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Cedar Pointe Village 8

Declaration of Condominium

April 1973

(through May 2003)

MERGED

DECLARATION OF CONDOMINIUM OF
CEDAR POINTE APARTMENT BUILDING NO. , A CONDOMINIUM

(through May 2003)

Made this 19th day of April, 1973, by MARK & SON, INC., a Florida corporation, hereinafter called the "Developer", for itself, its successors 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, 1971, hereinafter called the Condominium Act; and the Developer does hereby submit the condominium property to condominium ownership.

2. **NAME AND ADDRESS.**

The name by which this condominium is to be identified is CEDAR POINTE APARTMENT BUILDING NO. _____, A CONDOMINIUM, and its address is Building _____, 2000 East Ocean Boulevard, Stuart, Florida.

3. **THE LAND.**

The lands owned by Developer, which by this instrument are submitted to the condominium form of ownership, are located in Martin County, Florida. A description thereof is attached as a part of Exhibit A.

4. **DEFINITIONS.**

The terms used in this Declaration and in its Exhibits, and in all amendments thereto, shall have the meanings stated in the Condominium Act and as follows unless the context otherwise requires:

4.1. Apartment means unit as defined by the Condominium Act.

4.2 Apartment Owner means the record owner of legal title to an Apartment.

4.3 Assessment means a share of the funds required for the payment of common expenses which, from time to time, are assessed against the apartment owner.

4.4 Association means CEDAR POINTE VILLAGE NO. 8 ASSOCIATION, INC., the Florida not for profit corporation, its successors and assigns, responsible for the operation of the condominium.

4.5 Common Elements means the portions of the condominium property not included in the apartments.

4.6 Common Expenses include:

(a) Expenses of administration; expenses of maintenance, operation, repair or replacement of the common elements, Association Property, and of the portions of the apartments to be maintained by the Association, including, but not limited to, security expenses and directors' and officers' liability insurance.

(b) Expenses declared common expenses by provisions of this Declaration or the Bylaws of the Association.

(c) Any valid charge against the condominium property as a whole.

(d) Common Expenses shall not include uniform expenses, as defined in Section 4.15 below.

4.7 Common Surplus means the excess of all receipts of the Association over the common expenses.

4.8 Condominium means that form of ownership of property under which units of improvements are subject to ownership by different owners; and there is appurtenant to each unit, as a part thereof, an undivided share in the common elements.

4.9 Condominium Property means and includes the land of the condominium, all improvements thereon, and the common elements; and all easements and rights appurtenant thereto.

4.10 Institutional Mortgage means a mortgage held by a bank, savings and loan association, insurance company, or union pension fund authorized to do business in the State of Florida, or an agency of the United States Government.

4.11 Association Property means property, real and personal, owned or leased by or dedicated to the Association for the use and benefit of the members.

4.12 Singular, Plural Gender. Whenever the context hereof so permits, the use of plural will include the singular, the singular the plural, and the use of any gender will be deemed to include all genders.

4.13 Committee means a group of Board members, Apartment Owners or Board members and Apartment Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the proposed annual budget or take action on behalf of the Board.

4.14 Special assessment means any assessment levied against an Apartment Owner other than the assessment required by the budget adopted annually.

4.15 Uniform Expenses means fees payable to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the State of Florida Department of Business Regulations; and expenses for water supply sewage and waste disposal, pest control and any future items on a per unit cost.

5. DEVELOPMENT PLAN.

The condominium is described and established as follows:

5.1 Survey. A survey of the land showing the apartment building on it and common elements upon the land is attached as a part of Exhibit A. An additional document creating a road easement may also be attached as a part of Exhibit A.

5.2 Plot Plans. Plot plans and other documents showing common elements within or attached to the building, the location and dimensions of each apartment, and the location, dimensions and description of the Association Property are attached as collective Exhibit B. For the purpose of identification, all apartments in the building located upon said land are given identifying numbers and no apartment bears the same identifying number as does any other apartment.

5.3 A Surveyor's Certificate that said survey and plot plans, together with the wording of this Declaration, is a correct representation of the improvements described and that there can be determined therefrom the identification, location, dimensions and size of the common elements, and of each apartment is attached as Exhibit C.

5.4 Easements for utilities are reserved through the condominium property in order to adequately serve the condominium and others; provided, however, such easements through an apartment will be only according to the plans and specifications for the apartment building, or as the building is constructed, unless approved in writing by the apartment owner.

5.5 Improvements - General Description.

(a) **Apartment Building.** The condominium includes an apartment building. It consists of a first and second floor and contains apartments and common elements.

(b) **Other improvements** include, but are not limited to, landscaping, automobile parking areas and private roads; all of which are part of the common elements.

5.6 Apartment boundaries. Each apartment will 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 apartments will be the following boundaries, extended to an intersection with the perimetrical boundaries:

(1) Upper Boundary (first floor apartments) - The horizontal plane of the lower surfaces of the sheetrock;

(2) Upper Boundary (second floor apartments) - The horizontal plane of the upper surface of the sheetrock;

(3) Lower Boundary (all apartments) - The horizontal plane of the lower surfaces of the floor slab.

(b) **Perimetrical boundaries.** The perimetrical boundaries of the apartments will 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 of the outside walls of the apartment building bounding an apartment and fixture thereon; and when there is attached to the building a balcony, porch, stairway or other portion of the building serving only the apartment being bounded, such boundaries will be the intersecting vertical planes adjacent to and which include all of such structures and fixtures thereon.

(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:

(i) If interior building walls separate apartments from common elements, the perimetrical boundaries as to such walls will be the intersecting vertical planes adjacent to and including the surfaces thereof facing the common elements.

(ii) If walls between apartments are of varying thickness, or abut a column or shaft, the plane of the center line of a bounding wall will 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.

(iii) If 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 will be extended into the thicker wall for a distance which is one-half the thickness of the thinner wall, and the boundary will thence run at right angle to the plane of the center line of the thicker wall.

(iv) If exterior faces of apartment walls are diametrically opposite from each other, the perimetrical boundary of such apartments will proceed through the intersection of such walls at an angle of forty-five degrees from exterior face to exterior face.

5.7 Common Elements. The common elements of the condominium consist of the land and all other parts of the condominium property not within the apartments, including but not limited to service rooms, and all tangible personal property which is used in the maintenance and operation of the condominium (including all improvements and equipment located upon the land constituting a part of the sewage disposal system serving the condominium).

6. OWNERSHIP OF COMMON ELEMENTS.

There will be an undivided share in the common elements appurtenant to each apartment of the condominium, stated as a percentage thereof. The types of apartments of the condominium, and the percentage attributable to each, is set forth in the schedule attached as Exhibit D.

The fee title to each apartment will include both the apartment and its undivided interest in the common elements. said undivided interest to be deemed to be conveyed or encumbered with its respective apartment, even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the apartment. Any attempt to separate the fee title to an apartment from the undivided interest in the common elements appurtenant to each apartment will be null and void.

7. COMMON EXPENSES, UNIFORM EXPENSES AND COMMON SURPLUS.

The common expenses of the condominium will be shared by the apartment owners in the same proportions as their percentage interests in all of the common elements. These ratios will remain regardless of the purchase prices of the apartments or their locations.

The uniform expenses of the condominium shall be shared equally by the apartment owners.

Any common surplus of the Association will be owned by the apartment owners in the same proportions as their interests in all of the common elements.

8. MAINTENANCE, ALTERATION AND IMPROVEMENT.

Responsibility for the maintenance of the condominium property, and restrictions upon its alteration and improvement, will be as follows:

8.1. Apartments.

(a) **By the Association.** The Association will maintain, repair and replace:

(1) All portions of apartments contributing to the support of the apartment building, the surfaces of outside walls of the apartment building, the surfaces of interior building walls facing common elements, the outside surfaces of doors leading into apartments, fixtures attached to the outside surfaces of said doors, and all materials enclosing the floor areas of apartments other than walls, doors and windows. Such will be done at the expense of the Association, unless made necessary by the negligence of any apartment owner, members of his family or his or their guests, employees, agents or lessees. In the event of such negligence, it will be done by the Association at the expense of said apartment owner.

(2) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services, except electrical switches, electrical outlets, light bulbs, appliances, bathroom fixtures, kitchen fixtures

and similar equipment, contained within or attached to the portions of the apartments to be maintained by the Association. Such will be done at the expense of the Association, unless made necessary by the negligence of any apartment owner, members of his family or his or their guests, employees, agents or lessees. In the event of such negligence, it will be done by the Association at the expense of said apartment owner.

(3) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services and all fixtures and equipment contained within portions of the apartments to be maintained by the apartment owners, if necessary to properly furnish utility services to parts of the condominium other than the apartment within which they are contained. Such will be done at the expense of the owner of the apartment where the work is done.

(4) All incidental damage caused to apartments by such work will be promptly repaired by the Association, at the expense of the party responsible for the expense of such work. The Association's liability for incidental damage hereunder shall be limited to Two Thousand Dollars (\$2,000.00) per apartment for any incident in which incidental damage is caused.

The foregoing limitation shall not apply when the incidental damage is caused by negligent or intentional misconduct on the part of the Association.

(b) By the apartment owners. The responsibility of the apartment owners will be as follows:

(1) To maintain, repair and replace all portions of apartments and the fixtures and equipment contained within apartments, except the portions thereof to be maintained, repaired and replaced by the Association. The apartment owner shall be specifically responsible for all doors and windows serving the apartment, including all frames, locks and operating mechanisms appurtenant thereto, with the sole exception being the exterior surface of the outside doors to the apartments. Such will be done at the expense of the owner of the apartment where the work is done.

(2) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the apartment building or the surfaces of interior building walls facing common elements without the prior written approval of the Board of Directors.

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

(c) Insurance Proceeds. The liability of the Association and apartment owners for maintenance, repair and replacement, as aforesaid, will be reduced to the extent by which such expenses are met by the proceeds of insurance carried by the Association.

(d) Alteration and Improvement. No alterations will be made in the portions of any apartment to be maintained by the Association, without the prior written approval of the owners of apartments in which such work is to be done and of the Board of Directors of the Association. A copy of plans for all such work prepared by an architect licensed to practice in the State of Florida will be filed with said Board of Directors prior to the start of such work. Approval of the Board of Directors under this section shall be specifically required for alterations which require the issuance of a permit or which involve any work which will necessitate piercing a unit boundary, as defined in Section 5.7 hereof, or would otherwise, in the discretion of the Board of Directors, impact the common elements in any manner, including, without limitation, the installation of any flooring material other than carpeting, or the replacement of any window or door.

8.2 Common Elements and Association Property.

(a) By the Association. The maintenance, repair, replacement and operation of the common elements and Association Property will be the responsibility of the Association and a common expense. However, the liability of the Association for such expenses will be reduced to the extent by which they are met by the proceeds of insurance carried by it.

(b) Alteration and Improvement. There will be no alterations or additions to the common elements or Association Property which exceed one percent (1%) of the annual budget then in effect, including operating expenses or reserves, or which cumulatively in a fiscal year exceed five percent (5%) of the annual budget then in effect, including operating expenses and reserves, without the approval of a majority of the total

membership of the Association. Alterations costing less than the aforesaid thresholds may be approved by the Board of Directors without a membership vote.

9. ASSESSMENTS.

The making and collection of assessments against apartment owners for common expenses will be pursuant to the Bylaws of the Association, subject to the following provisions:

9.1 Share of Common Expense. Each apartment owner will be liable for a proportionate share of the common expenses, and will share in the common surplus, as provided for in Article 8 of this Declaration. Each apartment owner is liable for all assessments and other charges that come due while he or she is the apartment owner and is jointly and severally liable with the previous owner for all assessments and other charges that were due as of the date title was acquired, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure. A first mortgagee acquiring title by foreclosure or deed in lieu of foreclosure or the first mortgagee's successors or assigns, defined to be a subsequent holder of the mortgage, is liable for assessments and other charges coming due prior to the acquisition of title, but such liability is limited to the lesser of six (6) months of assessments immediately preceding the acquisition of title or one percent (1%) of the original mortgage balance. Such limited liability shall apply only to first mortgagees or their successors and assigns and shall only apply in the event the Association was joined as a defendant in the first mortgagee's foreclosure action.

9.2 Interest; Application of Payments. Assessments and installments on such assessments not paid on or before ten days after the date when due will bear interest at the maximum rate permitted by law and shall be subject to a late charge not to exceed the maximum amount permitted by the Condominium Act, as same may be amended from time to time. All payments upon account will be applied in the manner provided in the Condominium Act, as same may be amended from time to time.

9.3 Lien for Assessments. The Association will have a lien upon each apartment and upon all tangible personal property located within each apartment for any unpaid assessments, together with interest, late charges, costs and attorneys' fees. The assessments secured by the lien shall include those due at the time a claim of lien is recorded, as well as those coming due until a certificate of title is issued in connection with a foreclosure of a claim of lien or until the claim of lien is satisfied. Reasonable attorneys' fees incurred by the Association incident to the collection of such assessments or to the enforcement of such liens, together with all sums advanced and paid by the Association for taxes and payments on account of superior liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien will be payable by the apartment owner and secured by such liens. The Association's claim of lien shall have priority from the date upon which a claim of lien is recorded in the Public Records of Martin County, Florida, as against first mortgagees of record. As against all other interests in the unit, the Association's claim of lien shall be effective from and shall relate back to the original recording date of this Declaration of Condominium or such later date as may be required by law, but in no event later than the effective date of this amendment.

9.4 Collections and Foreclosure. The Association may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said liens, and it may settle and compromise the same, if in the best interests of the Association. The Association will be entitled to bid at any sale held pursuant to a suit to foreclosure any lien; and at any sale held pursuant to a suit to foreclosure an assessment lien it may apply as a cash credit against its bid all sums due the Association covered by the lien enforced. In case of the foreclosure of an assessment lien, the apartment owner will be required to pay a reasonable rental for the apartment and the plaintiff in such foreclosure will be entitled to the appointment of a receiver to collect same from the apartment owner and/or occupant.

9.5 Assignment of Claim and Lien Rights. The Association, acting through the Board of Directors, will have the right to assign its claim and lien rights for the recovery of any unpaid assessments to the Developer, or to any apartment owner or group of apartment owners, or to any third party.

10. ASSOCIATION.

The operation of the condominium will be by the Association, which will fulfill its functions pursuant to the following provisions:

10.1 The Bylaws of the Association will be the Bylaws of the condominium, a copy of which is attached hereto as Exhibit F.

10.2 A copy of the Articles of Incorporation of the Association is attached as Exhibit G.

10.3 No modification of or amendment to the Bylaws of the Association will be valid unless set forth in or annexed to a duly recorded amendment to this Declaration. The Bylaws may be amended in the manner provided for therein, but no such amendment will be adopted which would affect or impair the validity or priority of the recorded owner of any mortgage covering any apartment, or which would affect or impair the validity or priority of the Long Term Lease, or which would affect or impair the rights of the Developer under the Long Term Lease, unless said mortgagee or Developer will join in the execution of the amendment.

10.4 Limitation upon liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association will 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.

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

10.6 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 will 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.

11. INSURANCE.

The insurance, other than title insurance, that will be carried upon the condominium property and the property of the apartment owners will be governed by the following provisions:

11.1 Authority to purchase; named insured. All insurance policies upon the condominium property will be purchased by the Association. The named insured will be the Association individually and as agent for the apartment owners, without naming them. Provision will be made for the issuance of mortgagee endorsements and memoranda of insurance to the mortgagees of apartment owners. Such policies will provide that payments by the insurer for losses will be made to the Insurance Trustee designated below, and all policies and their endorsements will 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.

11.2 Coverage.

(a) Casualty. All buildings and improvements upon the land will 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 will be insured for its value, as determined by the Board of Directors of the Association. Such coverage will 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 will be customarily covered with respect to buildings similar in construction, location and use of 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 will be required by the Board of Directors of the Association, including but not limited to hired automobile and non-owned 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.

11.3 Premiums. Premiums upon insurance policies purchased by the Association will be paid by the Association, as a common expense.

11.4 Insurance trustee; share of proceeds. All insurance policies purchased by the Association will be for the benefit of the Association and the apartment owners and their mortgagees as their interests may appear, and will provide that all proceeds covering property losses will be paid 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 will 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 will 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 (except the premises leased to the Association under the Long Term Lease)- an undivided share for each apartment owner, such share being the same as the undivided share in the common elements (except the premises leased to the Association under the Long Term Lease) appurtenant to his apartment.

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

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

(2) When the building is not to be restored -An undivided share for each apartment owner, such share being the same as the undivided share in the common elements (except the premises leased to the Association under the Long Term Lease) appurtenant to his apartment.

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

11.5 Distribution of proceeds. Proceeds of insurance policies received by the Insurance Trustee will 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 will 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 will be paid to defray the cost of such as elsewhere provided. Any proceeds remaining after defraying such costs will 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 will not be reconstructed or repaired, the remaining proceeds will be distributed to the beneficial owners, remittance 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.

(d) Certificate. In making distribution to apartment owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the names of the apartment owners and their respective shares of the distribution.

11.6 Association as agent. The Association is irrevocably appointed agent for each apartment owner 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.

12. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

12.1 Determination to reconstruct or repair. If any part of the condominium property (except the premises leased to the Association under the Long Term Lease) shall be damaged by casualty, whether or not it shall be reconstructed or repaired will be determined in the following manner:

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

(b) Apartments.

(1) Lesser damage. If the damaged improvement is an apartment or apartments 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 will be reconstructed or repaired unless within 60 days after the casualty it is determined by agreement in the manner elsewhere provided that the condominium will be terminated.

(2) Major damage. If the damaged improvement IS an apartment or apartments and if apartments to which more than 50% of the common elements are appurtenant are found by the Board of Directors of the Association 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 UGH reconstruction or repair.

(c) Certificate. The Insurance Trustee may rely upon a certificate of the Association to determine whether or not the damaged property is to be reconstructed or repaired.

12.2 Plans and specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building; or if not, then according to plans and specifications approved by the Board of Directors of the Association; and if the damaged property is an apartment or apartments, by the owners of not less than 75% of the common elements, including the owners of all damaged apartments, which approval will not be unreasonably withheld.

12.3 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 will be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

12.4 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 will obtain reliable and detailed estimates of the cost to rebuild or repair.

12.5 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 are repair are insufficient, assessments will 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 will be in proportion to the cost of reconstruction and repair of their respective apartments; and such assessments on account of damage to common elements will be in proportion to the owner's share in the common elements (except the premises leased to the Association under the Long Term Lease).

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

(a) Association. If the total of the payments made in order to provide funds for the costs of reconstruction and repair that is the responsibility of the Association is more than \$5,000.00, then the sums paid will be deposited with the Insurance Trustee. In all other cases, the Association will hold the sums paid 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 on account of such casualty will constitute a construction fund which will 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 will 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 will 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 will be disbursed in payment of such costs in the manner required by the Association and upon approval of an architect qualified to practice in the State of 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 will 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 will be presumed that the first monies disbursed in payment of costs of reconstruction and repair will 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 will 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 will not be made payable to any mortgagee.

(5) Certificate. Notwithstanding the provisions of this instrument, the Insurance Trustee will not be required to determine whether or not sums paid will be deposited 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 that the sums to be paid are due and properly payable 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 will also name the mortgagee as a payee of any distribution of insurance proceeds to an apartment owner; and further provided that when the Association, or to 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 will be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

13. USE RESTRICTIONS.

The use of the condominium property will be in accordance with the following provisions, as long as the condominium exists and the apartment building in useful condition exists upon the land.

13.1 Apartments. Each of the apartments will be occupied as a single family private dwelling by the owner, the adult members of his family, and his social guests, and for no other purpose. Single family, for the purposes hereof, shall be defined to include the apartment owner, his spouse or live-in companion, and their children, grandchildren, parents and grandparents. No apartment may be divided or subdivided into a smaller unit or otherwise transferred without first amending this Declaration to show the changes in the apartments to be affected. Each two (2) bedroom apartment may be occupied by no more than four (4) permanent occupants. Each one (1) bedroom apartment may be occupied by no more than two (2) permanent occupants. A permanent occupant is defined as someone who resides in an apartment for more than thirty (30) days cumulatively in a calendar year. Guest occupancy as provided herein shall be subject to such rules and regulations as the Board of Directors may make and amend from time to time.

Cedar Pointe Apartments is a residential condominium designed and intended as housing for older persons. No unit may be occupied by children under the age of forty (40) years of age, except to the extent that temporary visits are permitted elsewhere in the condominium documents. Furthermore, no occupancy shall be permitted by individuals between the ages of forty (40) and fifty-five (55) unless the unit is also occupied by at least one person fifty-five (55) years of age or older. Accordingly, the Board shall not approve any proposed transfer to persons who do not intend to hold the unit out for occupancy by persons fifty-five (55) years of age and older or to persons who intend to occupy the unit without at least one occupant over the age of fifty-five (55). The Board may permit sales where the title holders will not include at least one person fifty-five (55) years of age or older on the condition that all purchasers verify in writing as a condition of approval that they intend to hold the unit out for occupancy by persons fifty-five (55) years of age or older or intend to occupy the unit with at least one person fifty-five (55) years of age or older in occupancy with them at all times. The only exceptions where occupancy by persons between the ages of forty (40) and fifty-five (55) will be permitted are surviving spouses under the age of fifty-five (55) and surviving children under the age of fifty-five (55). The foregoing exceptions shall not be permitted where the occupancy would result in less than eighty percent (80%) of the occupied units being occupied by at least one person fifty-five (55) years of age or older.

The Board of Directors shall establish policies and procedures for the purpose of assuring that the Board implements the intent of this provision in connection with the screening of sales and leases pursuant to this Article and for the purpose of assuring that at least eighty (80%) percent of the occupied units in the condominium are occupied by at least one person fifty-five (55) years of age or older, without being inconsistent with the initial exceptions cited above. The Board of Directors shall take all reasonable steps to

insure that the condominium's status as housing for older persons is preserved and protected. The Board shall also conduct a census to verify the age of the occupants of all occupied units and shall obtain reliable documentation of age, such as a driver's license, birth certificate, passport, immigration card, military identification, other state, local, national or international official documents containing a birth date of comparable reliability or a certification in a lease, application, affidavit or other document asserting that at least one person in the unit is fifty-five (55) years of age or older. The Board shall conduct such a census after the enactment of this amendment and shall update the census at least once every two years thereafter or as often as required by law.

No animals or pets of any kind shall be kept or brought on to any portion of the condominium property at any time.

The apartment owners will not cause anything to be hung, displayed, or placed on the exterior walls, doors or windows of the apartment building and will not otherwise change the appearance of any portion of the exterior of the apartment building or the surfaces of interior building walls facing common elements without the prior written consent of the Board of Directors of the Association. No clothes lines or similar devices, and no "For Sale" signs, will be allowed on porches or balconies or upon any other part of the condominium property, without the written consent of said Board of Directors.

Automobiles will be parked in the parking areas of the condominium property adjacent to or near the apartment building, but only in accordance with the rules and regulations of the Association. One parking space will be designated for use by the occupants of each apartment and the remaining spaces, if any, will be used by those persons specified by the Association. No other vehicles and objects, including but not limited to trucks, motorcycles, trailers, unlicensed or inoperable vehicles and boats may be parked or placed upon any of the condominium property unless permitted by the Association.

13.2 Common Elements. The common elements will be used only for the purposes for which they are intended.

13.3 Nuisances. No nuisances will 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 will 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 will 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 _

13.4 Lawful Use. No immoral, improper, offensive or unlawful use will 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, will be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the condominium property will be the same as the responsibility for the maintenance and repair of the property concerned.

13.5 Leasing. After approval by the Board of Directors of the Association as elsewhere required, entire apartments may be rented, provided the occupancy is only by the lessee, members of his family, and his social guests. No rooms may be rented and no transient tenants may be accommodated. No lease will be approved for a term of less than three (3) months or for a term of more than twelve (12) months nor will a lease be approved which would result in an apartment being leased more than once in a twelve month period, the twelve month period being measured from the commencement date of the most recent prior lease of the apartment. Further, no lease will be approved during the first two (2) years of ownership of the apartment, measured from the recording date of the most recent deed conveying any interest in title to the apartment. The foregoing prohibition against leasing during the first two (2) years of ownership of an apartment shall not apply to

transfers by Will or the intestacy statute from the deceased unit owner's estate to the deceased unit owner's surviving children.

13.6 Rules and Regulations. Reasonable rules and regulations concerning other use of the condominium property may be made and amended from time to time by the Board of Directors. Copies of such rules and regulations and amendments will be furnished to all apartment owners and residents of the condominium, upon request.

13.7 Ownership Limitations. No person or entity may own, directly or indirectly, jointly or severally, any ownership interest in more than two (2) apartments total in the condominiums operated by the Association. Furthermore, no transfer of an apartment, whether by sale, lease or any other means, to a corporation, partnership or other entity shall be approved, except for transfers to trusts for the purpose of estate or financial planning or transfers to family owned corporations where all of the stock is owned by a single family, as defined hereinabove. The foregoing provisions shall not apply to persons or entities which already own more than two (2) apartment, which shall be grandfathered in, but shall apply to all future transfers of title after the effective date of these amendments. The foregoing shall not preclude the Association or a foreclosing mortgagee from acquiring title to an apartment. No apartment may be titled in the names of more than three (3) natural persons or one (1) permitted entity, as described above.

14. 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 will 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.

14.1 Transfer subject to approval.

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

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

(c) Gift. If any apartment owner shall acquire his title by gift, the continuance of his ownership of his apartment will 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 will 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 sub-sections, the continuance of his ownership of his apartment will be subject to the approval of the Association.

(f) In no event shall any transfer of title by sale, gift, devise, inheritance or any other transfer, nor shall any transfer of possessory interest by lease take place, unless the requirements of Paragraph 13.1 have been met.

(f) Transfer fee and security deposit. In connection with any transfers subject to approval hereunder, the Association may impose a transfer fee not to exceed the maximum amount permitted by the Condominium Act, as same may be amended from time to time. In connection with leases, the Association may condition its approval on the posting of a security deposit, not to exceed the maximum amount permitted by the Condominium Act, as same may be amended from time to time.

14.2 Approval by Association. The approval of the Association that is required for the transfer of ownership of apartments will 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 of any interest in it will 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, including, but not limited to, a personal interview with the intended purchaser and all other intended occupants of the apartment. Each prospective purchaser shall be required to provide proof of age to insure compliance with Paragraph 13.1.

(2) Lease. An apartment owner intending to make a bona fide lease of his apartment or of any interest in it will 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 reasonable require, including, but not limited to, a personal interview with the intended lessee and all other intended occupants of the apartment, and an executed copy of the proposed lease. Each prospective lessee shall be required to provide proof of age to insure compliance with Paragraph 13.1.

(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, will 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, including, but not limited to, a personal interview with the intended grantee and all other intended occupants of the apartment, and a certified copy of the instrument evidencing the owner's title. Each prospective owner shall be required to provide proof of age to insure compliance with Paragraph 13.1.

(4) Failure to give notice. If the above required notice to the Association 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, it will 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 thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval will be stated in a certificate executed by the President and Secretary of the Association.

(2) Lease. If the proposed transaction is a lease, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval will be stated in a certificate executed by the President and Secretary of the Association.

(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 thirty (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 will be stated in a certificate executed by the President and Secretary of the Association.

(c) Approval of corporate owner 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 owner or purchaser of an apartment is a corporation, the approval of ownership by the corporation may be conditioned by requiring that all persons occupying the apartments be approved by the Association.

14.3 Disapproval by Association. If the Association shall disapprove a transfer of ownership of an apartment, unless good cause exists, as defined below, with good cause applying only to transfers by sale, gift, devise or inheritance, the matter will be disposed of 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 thirty (30) days after receipt of such notice and information the Association will deliver or mail by registered mail to the apartment owner an agreement to purchase the apartment

concerned by a purchaser approved by it, 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 will be that stated in the disapproved contract to sell or it will be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators will be two appraisers appointed by the American Arbitration Association who will 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 will be paid by the purchaser.

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

(3) The sale will 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 if such is by arbitration, whichever is the later.

(4) A certificate approving the purchaser will be executed by the President and Secretary of the Association.

(5) If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by it shall default in his agreement to purchase, then notwithstanding the disapproval, such ownership will be deemed to have been approved; and the Association will furnish a certificate of approval as elsewhere provided.

(b) Lease. If the proposed transaction is a lease, an apartment owner will be advised of the disapproval in writing, and the lease will not be made. In the event that the lease is made without approval of the Association and not in compliance with Paragraph 13.1, the Association shall have the right to bring an action to evict the tenant as well as such other action as may be necessary to enforce compliance in the future by the unit owner with the Declaration of Condominium and the rules of the Association, to include, but not be limited to, the right of injunctive relief against said unit owner who made the lease which violated Paragraph 13.1 or other sections of this Declaration of Condominium.

(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 will deliver or mail by registered mail to the apartment owner an agreement to purchase the apartment concerned by a purchaser approved by it, who will purchase and to whom the apartment owner must sell the apartment upon the following terms:

(1) The sale price will 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 will be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators will be two appraisers appointed by the American Arbitrators Association who will 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 will be paid by the purchaser.

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

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

(4) A certificate approving the purchaser will be executed by the President and Secretary of the Association.

(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 will be deemed to have been approved, and the Association will furnish a certificate of approval as elsewhere provided.

If good cause exists for the Association to disapprove a proposed sale, conveyance or other transfer of title, the Association shall not be obligated to purchase or provide a substitute purchaser for the apartment. Good cause shall be defined to include the following:

(1) The applicant fails to qualify for membership in the Association, including, but not limited to, those applicants who fail to qualify for membership because of the restrictions on or requirements for ownership and occupancy set forth in this Declaration, or;

(2) The person seeking approval (which shall include all proposed occupants) has been convicted of a crime involving theft, violence to persons or property, dishonesty or moral turpitude or possession or sale of illegal substances or other contraband;

(3) The person seeking approval intends to purchase the apartment without paying at least twenty percent (20%) of the purchase price, excluding closing costs, in cash.

(4) The Owner allows a prospective owner to take possession of the apartment prior to approval by the Association as provided for herein.

(5) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in the Cedar Pointe Community as a tenant, guest, owner or occupant of an apartment;

(6) The person seeking approval failed to provide the information, fees or appearance required pursuant hereto.

If any of the above-described bases for good cause exists, the Association may disapprove the transfer without further obligation to the apartment owner.

14.4 Mortgage. No apartment owner may mortgage his apartment nor any interest in it without the approval of the Association, unless it is an institutional mortgage or a mortgage to the Developer to secure a portion or all of the purchase price. The approval of any other mortgage may be upon conditions determined by the Association or may be arbitrarily withheld.

14.5 Exceptions. The foregoing provisions of this section entitled "Maintenance of Community Interests" will not apply to a transfer to or a purchase by the holder of an institutional mortgage, or the lessor under the Long Term Lease, that acquires its title as the result of owning such mortgage or lien upon the apartment concerned; and this will be so whether the title is acquired by deed from the apartment owner, his successors or assigns, or through foreclosure proceedings; nor will such provision apply to a transfer, sale or lease by the holder of an institutional mortgage, or by the lessor under the Long Term Lease, that so acquires its title. Neither will 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.

14.6 Unauthorized Transactions. Any sale, mortgage or lease not authorized pursuant to the terms of this Declaration will be void unless subsequently approved by the Board of Directors of the Association.

14.7 The age restrictions contained in Paragraph 13.1 shall not in any way apply to persons who are validly occupying a unit as a resident or on before the effective date of the Amendment to Paragraph 13.1. Any renewal or leases after the effective date of this Amendment must comply with Paragraph 13.1.

15. COMPLIANCE AND DEFAULT.

Each apartment owner will be governed by and will comply with the terms and provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, the Long Term Lease and the rules and regulations adopted pursuant to those documents, as they may be amended from time to time. Failure of an apartment owner to comply with such documents and regulations will entitle the Association or other apartment owners to the following relief in addition to the remedies provided by the Condominium Act or otherwise:

15.1 Increase in Insurance Premiums. 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.

15.2 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 this Declaration, the Articles of Incorporation and Bylaws of the Association, the Long Term Lease and the rules and regulations adopted pursuant to those documents, as they may be amended from time to time, the prevailing party will be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.

15.3 No waiver of rights. The failure of the Association or of any apartment owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation and Bylaws of the Association, the Long Term Lease and the rules and regulations adopted pursuant to those documents will not constitute a waiver of the right to do so thereafter.

15.4 Fines. In addition to and cumulative with all other remedies, the Association may impose reasonable fines for violations of this Declaration, the By-Laws or the Rules and Regulations by any owner or any owner's family members, tenants, guests or invitees. No fine may exceed the maximum amount permitted by the Condominium Act, as same may be amended from time to time, nor may any fine be imposed except in accordance with the procedural requirements of the Condominium Act, as same may be amended from time to time.

16. AMENDMENTS.

Except as elsewhere provided otherwise, this Declaration may be only amended in the following manner:

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

16.2 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, provided such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be by sixty percent (60%) of the total membership of the Association.

16.3 Proviso. Provided, however, that no amendment will discriminate against any apartment nor against any apartment or class or group of apartments, unless the apartment owners so affected shall consent; and no amendment will change any apartment nor the share in the common elements appurtenant to it, nor increase the owners 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; and no amendment will affect or impair the validity or priority of any mortgage covering any apartments, or affect or impair the rights of the Developer under the Long Term Lease, unless said mortgagee or Developer shall join in the execution of the amendment. Neither shall any amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or repair after casualty" or "Amendments", or in paragraph 15.5 of the section entitled "Maintenance of Community Interests", unless the record owners of all mortgages upon the condominium shall join in the execution of the amendment.

17. **TERMINATION.**

This condominium may be voluntarily terminated in the manner provided in the Condominium Act, at any time. However, the written consent of the lessor under the Long-Term Lease will also be required for such termination to occur prior to the termination of the Long Term Lease. In addition thereto, if it is determined in the manner elsewhere provided that the apartments will not be reconstructed because of major damage, the condominium plan of ownership will be terminated without agreement.

18. **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, the Articles of Incorporation and Bylaws of the Association, the Long Term Lease and the rules and regulations of the Association will not affect the validity of the remaining portions.

19. **ADDITIONAL FACILITIES.**

The Association may own and hold fee simple title to lands within reasonable proximity to the Condominium property upon which recreational facilities, entrance ways, walkways, automobile parking areas, and the like are, or may be, constructed. Such facilities shall only be for the use and benefit of the apartment owners and their guests, invitees and tenants, and subject to reasonable rules and regulations promulgated by the Association. The Association shall assess each separate condominium unit owner for such owner's pro rata share of the necessary acquisitions costs, including any mortgage payments in connection with the mortgage on the property so acquired, and also the necessary costs and expenses of operation and maintenance of said facilities. The assessments hereunder shall be based upon each apartment's share of the common expenses as set forth in the Declaration of Condominium. All such assessments hereunder shall be deemed a common expense of each condominium apartment and the Association shall have a lien against the individual condominium apartment for the assessments against it.