at the rate of ten percent per annum from the date when due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due.

6.3 Lien for assessments. The lien for unpaid assessments shall also secure reasonable attorneys' fees incurred by the Association incident to the collection of such assessment or enforcement of such lien.

6.4 Rental pending foreclosure. In any foreclosure of a lien ~~the owner of the apartment subject to the lien shall~~ be required to pay a reasonable rental for the apartment, and the Association shall be entitled to the appointment of a receiver to collect the same.

AMENDMENT TO SECTION 6.2 OF
DECLARATION OF CONDOMINIUM
OF MADEIRA VILLA II, a condominium

6.2 Interest; application of payments. Assessments and installments on such assessments paid on or before ten days after the date when due shall not bear interest, but all sums not paid on or before ten days after the date when due shall bear the maximum interest rate allowable by law from the date when due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due.

Voted yes July 9, 1987

7. Association. The operation of the condominium shall be by MADEIRA VILLA ASSOCIATION, INC., a corporation not for profit under the laws of Florida, which shall fulfill its functions pursuant to the following provisions:

7.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit B.

7.2 The Bylaws of the Association shall be the bylaws of the condominium, a copy which is attached as Exhibit C.

7.3 Limitation upon liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to apartment owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

7.4 Restraint upon assignment of shares in assets. The share of member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his apartment.

7.5 Approval or disapproval of matters. Whenever the decision of an apartment owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

8. Insurance. The insurance other than title insurance that shall be carried upon the condominium property and the property of the apartment owners shall be governed by the following provisions:

8.1 Authority to purchase; named insured. All insurance policies upon the condominium property shall be purchased by the Association. The named insured shall be the Association individually and as agent for the apartment owners, without naming them, and as agent for their mortgagees. Provision shall be made for the issuance of mortgagee endorsements and memoranda of insurance to the mortgagees of apartment owners. Such policies shall provide that payments by the insurer for losses shall be made to the Insurance Trustee designated below, and all policies and their endorsements shall be deposited with the Insurance Trustee. Apartment owners may obtain coverage at their own expense upon their personal property and for their personal liability and living expense.

8.2 Coverage.

a. Casualty. All buildings and improvements upon the land shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, and all personal property included in the common elements shall be insured for its value, all as determined annually by the board of directors of the Association. Such coverage shall afford protection against:

(1) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and

(2) such other risks as from time to time shall be customarily covered with respect to the buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.

b. Public liability in such amounts and with such coverage as shall be required by the board of directors of the Association, including but not limited to hired automobile and nonowned automobile coverages, and with cross liability endorsement to cover liabilities of the apartment owners as a group to an apartment owner.

c. Workmen's compensation policy to meet the requirements of law.

d. Such other insurance as the board of directors of the Association shall determine from time to time to be desirable.

8.3 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

8.4 Insurance trustee; shares of proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the apartment owners and their mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Ormond Beach First National Bank, as Trustee, or to such bank in Florida with trust powers as may be designated as insurance trustee by the board of directors of the Association, which trustee is referred to in this

instrument as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes elsewhere stated in this instrument and for the benefit of the apartment owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

a. Common elements. Proceeds on account of damage to common elements and undivided share for each apartment owner, such share being the same as the undivided share in the common elements appurtenant to his apartment.

b. Apartments. Proceeds on account of damage to apartments shall be held in the following undivided shares:

(1) When the building is to be restored - for the owners of damage apartments in proportion to the cost of repairing the damage suffered by each apartment owner, which cost shall be determined by the Association.

c. Mortgagees. In the event a mortgagee endorsement has been issued as to an apartment, the share of the apartment owner shall be held in trust for the mortgagee and the apartment owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any

insurance proceeds except distribution of such proceeds made to the apartment owner and mortgagee pursuant to the provisions of this Declaration

8.5 Distribution of proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

a. Expense of the trust. All expenses of the Insurance Trustee shall be paid first or provision made for such payment.

b. Reconstruction or repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost of such as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an apartment and may be enforced by such mortgagee.

c. Failure to reconstruct or repair. If it is determined in the manner elsewhere provided that the damage for which proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly by them. This is a covenant for the benefit of any mortgagee of an apartment and may be enforced by such mortgagee.

d. Certificate. In making distribution to apartment

certificate of the Association made by its President and Secretary as to the names of the apartment owners and their respective shares of the distribution.

8.6 Association as agent. The Association is irrevocably appointed agent for each apartment owner and for each owner of a mortgage or other lien upon an apartment and for each owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

9. RECONSTRUCTION OR REPAIR AFTER CASUALTY

9.1 Determination to reconstruct or repair. If any part of the condominium property shall be damaged by casualty, whether or not it shall be constructed or repaired shall be determined in the following manner:

a. Common element. If the damaged improvement is a common element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated.

b. Apartment building.

(1) Lesser damage. If the damaged improvement is the apartment building, and if apartments to which 50% of the common elements are appurtenant are found by the board of directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired unless within 60 days after the casualty is determined by agreement in the manner elsewhere provided that the condominium shall be terminated.

(2) Major damage. If the damaged improvement is the apartment building, and if apartments to which more than 50% of the common elements are appurtenant are found by the board of directors to be not tenantable, then the damaged property will not be reconstructed or repaired and the condominium will be terminated without agreement as elsewhere provided, unless within 60 days after the casualty the owners of 75% of the common elements agree in writing to such reconstruction or repair.

c. Certificate. The insurance Trustee may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

9.2 Plans and specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached as exhibits; or if not, then according to plans and specifications approved by the board of directors of the Association, and if the damaged property is the apartment building, by the owners of not less than 75% of the common elements, including the owners of all damaged apartments, which approval shall not be unreasonably withheld.

9.3 Responsibility. If the damage is only to those parts of one apartment for which the responsibility of maintenance and repair is that of the apartment owner, then the apartment owner shall be responsible for reconstruction and repair after casualty.

~~When the damage is to the common elements, the responsibility of reconstruction and~~
repair after casualty shall be that of the Association.

9.4 Estimates of costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

9.5 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the apartment owners who own the damaged apartments, and against all apartment owners in the case of damage to common elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against apartment owners for damage to apartments shall be in proportion to the cost of reconstruction and repair of their respective apartments. Such assessments on account of damage to common elements shall be in proportion to the owner's share in the common elements.

9.6 Construction funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against apartment owners shall be disbursed in payment of such costs in the following manner:

a. Association. If the total of assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair that is the responsibility of the

Association is more than \$5,000.00, then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee. In all other cases the Association shall hold the sums paid upon such assessments and disburse them in payment of the costs of reconstruction and repair.

b. Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from collections of assessments against apartment owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(1) Association-lesser damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than \$5,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association, provided, however, that upon request to the Insurance Trustee by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(2) Association-major damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is more than \$5,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the board of directors of the Association and

upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

(3) Apartment owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an apartment owner shall be paid by the Insurance Trustee to the apartment owner, or if there is a mortgagee endorsement as to the apartment, then to the apartment owner and the mortgagee jointly, who may use such proceeds as they may be advised.

(4) Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner that is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

(5) Certificate. Notwithstanding the provisions of this instrument, the Insurance Trustee shall not be required to determine whether or not sums paid by the apartment owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, the Insurance Trustee may rely upon a certificate

of the Association made by its President and Secretary as to any or all of such matters and stating the name of the payee and the amount to be paid; provided that when a mortgagee is required in this instrument to be named as payee, the Insurance Trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a unit owner; and further provided that when the Association, or a mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

10. Use restrictions. The use of the condominium property shall be in accordance with the following provisions as long as the condominium exists and the apartment building in useful condition exists upon the land.

10.1 Apartments. Each of the apartments, together with the parking garages that are a part of them, shall be occupied only by a family, its servants and guests, as a residence and for no other purpose. Except as reserved to Developer, no apartment may be divided or subdivided into a smaller unit nor any portion sold or otherwise transferred without first amending this Declaration to show the changes in the apartments to be effected.

10.2 Common elements. The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the apartments.

10.3 Nuisances. No nuisances shall be allowed upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No apartment owner shall permit any use of his apartment or make any use of the common elements that will increase the cost of insurance upon the condominium property.

10.4 Lawful use. No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part of it; and 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 for maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

10.5 Leasing. After approval by the Association elsewhere required, entire apartments may be rented provided the occupancy is only by the lessee and his family, its servants and guests. No rooms may be rented, no maids' rooms may be rented excepted as a part of an apartment or to another apartment owner, and no transient tenants may be accommodated.

10.6 Regulations. Reasonable regulations concerning the use of condominium property may be made and amended from time to time by the Association in the manner provided by its Articles of

Incorporation and Bylaws. Copies of such regulations and amendments shall be furnished by the Association to all apartment owners and residents of the condominium upon request.

10.7 Proviso. Provided, however, that until Developer has completed all of the contemplated improvements and closed the sales of all of the apartments and maids' rooms of the condominium, neither the apartment owners nor the Association nor the use of the condominium property shall interfere with the completion of the contemplated improvements and the sale of the apartments. Developer may make such use of the unsold units and common areas as may facilitate such completion and sale, including but not limited to maintenance of a sales office, the showing of the property and the display of signs.

11. Maintenance of Community Interests. In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the apartments, the transfer of apartments by any owner other than the Developer shall be subject to the following provisions as long as the condominium exists and the apartment building in useful condition exists upon the land, which provisions each apartment owner covenants to observe:

11.1 Transfers subject to approval.

a. Sale. No apartment owner may dispose of an apartment or any interest in an apartment by sale without approval of the Association except to an apartment owner.

b. Lease. No apartment owner may dispose of an apartment or any interest in an apartment by lease without approval of the Association except to an apartment owner.

c. Gift. If any apartment owner shall acquire his title by gift, the continuance of his ownership of his apartment shall be subject to the approval of the Association.

d. Devise or inheritance. If any apartment owner shall acquire his title by devise or inheritance, the continuance of his ownership of his apartment shall be subject to the approval of the Association.

e. Other transfers. If any apartment owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of his apartment shall be subject to the approval of the Association.

11.2 Approval by Association. The approval of the Association that is required for the transfer or ownership of apartments shall be obtained in the following manner:

a. Notice to Association.

(1) Sale. An apartment owner intending to make a bona fide sale of his apartment or any interest in it shall give to the Association notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. Such notice at the apartment owner's option may include a demand by the apartment owner that the Association furnish a purchaser of the apartment if the proposed purchaser is not approved;

the notice shall be accompanied by an

(2) Lease. An apartment owner intending to make a bona fide lease of his apartment or any interest in it shall give to the Association notice of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require and an executed copy of the proposed lease.

(3) Gift; devise or inheritance; other transfers. An apartment owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Association notice of the acquiring of his title, together with such information concerning the apartment owner as the Association may reasonably require, and a certified copy of the instrument evidencing the owner's title.

(4) Failure to give notice. If the above required notice to the Association is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of an apartment, the Association at its election and without notice may approve or disapprove the transaction or ownership. If the Association disapproves the transaction or ownership, the Association shall proceed as if it had received the required notice on the date of such disapproval.

b. Certificate of approval.

(1) Sale. If the proposed transaction is a sale, then within 30 days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate

executed by the President and Secretary of the Association, which shall be recorded in the public records of Volusia County, Florida at the expense of the purchaser.

(2) Lease. If the proposed transaction is a lease, then within 30 days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the President and Secretary of the Association in recordable form, which, at the election of the Association, shall be delivered to the lessee or shall be recorded in the public records of Volusia County, Florida at the expense of the lessee.

(3) Gift; devise or inheritance; other transfers. If the apartment owner giving notice has acquired his title by gift, devise or inheritance or in any other manner, then within 30 days after receipt of such notice and information the Association must either approve or disapprove the continuance of the apartment owner's ownership of his apartment. If approved, the approval shall be stated in a certificate executed by the President and Secretary of the Association, which shall be recorded in the public records of Volusia County, Florida at the expense of the apartment owner.

c. Approval of corporate ownership or purchaser. Inasmuch as the condominium may be used only for residential purposes and a corporation cannot occupy an apartment for such use, if the apartment

approval of ownership by the corporation may be conditioned by requiring that all persons occupying the apartment be approved by the Association.

11.3 Disapproval by Association. If the Association shall disapprove a transfer or ownership of an apartment, the matter shall be disposed in the following manner:

a. Sale. If the proposed transaction is a sale and if the notice of sale given by the apartment owner shall so demand, then within 30 days after receipt of such notice and information the Association shall deliver or mail by registered mail to the apartment owner an agreement to purchase the apartment concerned by a purchaser approved by the Association who will purchase and to whom the apartment owner must sell the apartment upon the following terms:

(1) At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(2) The purchase price shall be paid in cash.

(3) The sale shall be closed within 30 days after the delivery or mailing of the agreement to purchase, or within 10 days after the determination of the sale price as such is by arbitration, whichever is the later.

(4) A Certificate of the Association executed by its President and Secretary and approving the purchaser shall be recorded in the public records of Volusia County, Florida, at the expense of the purchaser.

(5) If the Association shall fail to provide a purchaser upon the demand of the apartment owner in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval the proposed transaction shall be deemed to have been approved and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the public records of Volusia County, Florida, at the expense of the purchaser.

b. Lease. If the proposed transaction is a lease, the apartment owner shall be advised of the disapproval in writing, and the lease shall not be made.

c. Gifts; devise or inheritance; other transfers.

If the apartment owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within 30 days after receipt from the apartment owner of the notice and information required to be furnished, the Association shall deliver or mail by registered mail to the apartment owner an agreement to purchase the apartment concerned by a purchaser approved by the Association who will purchase and to whom the apartment owner must

sell the apartment upon the following terms:

(1) The sale price shall be the fair market value determined by agreement between the seller and purchaser within 30

days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(2) The purchase price shall be paid in cash.

(3) The sale shall be closed within 10 days following the determination of the sale price.

(4) A Certificate of the Association executed by its President and Secretary and approving the purchaser shall be recorded in the public records of Volusia County, Florida, at the expense of the purchaser.

(5) If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval such ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the public records of Volusia County, Florida, at the expense of the apartment owner.

11.4 Mortgage. No apartment owner may mortgage his apartment nor any interest in it without the approval of the Association except to a bank, life insurance company or a savings and loan association, or to a vendor to secure a portion or all of the purchase price. The approval of any other mortgagee may be upon conditions determined by the Association or may be arbitrarily withheld.

11.5 Exceptions. The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by a bank, life insurance company or savings and loan association that acquires its title as the result of owning a mortgage upon the apartment concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such provisions apply to a transfer, sale or lease by a bank, life insurance company or savings and loan association that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to an apartment at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

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

12. Compliance and default. Each apartment owner shall be governed by and shall comply with the terms of the Declaration of

Condominium, Articles of Incorporation and Bylaws and the Regulations adopted pursuant to those documents, and all of such as they may be amended from time to time. Failure of an apartment owner to comply with such documents and regulations shall entitle the Association or other apartment owners to the following relief in addition to the remedies provided by the Condominium Act.

12.1 Negligence. An apartment owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. An apartment owner shall pay the Association the amount of any increase in its insurance premiums occasioned by use, misuse, occupancy or abandonment of an apartment or its appurtenances, or of the common elements, by the apartment owner.

12.2 Costs and attorneys' fees. In any proceeding arising because of an alleged failure of an apartment owner or the Association to comply with the terms of the Declaration, Articles of Incorporation of the Association, the Bylaws, or the Regulations adopted pursuant to them, and the documents and Regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.

12.3 No waiver of rights. The failure of the Association or any apartment owner to enforce any covenant, restriction or

other provision of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, the Bylaws or the Regulations shall not constitute a waiver of the right to do so thereafter.

13. Amendments. Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

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

13.2 A resolution for the adoption of a proposed amendment may be proposed by either the board of directors of the Association or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approval must be either by:

a. not less than 75% of the entire membership of the board of directors and by not less than 75% of the votes of the entire membership of the Association; or

b. not less than 80% of the votes of the entire membership of the Association; or

c. until the first election of directors, only by all of the directors, provided the amendment does not increase the number of apartments nor alter the boundaries of the common elements.

13.3 Proviso. Provided, however, that no amendment shall discriminate against any apartment owner nor against any apartment or class or group of apartments, unless the apartment owners so affected shall consent; and no amendment shall change any apartment nor the share in the common elements appurtenant to it, nor increase the owner's share of the common expenses, unless the record owner of the apartment concerned and all record owners of mortgages on such apartment shall join in the execution of the amendment. Neither shall an amendment make any change in the section entitled "Insurance" nor in the section entitled "Reconstruction or repair after casualty" unless the record owners of all mortgages upon the condominium shall join in the execution of the amendment.

13.4 Execution and recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the public records of Volusia County, Florida.

14. Termination. The condominium may be terminated in the following manner in addition to the manner provided by the Condominium Act.

14.1 Destruction. If it is determined in the manner elsewhere provided that the apartment building shall not be reconstructed because of major damage, the condominium plan of ownership will be

14.2 Agreement. The condominium may be terminated at any time by the approval in writing of all record owners of apartments and all record owners of mortgages on apartments. If the proposed termination is submitted to a meeting of the members of the Association, the notice of the meeting giving notice of the proposed termination, and if the approval of the owners of not less than 75% of the common elements, and of the record owners of all mortgages upon the apartments, are obtained in writing not later than 30 days from the date of such meeting, then the approving owners shall have an option to buy all of the apartments of the other owners for the period ending on the 60th day from the date of such meeting. Such approvals shall be irrevocable until the expiration of the option, and if the option is exercised, the approvals shall be irrevocable. The option shall be upon the following terms:

a. Exercise of option. The option shall be exercised by delivery or mailing by registered mail to each of the record owners of the apartments to be purchased an agreement to purchase signed by the record owners of apartments who will participate in the purchase. Such agreement shall indicate which apartments will be purchased by each participating owner and shall require the purchase of all apartments owned by owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.

be the fair market value determined by agreement between the seller and purchaser within 30 days from the delivery or mailing of such agreement, and in the absence of agreement as to price it shall be

determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

c. Payment. The purchase price shall be paid in cash.

d. Closing. The sale shall be closed within 10 days following the determination of the sale price.

14.3 Certificate. The termination of the condominium in either of the foregoing manners shall be evidenced by a Certificate of the Association executed by its President and Secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Volusia County, Florida.

14.4 Shares of owners after termination. After termination of the condominium the apartment owners shall own the condominium property and all assets of the Association as tenants in common in undivided shares that shall be the same as the undivided shares in the common elements appurtenant to the owners' apartments prior to the termination.


14.5 Amendment. This section concerning termination cannot be amended without consent of all apartment owners and of all record owners of mortgages upon the apartments.

15. SEVERABILITY AND CONCLUSION


15. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and the Articles of Incorporation, Bylaws and Regulations of the Association shall not affect the validity of the remaining portions.

IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first above written.

Signed, Sealed and Delivered
in the presence of:



Captain Hodge

 (SEAL)
JOHN LEDBETTER, Individually
and as Trustee under the provisions
of a certain Trust Agreement,
dated the 30th day of 30th day
of October, 1970.

 (SEAL)
JOYCE H. LEDBETTER, his wife

STATE OF FLORIDA
COUNTY OF VOLUSIA

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared JOHN LEDBETTER, Individually and as Trustee, under the provisions of a certain Trust Agreement, dated the 30th day of October, 1970, joined by his wife, JOYCE H. LEDBETTER, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

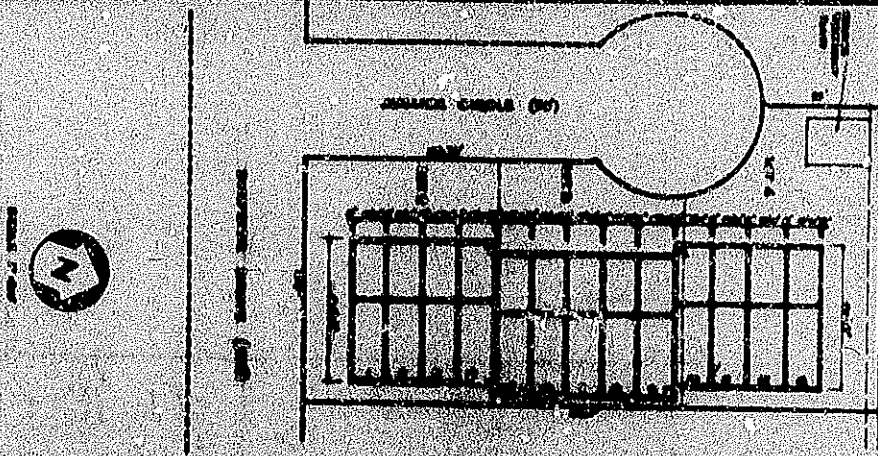
WITNESS my hand and official seal in the County and State last aforesaid this 26 day of MAY, 1971.


Notary Public, State of Florida
at Large.

My commission expires

Notary Public, State of Florida at Large
My Commission Expires May 23, 1972

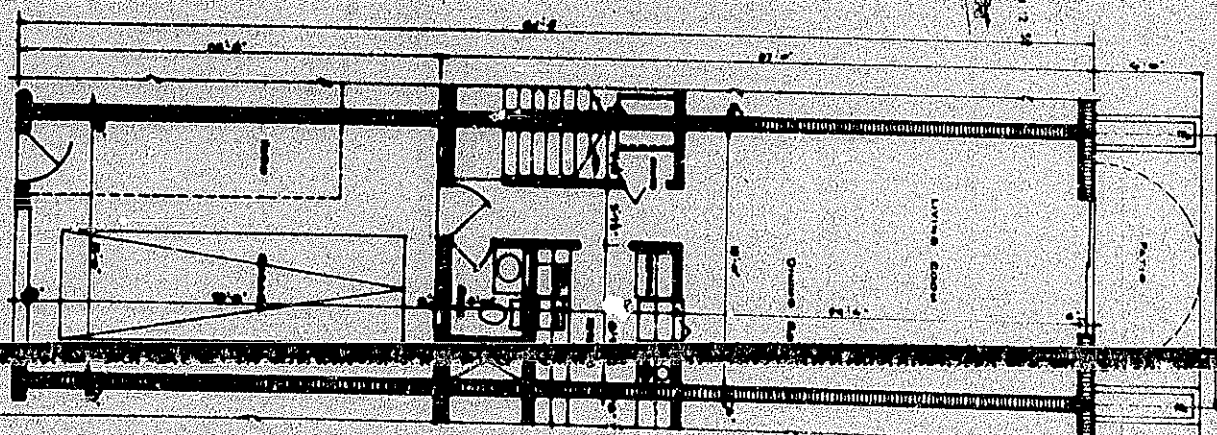
MADERIA VILLA II
A CONDOMINIUM



TYPICAL FIRST FLOOR PLAN



TYPICAL FIRST FLOOR PLAN



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