

**REPORT OF THE
COMMITTEE TO STUDY AND RECOMMEND
REVISION**

OF THE CONDOMINIUM LAWS

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



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COMMONWEALTH OF VIRGINIA
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Report of the
Committee to Study and Recommend Revision
of the Condominium Laws

to

The Governor and General Assembly

Richmond, Virginia

To HONORABLE LINWOOD HOLTON, Governor of Virginia
and
The General Assembly of Virginia

I INTRODUCTION

Virginia became one of the first states to adopt legislation to permit the condominium form of ownership of property upon enactment of the "Horizontal Property Act" by the 1962 session of the General Assembly. The first state to adopt such legislation had done so the year before. It was not until 1968, that all fifty states had enacted such laws.

The Virginia Code Commission assigned Code Section Numbers 55-79 1 to 55-79 33 to this Act.

In 1966, 1972 and 1973, the General Assembly amended the Act in some fourteen instances and added Sections 55-79 34 through 55-79 38.

Under the Act, condominium projects must be registered with the Virginia Real Estate Commission. In the first six years following enactment of this legislation, three condominium projects were registered under its provisions. In the seventh year, 1969, an additional three projects were so registered, in 1970, five were registered and in 1971, ten were registered under the Act.

The total of twenty-one such projects registered in the first decade of the Act, was doubled in the single year of 1972, with registration of forty-two projects in that single year.

In the first eleven months of 1973, more than one hundred projects have been registered with the Real Estate Commission under this Act.

The dramatic surge of condominium development — both new construction and conversion of existing structures — pointed up deficiencies in the 1962 Act as amended in 1966 and 1972 and led to more significant amendments by the 1973 session of the General Assembly.

The 1973 session, seeing the need for more substantive revision enacted House Bill 1487 as follows:

HOUSE BILL 1487

An Act directing the Virginia Real Estate Commission to conduct a study of the State's condominium laws and appropriating funds therefor

(H 1487)

Approved March 20, 1973

Whereas, there is currently a great upsurge in development and ownership of condominiums, and

Whereas, Virginia's laws applicable to condominiums were enacted before this trend became so prevalent and may need to be revised or made more comprehensive, now, therefore

Be it enacted by the General Assembly of Virginia

1 § 1 The Virginia Real Estate Commission is hereby directed to appoint a committee to study the laws of the Commonwealth applicable to condominiums and to determine and recommend any improvements therein which should be made

The Committee shall be composed of a mortgage lender, a builder-developer, a lawyer knowledgeable in real estate laws, a representative of a title insurance company and three members of the public at large, one of whom shall be a member of the Commission, all of whom shall be appointed by the Virginia Real Estate Commission. The committee shall be chaired by a member of such Commission

§ 2 Members of the committee shall be reimbursed for their necessary expenses incurred in conducting the study, for which and for such secretarial and other assistance as may be necessary, there is hereby appropriated from the General Fund of the treasury the sum of five thousand dollars

§ 3 The committee shall conclude its study and shall report to the Governor and the General Assembly no later than October one, nineteen hundred seventy-three

Appointed to serve as Chairman of the Committee authorized by House Bill 1487, was Albert W Highsmith of Alexandria, Chairman of the Virginia Real Estate Commission

Other members appointed were (mortgage lender) Donald B Vaden, Richmond, (builder-developer) Mrs Jean W Cobb, Virginia Beach, (lawyer) William Griffith Thomas, Alexandria, (title insurance) Boyce C Outen, Richmond, (public) Moses Easter, Hampton, and John W Austin, Roanoke

Mr Stephen G Johnakin, an attorney associated with Lawyers Title Insurance Corporation of Richmond, attended all sessions of the Committee and worked with Mr Thomas and Mr Outen in drafting sections of the proposed legislation being submitted by the Committee

The Committee is grateful to Mrs Ruth J Herrink, Secretary of the Real Estate Commission, and to the Commission's two Assistant Secretaries, Mr William W Dennis, Jr and Mr William H Fowlkes, who assisted the Committee

The Committee met nine times between April 19, 1973 and December 1, 1973 including public hearing sessions in June in Arlington, Richmond and Virginia Beach

II SYNOPSIS OF THE PROPOSED CONDOMINIUM ACT

More than a decade has passed since the first condominium statutes, including our own Horizontal Property Act, were drafted. During that time, almost everyone who has had anything to do with condominiums has noticed that the existing statutes unreasonably restrict the inherent flexibility of the condominium concept, while failing to provide an adequate measure of purchaser protection in this new field of real estate law.

Virginia's statute is better than most in the degree of purchaser protection it provides, but the Study Committee believes that a great deal more can and should be done in this area. The consensus of opinion was that a higher degree of consumer protection will be of great benefit, not only to the purchasers of condominium units, but also to developers, realtors, and lending institutions. Without adequate purchaser protection, the unscrupulous practices of a few can create a negative image affecting the whole condominium concept. That has been the unfortunate experience of a few of our sister States.

Condominiums are relatively new in the United States, and prospective purchasers are entitled to know what they are getting when they buy a condominium unit and what rights and responsibilities are attendant upon that form of ownership. In addition, the Commonwealth has an obligation to its citizens to take all reasonable measures calculated to assure that condominium offerings will be made only by responsible firms and individuals. Article IV of the proposed Act, which is reviewed in detail at the end of this Synopsis, is calculated to provide these forms of purchaser protection.

Prospective purchasers should also be assured that control of the condominium will be turned over to the unit owners within a reasonable time. Throughout the country, many condominium developers have attempted to retain complete control of the condominium until the conveyance of the very last unit. The instrumentation for many condominiums provides that the developer could retain control of the condominium *forever* by retaining ownership of only one unit, or a very small percentage of the units. This practice is plainly contrary to the manifest spirit and intent of the various condominium acts. But none of those acts, as originally enacted, expressly forbade this practice.

An initial period of developer control may be necessary in order that the unit owners may become better acquainted with one another and with the complexities of co-existing in a multi-unit project destined to be a self-governing community. But Section 36 (a) is designed to assure that that community will indeed become a fully self-governing democracy within a reasonable time, rather than an autocracy ruled for an indefinite period (perhaps forever) by a developer who retains only a minority interest in the project.

The unit owners are further protected by Section 36 (b), which assures that the unit owners, once they become fully self-governing, will be free to rescind or renew at will any contracts or leases entered into on their behalf during the period of developer control.

Second only to the need for a greater measure of purchaser protection is the need for reformed condominium legislation that will eliminate arbitrary and unreasonable restraints on the inherent flexibility of the condominium concept. Existing condominium legislation is so grossly defective in this regard that the Committee soon recognized that the multitude of problems in this area could not be cured by merely revising our present statute, or by copying selected portions of other state statutes. We found that there were simply too many problems which none of our sister States had even attempted to resolve, and a few problems which had been treated elsewhere only in a preliminary,

tentative, and altogether inadequate fashion. What is needed in Virginia, and in all the other states, is a second generation of condominium statutes that will handle these problems more adequately. The Committee believes that the proposed Act, if adopted, will be used as a model and a pattern for new condominium legislation throughout the United States.

Puerto Rico already had a condominium statute before the movement toward condominium legislation began in the United States. Most of the state condominium statutes, including our own Horizontal Property Act, were based on the Puerto Rican model, which envisioned single structure, high-rise condominiums. But there is no reason why every condominium must consist of a single building, and in 1966 the General Assembly amended several sections of the Horizontal Property Act to make it clear that projects containing more than one building could be organized as condominiums.

By the same token, there is no reason to require that the units in all condominiums must have horizontal boundaries. At present, Section 55-79 2 defines an "apartment" as "an enclosed space" together with such "accessories" as "garage space, storage space, balcony, terrace, and patio." Some of those "accessories" — especially terraces and patios — may very well lack any physical structures delimiting their upper horizontal boundaries. In any event, what need is there for horizontal boundaries in townhouse condominiums? Where units are stacked on top of one another, as in the case of a high-rise condominium, there is clearly a need for horizontal boundaries. But except in downtown urban areas, high-rise condominiums have been the exception rather than the rule.

Consequently, the Committee is unanimous in its conviction that the law should no longer require that condominium units consist of "enclosed spaces." So long as units are not stacked on top of one another, there is no reason why a condominium unit should not be allowed to extend *ab solo usque ad coelum*. The Committee therefore recommends that a "unit" be defined simply as "a portion of the Condominium designed and intended for individual ownership and use" (See Section 3(d) of the proposed Act.)

The Committee discarded the term "apartment," with its residential connotation, in favor of the more neutral term "unit." This represents no substantive change, since Section 55-79 2 (a) already states that an "apartment" may be used not only for residential purposes, but also "for office, for the operation of any industry or business, or for any other type of independent use, or combination of uses."

Experience with American condominiums over the last ten years has demonstrated that they differ widely in their genesis and the manner of their development. Occasionally, existing structures are converted into condominiums, especially in downtown urban areas. Most condominiums involve new construction, but seldom have all the units been constructed by the time the developer wishes to record the condominium instruments and begin conveying the units already completed. And when the condominium instruments are recorded, the developer may still be uncertain how much land he wishes to ultimately submit to condominium ownership. If sales go well, he may want to add more land (and more units) to the land initially submitted. On the other hand, he may desire to submit all the land at the outset, reserving the option to withdraw a portion of the submitted land if market experience fails to bear out his initial expectations, forcing him to build fewer units than he had originally anticipated.

Consider also the problem of the developer of a commercial, industrial, or office condominium who cannot predict at the outset what the space requirements of the unit purchasers will be, and consequently is unable to

specify the exact dimensions of each unit in advance. The same problem would beset the developer of a predominantly residential condominium who plans commercial or office units — perhaps a shopping mall — on the first floor or on some other portion of the submitted land.

Finally, there is the problem of assigning and reassigning limited common elements. Parking spaces are a good example. It is reasonable to require the developer to specify at the outset which parking spaces will be reserved as limited common elements. But he has no way of knowing then the units to which each of the reserved spaces should be assigned. Some unit owners may want only one reserved space, or none at all. Others may want two, three, or even more. Once the limited common elements have been delimited in the original instrumentation, it should be permissible for the developer to wait until later before assigning each of them to specific units. The law should also make it far easier than it is at present for the individual unit owners to reassign the limited common elements among themselves.

The proposed Condominium Act addresses itself to all of the aforementioned problems.

1 *Progressive Construction* Where the developer records the condominium instruments and begins conveyancing prior to completion of all the units, a plethora of legal problems could arise under existing condominium legislation, because it is possible that for one reason or another he might never complete all of the units. Suppose that he completed only ten units in a project that was to have contained one hundred units, and then went bankrupt. If the condominium instruments had assigned to each unit only a one per cent interest in the common elements and a one per cent liability for the common expenses, who would take up the burden of the other ninety per cent of the common expenses? If the construction lender bought in at foreclosure sale, must he have no alternative but to complete and sell the other ninety units as originally planned?

The proposed Condominium Act is designed to provide a sensible alternative through the medium of two new concepts, "Convertible Lands," and the "Contractable Condominium." A Convertible Land is simply a building site within which the developer intends to create units that are not in existence at the time of the recordation of the condominium instruments. In a townhouse project where a hundred units are contemplated but only ten have been completed at the time of recordation of the condominium instruments, the developer would designate one or more Convertible Lands within which the other ninety units are to be constructed. If the project is to consist of ten separate buildings, each containing ten townhouse units, the developer in the case supposed would probably designate nine separate Convertible Lands as building sites for the nine uncompleted buildings. (The dimensions of those lands would depend not only on the projected size of the buildings, but also on how much freedom the developer wanted to allow himself with respect to the exact location of each building.) In any event, the developer would apportion one hundred per cent of the undivided interests in the common elements to the ten units already in existence at the time of the recordation of the condominium instruments, and those units would bear one hundred per cent of the liability for common expenses.

If the project proceeded normally, the developer would "convert" the Convertible Lands into units in accordance with the provisions of Section 23 of the proposed Act. Undivided interests in the common elements would be appropriately reallocated upon the conversion of each Convertible Land in accordance with Section 18 (b). Liabilities for common expenses, together with rights to common profits (if any) and voting rights in the Unit Owners' Association would also be appropriately readjusted in accordance with Section 39 (a) or (b), Section 44, and Section 45 (c).

But just in case the project did not proceed normally, and the developer failed for any reason to complete construction of all the units, the construction lender could have protected himself in advance against that eventuality by requiring the developer to have provided in the original instrumentation for "contraction" of the condominium, a subject discussed under the next heading

2 Contractable Condominiums A contractable condominium is a condominium which may diminish in size by the withdrawal of a portion of the submitted land from the condominium. Section 16 (d) of the proposed Act sets forth the prerequisites for making a condominium contractable. The developer must describe the "withdrawable land" in the Declaration, and the Declaration must set a time limit (not exceeding seven years) within which the option to contract the condominium must be exercised if it is to be exercised at all.

"Contractability" would provide an alternative for the construction lender who does not want to have to complete the condominium if he should have to foreclose his lien and then bid the developer's interest in at the foreclosure sale. In our hypothetical hundred unit project, for example, the construction lender would probably require that about ninety per cent of the land be designated as "withdrawable" land. If ten units are completed and conveyed, the lender will of course give a partial release freeing each of those units, together with their undivided interests in the common elements, from the lien of the construction loan deed of trust. If the developer then defaults and the lender bids in at the foreclosure sale, he steps into the shoes of the developer. He may decide to proceed toward completion of the project as it had been originally planned. Indeed, that is the *only* practical alternative he has under existing legislation. But if the condominium is contractable, he may decide instead to simply withdraw the withdrawable land and proceed no further with development of the project. In most cases, that will probably be the wiser course, if the condominium had been shaping up as a successful project, the developer would probably not have defaulted. Perhaps the developer had miscalculated in his market analyses and wound up selling those first ten units at prices much lower than he had hoped. If so, it should be possible to now withdraw the "withdrawable" land and develop it in some other way.

In any event, the unit owners of the ten units will not have been harmed. They knew, when they purchased their units, that the project might not be fully completed and that perhaps no more than the original ten units would be completed. They knew that in that eventuality the condominium might be reduced to a fraction of its original size. So now each of them owns his unit, together with a ten per cent undivided interest in the common elements. Each has a ten per cent liability for common expenses, a ten per cent right to any common profits, and ten per cent of the votes in the Unit Owners' Association.

They are in a far better position than they would have found themselves in under existing legislation. At least the titles to their condominium units are marketable. It is doubtful that they would have had marketable titles otherwise if no one had been able or willing to complete construction of the entire project in accordance with the original plans, because existing law simply fails to make it clear exactly what rights and responsibilities they would have had in such a case with regard to payment of common expenses.

The "contractable condominium," in short, not only provides more flexibility for the developer and more protection for the construction lender, but also a badly needed measure of purchaser protection for those who buy units in a condominium that is being constructed progressively. Experience across the country shows that only very rarely does a progressively constructed condominium fail to go through to completion. But the Study Committee, prompted primarily by its concern for purchaser protection, believes that the statute should make every effort to provide for every eventuality, and it is

especially appropriate to weigh this problem in these times of economic uncertainty. The Committee believes that "contractability" is the solution, for developers, construction lenders, and unit purchasers alike.

3 Expandable Condominiums In many ways, an expandable condominium is the exact opposite of a contractable condominium, as their names suggest. At present, only three state statutes make any express provisions for expandable condominiums, and they have done so only in ambiguous and inadequate terms. Yet expandable condominiums have been created throughout the United States, despite express statutory sanction, because the "expandable" is such an eminently practical way of developing a condominium in situations where the developer is unable to predict at the outset how large the project may grow. If the units constructed on the land initially submitted sell very quickly at or above the prices originally projected by the developer, he may want to add additional land (and additional units) to the condominium.

The alternative would be to create a second condominium on that additional land. But one large condominium can produce economies of scale for the unit owners that two or more smaller condominiums would be unable to realize. For example, one large condominium might be able to support recreational facilities that several smaller condominiums could not. Again, a large condominium would more likely find it feasible to employ professional management than several small condominiums.

Consequently, the developer originally submits only a portion of the land that he hopes ultimately to develop, reserving an option to add one or more additional "phases" (as they are usually called), consisting of additional land and units, if all goes well. But the option is only an option. If demand for the units in the first phase is not as great as had been hoped, he need not add the additional phases. Thus, we have a parallel with the contractable condominium, where the developer submits at the outset *all* of the land he hopes to develop, but reserves the option to withdraw portions of that land from the condominium if market experience dictates that course.

Section 16 (c) sets forth in detail the prerequisites for the creation of an expandable condominium. The developer must furnish a legal description of the lands that may be added to the condominium, just as he must furnish a legal description of the lands that may be withdrawn from a contractable condominium. And as in the case of a contractable condominium, he must set a time limit not exceeding seven years within which he may exercise his option to expand the condominium. In addition, Section 16 (c) requires the developer to specify just how he will develop any land added to the condominium, or to spell out any self-imposed restrictions on how such development will proceed, or at least to warn prospective purchasers of the degree of flexibility and freedom he is retaining in that regard.

If the developer does expand the condominium, Section 25 provides for the reallocation of common element interests among all the units just as in the case of the conversion of any Convertible Land. Similarly, liabilities for common expenses, rights to any common profits, and voting rights in the Unit Owners' Association, will all be appropriately readjusted in accordance with Section 39 (a) or (b), Section 44, and Section 45 (c).

4 Convertible Spaces The problems besetting the developer of a commercial, industrial, or office condominium were mentioned earlier. He cannot predict at the outset what the space requirements of each unit purchaser will be. Suppose he plans a simple project consisting of one building to be devoted exclusively to stores and offices. He knows how large a building he wants to erect, but he does not know just where to draw the boundaries.

within the building separating units from one another and common elements (such as corridors) from the units

A Convertible Space is simply a portion of a building within the condominium that may be converted in whole or in part into one or more units and/or common elements (including limited common elements) *after* the recordation of the condominium instruments. Whereas a Convertible Land is treated as a portion of the common elements until it is "converted," an unconverted Convertible Space is treated as though it were a unit owned by the developer. Hence, like any other unit, it is assigned an undivided interest in the common elements, a proportionate liability for common profits, a proportionate right to any common profits, and voting rights in the Unit Owners' Association. If the Convertible Space (or any portion thereof) is never converted in accordance with Section 24 of the proposed Act, then that Space (or portion thereof) will continue to be treated for all purposes as an ordinary condominium unit.

But the developer will probably "convert" the Convertible Space as soon as he can determine the space requirements of the unit purchasers. When he does so, Section 24 (b) and (c) requires him to reallocate the undivided interest in the common elements formerly appertaining to that Space among the units formed out of it. Similarly, the liability for common expenses, rights to any common profits, and voting rights in the Unit Owners' Association, formerly appertaining to that Space, will be allocated among the units formed therefrom in accordance with Section 39 (a) or (b), Section 44, and Section 45 (c).

The Study Committee is unanimous in its firm conviction that the "Convertible Space" concept will facilitate the development of almost all non-residential condominiums, and will permit the development of many commercial, industrial, and office condominiums that could not be created under existing legislation because of practical difficulties arising from unnecessary and unreasonable inflexibility in the existing statutes, including our own Horizontal Property Act.

5 Limited Common Elements As mentioned earlier, it ought to be permissible for the developer, after he has specified in the Declaration which of the common elements are to be set aside as *limited* common elements, to postpone the decisions as to exactly which limited common elements should be assigned to particular units. But it is by no means clear that the developer can reserve this right to postpone assignments of the limited common elements. See Section 55-79 3 (1) of the Horizontal Property Act.

It should also be possible for unit owners to transfer among themselves their rights to the use of limited common elements. A step in this direction was taken in 1973 when the General Assembly amended Section 55-79 4 to permit unit owners to transfer among themselves "garage units" (sic) that had been sold as "limited common elements."

The proposed Condominium Act greatly facilitates the assignment and reassignment of limited common elements. Section 16 (a), which prescribes the contents that *all* condominium Declarations must contain, requires, among other things, that the Declaration describe all common elements which may subsequently be set aside as limited common elements, and explain the method whereby such assignments shall be made. See Section 16 (a) (6). Once those matters have been set out, assignments can later be made of particular limited common elements to particular units in accordance with Section 19 (c), which should be read, in this connection, in conjunction with Section 36 (a).

Section 19 (b) provides a simple method whereby the unit owners may transfer their rights to limited common elements among themselves, while Section 19 (a) guarantees that no amendment to any condominium instrument

will alter any rights or obligations with respect to any of the limited common elements without the consent of the unit owners adversely affected thereby

In addition to handling the five problem areas just discussed, the proposed Condominium Act includes a number of other innovations for which no parallels exist in the condominium legislation of our sister States. For the most part, these innovations are designed with two goals in mind. First, to go even farther toward eliminating arbitrary and unreasonable restraints on the inherent flexibility of the condominium concept. Second, to anticipate and resolve many of the problems that attorneys encounter in drafting condominium instrumentation. The following is a brief review of some of those innovations, discussed in the order in which they appear in the proposed Act.

1 Section 4 of the proposed Act, unlike Section 55-79.14 of the Horizontal Property Act, does not require separate assessment of the condominium units until at least one of the units has been conveyed. It is senseless to require the tax authorities to separately assess each unit as long as the entire condominium is owned by the developer.

2 Section 5 prohibits discrimination against condominiums in zoning ordinances. The statutes of several other States have similar provisions. The Committee has added a provision that local subdivision ordinances shall not apply to condominiums unless the ordinance itself expressly states that it is meant to include condominiums.

3 Section 6 is the first effort in the United States to make sensible provisions for condemnations that involve some but not all of the condominium units. In such a situation, reallocations are necessary in the case of common element interests, liabilities for common expenses, rights to common profits, and votes in the Unit Owners' Association. The problems involved are so complex that we know of no instance where an attorney drafting condominium instrumentation has attempted to resolve them, short of simply calling for the condominium to be terminated in the event of such a partial condemnation. Indeed, it is unlikely that those problems could be resolved by condominium instrumentation rather than by statute. Virginia will be the first state to provide a statutory solution to those complex problems if Section 6 of the proposed Act is adopted.

4 The last sentence of Section 7 is important because it guarantees that foreclosure of a construction loan or other lien will not automatically terminate the condominium. Frequently, lienors fail for one reason or another to join in the execution of the condominium instruments. It is doubtful, in such a case, whether foreclosure in such a case would not terminate the condominium automatically, since the lien was perfected prior to the recordation of the condominium instruments. If so, the lienor would be in the unfortunate position of being a tenant in common with the unit owners as to the common elements and would be a unit owner himself with respect to units not released from his lien, yet the project might not be a condominium, and serious questions would arise affecting marketability of title. Hence, the last sentence of Section 7 gives valuable protection to both unit owners and all persons holding liens on the condominium property.

5 Section 12 gives valuable assistance to the draftsmen of condominium instrumentation in two ways. First, it eliminates the necessity for a lengthy recitation of definitions in the condominium instruments. Second, it resolves ambiguities as to precisely which parts of a condominium constitute units, which parts constitute common elements, and which parts constitute limited common elements. Such ambiguities frequently appear in condominium instrumentation, and could cause considerable internecine conflict among the unit owners as to whether the repair or replacement of a particular part of a

condominium structure is the responsibility of an individual unit owner, or of the Unit Owners' Association

6 Frequently, attorneys drafting condominium instrumentation will inadvertently put material that belongs in the By-Laws in the Declaration instead, or *vice versa*. Also, information that the statute requires in the Declaration is frequently omitted there, but does appear on the plats and plans. If the statutory requirements of condominium statutes are to be construed strictly, as some state courts have suggested, then any such inadvertence might arguably impair the validity of the condominium. Section 13 is expressly designed to prevent that unfortunate result.

7 Section 17 allows undivided interests in the common elements to be apportioned on any one of three different bases: equality, "area," or "par value." About two-thirds of the States require that the apportionment be made on the basis of "value" or "fair value," but the statutes do not define those terms. The proposed Act defines "area," however, in Section 3 (h), as well as "par value" in Section 3 (i). The proposed Act thus achieves maximum flexibility by permitting the assignment of common element interests on any of the aforementioned bases, while providing guidelines to aid the developer and his attorney if area or par value is selected as the basis of allocation.

8 Most jurisdictions require that liability for common expenses, rights to common profits, and voting strength in the Unit Owners' Association, all be apportioned on the same basis as undivided interests in the common elements. The Study Committee is convinced that such a requirement is most unwise. For example, it might make sense to apportion undivided interests in the common elements on the basis of par value in a project where some units are of much greater value than others. But there is no reason to suppose that the owner of a more valuable unit will use or put more wear and tear on the common elements than the owner of a less valuable unit. Apportioning common element interests on the basis of par value in such a project would be a safeguard to the owners of the more valuable units (and their mortgagees), because it would insure that in the event of termination of the condominium for any reason (perhaps because of destruction by fire or other casualty), the market value of the land, and rights to any insurance proceeds, would be divided among the unit owners in close proportion to the values of their respective units. On the other hand, the other three items mentioned above might be apportioned equally among the unit owners, for the reason suggested above. It *does* make sense to tie those three items together. For example, if voting power were apportioned equally among the unit owners while liability for common expenses was divided among them unevenly, unit owners with a majority of the votes could vote for an expenditure that would fall most heavily on the dissident minority. Taxation without (proportionate) representation could be tyrannous. Consequently, the Committee strongly urges that liability for common expenses, rights to common profits, and voting strength in the Unit Owners' Association be apportioned on the same basis, but not necessarily on the same basis as undivided interests in the common elements. Sections 39 (a) and (b), 44, and 45 (c) permit this to be done.

9 The proposed Condominium Act creates a number of easements designed to make condominiums more viable. The easement for encroachments created by Section 22 in case units or common elements encroach upon one another is customarily required by title insurers as a prerequisite to giving survey coverage on title insurance policies. The easements created by Sections 27 and 28, to help the developer in converting Convertible Lands, expanding expandable condominiums, and maintaining model units and sales offices, are all usually included in condominium instruments — if the draftsman has enough foresight to recognize the need for them. The Committee decided that it

would be to the benefit of all concerned to have those easements in the statute itself, so long as they are accompanied by provisions for the protection of unit owners in Section 29 to assure that no abuses occur by virtue of those easements. Emphasis on the protection of unit owners is also evident in the concluding sentence of Section 22.

10 In a commercial, industrial, or office condominium, it would often be of enormous benefit if the law allowed small units to be combined into a larger unit, or the boundaries between adjoining units to be relocated by agreement of the unit owners concerned, or a large unit to be subdivided into smaller units. Sections 30, 31, and 32 allow these things to be done. If a unit owner acquires an adjoining unit (or portion thereof), Section 30 (b) permits him to remove in whole or in part any intervening partition, so long as no portion of any bearing wall or column is weakened or removed. Section 31 allows boundaries between adjoining units to be altered by the mutual consent of the unit owners involved, while Section 32 allows for the subdivision of units into smaller units. Both sections provide for appropriate adjustments in common element interests, liabilities for common expenses, rights to common profits, and voting rights in the Unit Owners' Association, among the units concerned. (The other units would, of course, not be affected.) And Sections 31 and 32 permit such relocations of unit boundaries and subdivisions of units only in cases where "the Condominium Instruments expressly permit it." See Sections 31 (a) and 32 (a).

11 The provisions of Article III of the proposed statute, dealing with the Unit Owners' Association, permit a great deal of flexibility. The Unit Owners' Association may be incorporated, and in most larger condominiums it probably will be. The Association may delegate various powers and responsibilities to its "executive organ," as the proposed Act designates the elected administrative entity chosen to govern the condominium. (Some very small condominiums may not have an executive organ, and the executive organ might be denominated by a variety of different names, if the Unit Owners' Association were incorporated, it would be called the Board of Directors, but other names may also be used, such as Board of Managers, Council of Co-Owners, Committee of Co-Proprietors, etc.) The Association might also designate various powers and responsibilities to a professional managing agent. Section 41 sets forth the responsibilities of the Association with regard to the upkeep of the condominium, while the following Section specifies some of the more important powers inuring to the Association with regard to governing the condominium.

12 Experience has shown that the By-Laws governing the Unit Owners' Association are frequently ambiguous, and Sections 37 through 40 are designed to resolve some of those ambiguities with regard to meetings, quorums, voting, and the qualifications of officers. Sections 46 (h) and 47, on the other hand, are designed to facilitate transfers of title by requiring the Association to furnish statements of past due common expenses and of any waiver or other failure to exercise any rights of first refusal the Association might have. Since these statements must be in recordable form and are binding on the Association, they provide a significant amount of purchaser protection to the buyer of a condominium unit.

The bulk of the purchaser protection provisions, however, including all provisions relating to supervision of condominium offerings by an agency of the Commonwealth, are set forth in Article IV of the proposed Act. The balance of this Synopsis is devoted to a review of those provisions.

The Committee spent a substantial amount of time discussing the best statutory scheme for regulation of offerings in regard to condominiums. The Committee noted that our present statutory scheme, while much more

desirable than that of many other states, is insufficient to adequately protect the consumer

The Committee considered at length the alternatives offered by two different schemes of statutory regulation of such offers. First, the Committee considered the possibility of instituting a "prior approval" approach to control of condominium offerings. Second, the Committee considered, in lieu of a "prior approval" approach, a "full and fair disclosure" approach to serve the need of adequately informing the consumer in regard to condominium offerings. The Committee unanimously concluded that the "full and fair disclosure" approach was far preferable to one of "prior approval." All of the sections generally identified as relating to Purchaser Protection have been drawn based on this philosophical decision by the Committee. It is the Committee's belief that it is far preferable to fully and fairly and adequately inform the Purchaser of all of the material facts and issues in regard to a condominium offering rather than establish an elaborate and expensive administrative procedure for approving the offering of condominiums for sale.

The statutory scheme recommended calls for the continuation of administration by the Virginia Real Estate Commission. Lengthy consideration was given on this matter and the Committee concluded that it was most preferable to leave control of condominium offerings under the Virginia Real Estate Commission.

The statute, as drafted, would prohibit offerings or sales of condominium units unless such condominium is registered pursuant to the provisions of this Act. Offer or sale would not include offers by the developer on non-binding reservation agreements as defined in the Act.

In order to register the condominium, a developer would have to apply pursuant to the provisions of the Act and supply the Commission with all appropriate information in regard to the condominium.

In addition to registering, a developer is prohibited from selling a condominium unit until he either (1) delivers to a purchaser a public offering statement, 10 days prior to such sale, or (2) delivers to such purchaser a public offering statement at the time of the sale and allows the purchaser 10 days in which to cancel the sale.

The public offering statement which must be delivered to prospective purchasers of condominium units is required to be submitted with the application for registration of the condominium project. The public offering statement is required to, in all respects, fully and fairly disclose to prospective purchasers all pertinent characteristics and circumstances relative to the condominium.

The Committee felt very strongly that the use of public offering statements well-known and understood in the field of securities would be far more meaningful to the consumer than the existing "Public Report" provided for under present statute. It was also felt that attorneys dealing with our Act would be far more familiar with the provisions of public offering statements as provided in Securities Acts than they are with the existing Public Report system.

Upon filing of the Application for Registration in proper form the Commission is directed to pursue the application promptly and in detail to determine that it does meet the intent of the statute to fully and fairly inform the consumer concerning the condominium offered.

Special provisions have been included in regard to so-called "conversion condominiums." A conversion condominium is defined as "a condominium

containing structures which were wholly or partially occupied before the recording of the declaration” The Committee decided that the problems in regard to conversion of an existing previously occupied structure to a condominium were such that it would require special statutory provisions The Committee considered at length various proposals and alternatives in regard to conversion condominiums It was felt, in the case of conversion condominiums as in the case of an ordinary condominium project, that the best approach was to fully and fairly and adequately disclose all pertinent information to the prospective purchaser

As a result of this determination the Committee drafted a particular section relative to condominium conversions containing two special provisions First, in the case of any conversion condominium special disclosures must be made in a public offering statement over and above those otherwise required which give all pertinent financial information in regard to the conversion This special information includes comparative statements for budgets of previous operation of the building to be converted to a condominium Second, a provision is included to require that any tenant of a conversion condominium, even one on a month-to-month tenancy, will receive at least 90 days written notice of the conversion that is impending

The Committee considered further, in light of the 1973 amendments to the existing “Horizontal Property Act,” the provisions for escrow of deposits on contracts or non-binding reservation agreements to purchase condominium units The Committee was unanimously of the opinion that the strict requirement of escrow of such funds should be maintained and has accordingly drafted this provision in the proposed statute

The Committee was of the opinion that since the declaration creating the condominium would not necessarily be recorded prior to the entering into of binding contracts as required by present statute purchasers should be promptly informed of recordation of documents creating the condominium and receive a copy of such documents Statutory provisions providing for this have been included

The Committee was of the opinion that some protection over and above that presently provided by general law was in order for sales of condominium units by purchasers to other purchasers As a result, statutory provisions have been included to provide full and fair disclosure of the financial structure and stability of the condominium and the status of the sellers condominium assessments to the prospective purchaser As a result of this provision, it is felt that a future purchaser of a condominium unit will be fully and fairly informed of both his current financial obligations upon purchase and the prospect of future unanticipated condominium assessments, particularly for major repairs and replacements

The balance of the provisions dealing with consumer protection give broad powers and duties to the Commission in this regard and further give the Commission broad investigative authority The Commission has also been fully authorized to revoke the registration of a condominium and issue such cease and desist orders as may be necessary

The Committee is of the opinion that this statutory scheme offers to the Commission sufficient authority and responsibility to assure that offerings of condominium units to the public will be upon a proper basis and give to all prospective purchasers a full and adequate description of any and all material information concerning the project to allow such consumers to make intelligent determinations concerning purchases

Respectfully submitted,

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Section 1 Title

This Chapter shall be known and may be cited as the “Condominium Act ”

Section 2 Application

This Chapter shall apply to all Condominiums and to all horizontal property regimes or condominium projects. For the purposes of this Chapter, the terms “horizontal property regime” and “Condominium project” shall be deemed to correspond to the term “Condominium,” the term “Apartment” shall be deemed to correspond to the term “Unit,” the term “Co-owner” shall be deemed to correspond to the term “Unit Owner,” the term “Council of co-owners” shall be deemed to correspond to the term “Unit Owners’ Association,” the term “Developer” shall be deemed to correspond to the term “Declarant,” the term “General common elements” shall be deemed to correspond to the term “Common Elements,” and the terms “Master deed” and “master lease” shall be deemed to correspond to the term “Declaration” and shall be deemed included in the term “Condominium Instruments.” This Chapter shall be deemed to supercede the Horizontal Property Act, and no Condominium shall be established under the latter on or after the effective date hereof. But neither shall this Chapter be construed to affect the validity of any provision of any Condominium Instrument recorded prior to the effective date hereof. Nor shall Article IV of this Chapter be deemed to supersede §§ 55-79 16 through 55-79 31 of the Horizontal Property Act as to any Condominiums established prior to the effective date hereof.

Section 3 Definitions

As used in this Chapter, the following terms shall have the following meanings except in cases where a different meaning is expressly specified:

(a) **Declarant** all Persons who execute the Declaration or on whose behalf the Declaration is executed. From the time of the recordation of any Amendment to the Declaration expanding an Expandable Condominium, all Persons who execute that Amendment or on whose behalf that Amendment is executed shall also come within this definition. Any successors of the Persons referred to in this subsection who come to stand in the same relation to the Condominium as their predecessors did shall also come within this definition.

(b) **Person** a natural person, corporation, partnership, association, trust,

or other entity capable of holding title to real property, or any combination thereof

(c) Condominium real property, and any incidents thereto or interests therein lawfully submitted to this Chapter by the recordation of Condominium Instruments pursuant to the provisions of this Chapter

(d) Unit a portion of the Condominium designed and intended for individual ownership and use For the purposes of this Chapter, a Convertible Space shall also be deemed a Unit

(e) Condominium Unit a Unit together with the undivided interest in the Common Elements appertaining to that Unit

(f) Unit Owner one or more Persons who own a Condominium Unit, or, in the case of a Leasehold Condominium, whose leasehold interest or interests in the Condominium extend for the entire balance of the unexpired term or terms

(g) Identifying Number one or more letters and/or numbers that identify only one Unit in the Condominium

(h) Area the number of cubic feet, or the number of square feet of ground and/or floor space, within each Unit as computed by reference to the plat and plans and rounded off to a whole number Certain spaces within the Units (including without limitation attic, basement, and/or garage space) may but need not be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all Units in the Condominium

(i) Par Value a number of dollars or points assigned to each Unit by the Declaration Provided, that substantially identical Units shall be assigned the same Par Value, but that Units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may but need not be considered substantially identical within the meaning of this subsection If Par Value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any Unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the Par Value of any Unit, or any undivided interest in the Common Elements, voting rights in the Unit Owners' Association, liability for Common Expenses, or rights to Common Profits, assigned on the basis thereof

(j) Common Elements all portions of the Condominium other than the Units

(k) Limited Common Element a portion of the Common Elements reserved for the exclusive use of those entitled to the use of one or more (but less than all) of the Units

(l) Convertible Land a portion of the Common Elements, described by metes and bounds, within which additional Units and/or Limited Common Elements may be created in accordance with the provisions of this Chapter

(m) Convertible Space a portion of a structure within the Condominium, which portion may be converted into one or more Units and/or Common Elements (including but not limited to Limited Common Elements) in accordance with the provisions of this Chapter

(n) Expandable Condominium a Condominium to which additional land may be added in accordance with the provisions of the Declaration and of this Chapter

(o) **Contractable Condominium** a Condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the Declaration and of this Chapter. If no such withdrawal can occur except by the expiration or termination of one or more leases, then the Condominium shall not be deemed a Contractable Condominium within the meaning of this Chapter.

(p) **Leasehold Condominium** a Condominium in all or any portion of which each Unit Owner owns an estate for years in his Unit, or in the land within which that Unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A Condominium including leased land (or an interest therein) within which no Units are situated or to be situated shall not be deemed a Leasehold Condominium within the meaning of this Chapter.

(q) **Conversion Condominium** a Condominium containing structures which were wholly or partially occupied before the recording of the Declaration.

(r) **Executive Organ** an executive and administrative entity, by whatever name denominated, designated in the Condominium Instruments as the governing body of the Unit Owners' Association.

(s) **Officer** any member of the Executive Organ or official of the Unit Owners' Association.

(t) **Common Expenses** all expenditures lawfully made or incurred by or on behalf of the Unit Owners' Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments.

(u) **Common Profits** all income collected or accrued by or on behalf of the Unit Owners' Association, other than income derived from assessments pursuant to Section 43.

(v) **Condominium Instruments** a collective term referring to the Declaration, By-Laws, and plats and plans, recorded pursuant to the provisions of this Chapter. Any exhibit, schedule, or certification accompanying a Condominium Instrument and recorded simultaneously therewith shall be deemed an integral part of that Condominium Instrument. Any Amendment or certification of any Condominium Instrument shall, from the time of the recordation of such Amendment or certification, be deemed an integral part of the affected Condominium Instrument, so long as such Amendment or certification was made in accordance with the provisions of this Chapter.

(w) **Offer** any inducement, solicitation, or attempt to encourage any Person or Persons to acquire any legal or equitable interest in a Condominium Unit.

(x) **Purchaser** any Person or Persons who acquire or attempt to acquire a legal or equitable interest in a Condominium Unit.

(y) **Dispose (or Disposition)** any sale, contract, lease, assignment, or any other transaction concerning a Condominium Unit.

(z) **Non-binding Reservation Agreement** an agreement between the Declarant and a Purchaser which is in no way binding on the Purchaser and which may be cancelled without penalty at the sole discretion of the Purchaser by written notice to the Declarant or to any agent of the Declarant at any time prior to the formation of a contract for the sale or lease of a Condominium Unit or an interest therein. Such Agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the Purchaser as

contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement

Section 4 Separate Titles and Taxation

Each Condominium Unit shall constitute for all purposes a separate parcel of real property, distinct from all other Condominium Units. If there is any Unit Owner other than the Declarant, then no tax or assessment shall be levied on the Condominium as a whole, but only on the individual Condominium Units.

Section 5 County and Municipal Ordinances

No zoning or other land use ordinance shall prohibit Condominiums as such by reason of the form of ownership inherent therein. Neither shall any Condominium be prohibited by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. No subdivision ordinance enacted pursuant to Code of Virginia (1950) Section 15.1-465 *et seq.* shall apply to any Condominium or to any subdivision of any Convertible Land, Convertible Space, or Unit unless such ordinance is by its express terms made applicable thereto.

Section 6 Eminent Domain

(a) If any portion of the Common Elements is taken by eminent domain, the award therefor shall be allocated to the Unit Owners in proportion to their respective undivided interests in the Common Elements.

(b) If one or more Units are taken by eminent domain, the undivided interest in the Common Elements appertaining to any such Units shall thenceforth appertain to the remaining Units, being allocated to them in proportion to their respective undivided interests in the Common Elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include (without limitation) just compensation to the Unit Owner of any Unit taken for his undivided interest in the Common Elements as well as for his Unit.

(c) If portions of any Units are taken by eminent domain, the court shall determine the fair market value of the portions of such Units not taken, and the undivided interest in the Common Elements appertaining to any such Units shall be reduced, in the case of each such Unit, in proportion to the diminution in the fair market value of such Unit resulting from the taking. The portions of undivided interest in the Common Elements thereby divested from the Unit Owners of any such Units shall be reallocated among those Units and the other Units in the Condominium in proportion to their respective undivided interests in the Common Elements, with any Units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include (without limitation) just compensation to the Unit Owner of any Unit partially taken for that portion of his undivided interest in the Common Elements divested from him by operation of the first sentence of this subsection and not re-vested in him by operation of the following sentence, as well as for that portion of his Unit taken by eminent domain.

(d) If, however, the taking of a portion of any Unit makes it impractical to use the remaining portion of that Unit for any lawful purpose permitted by the Condominium Instruments, then the entire undivided interest in the Common Elements appertaining to that Unit shall thenceforth appertain to the remaining Units, being allocated to them in proportion to their respective undivided interests in the Common Elements, and the remaining portion of that Unit shall thenceforth be a Common Element. The court shall enter a

decree reflecting the reallocation of undivided interests produced thereby, and the award shall include (without limitation) just compensation to the Unit Owner of such Unit for his entire undivided interest in the Common Elements and for his entire Unit

(e) Votes in the Unit Owners' Association, liability for future Common Expenses, and rights to future Common Profits, appertaining to any Unit or Units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining Units, being allocated to them in proportion to their relative voting strength in the Unit Owners' Association, with any Units partially taken participating in such reallocation as though their voting strength in the Unit Owners' Association had been reduced in proportion to the reduction in their undivided interests in the Common Elements, and the decree of the court shall provide accordingly

Section 7 Creation of the Condominium

No Condominium shall come into existence except by the recordation of Condominium Instruments pursuant to the provisions of this Chapter. No Condominium Instruments shall be recorded unless all Units located or to be located on any portion of the submitted land other than within the boundaries of any Convertible Lands are depicted on plats and plans that comply with the provisions of Section 20 (a) and (b). The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, *ex proprio vigore*, to terminate the Condominium

Section 8 Release of Liens

(a) At the time of the conveyance to the first Purchaser of each Condominium Unit following the recordation of the Declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the Condominium or a greater portion thereof than the Condominium Unit conveyed, shall be paid and satisfied of record, or the Condominium Unit being conveyed shall be released of record from the lien thereof. The provisions of this subsection shall not apply, however, to any withdrawable land in a Contractable Condominium, nor shall any provision of this subsection be construed to prohibit the Unit Owners' Association from mortgaging or causing a deed of trust to be placed on any portion of the Condominium within which no Units are located, so long as any time limit specified pursuant to Section 36 has expired

(b) In the event that any lien, other than a deed of trust or mortgage, becomes effective against two or more Condominium Units subsequent to the creation of the Condominium, any Unit Owner may remove his Condominium Unit from that lien by payment of the amount attributable to his Condominium Unit. Such amount shall be computed by reference to the liability for common expenses appertaining to that Condominium Unit pursuant to Section 45 (c). Subsequent to such payment, discharge or other satisfaction, the Unit Owner of that Condominium Unit shall be entitled to have that lien released as to his Condominium Unit in accordance with the provisions of Code of Virginia (1950) Section 55-66 4, and the Unit Owners' Association shall not assess, or have a valid lien against, that Condominium Unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in Sections 45 and 46

Section 9 Descriptions of Condominium Units

After the creation of the Condominium, no description of a Condominium Unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the Identifying Number of that Unit, the name of the Condominium, the name of the city or county wherein the Condominium is

situated, and the deed book and page number where the first page of the Declaration is recorded. Any such description shall be deemed to include the undivided interest in the Common Elements appertaining to such Unit even if such interest is not defined or referred to therein.

Section 10 Execution of Condominium Instruments

The Declaration and By-Laws, and any Amendments to either made pursuant to Section 33, shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in Section 25 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any Person having an inchoate dower or curtesy interest, any Person having an equitable interest under any contract for the sale and/or lease of a Condominium Unit, or any lessee whose leasehold interest does not extend to any portion of the Common Elements.

Section 11 Recordation of Condominium Instruments

No Condominium Instrument or any Amendment or certification thereof shall be entitled to recordation unless the signatures of all those executing the same have been duly acknowledged. All Condominium Instruments, and all Amendments and certifications thereof, shall set forth the name of the Condominium, the name of the city or county in which the Condominium is located, and the deed book and page number where the first page of the Declaration is recorded. All Condominium Instruments, and all Amendments and certifications thereof, shall be recorded in every city and county wherein any portion of the Condominium is located. Wherever the phrase "city or county" appears in this Chapter, the disjunctive shall be deemed to include the conjunctive and the singular shall be deemed to include the plural.

Section 12 Construction of Condominium Instruments

Except to the extent otherwise provided by the Condominium Instruments:

(a) The terms defined in Section 3 shall be deemed to have the meanings therein specified wherever they appear in the Condominium Instruments unless the context otherwise requires.

(b) To the extent that walls, floors, and/or ceilings are designated as the boundaries of the Units or of any specified Units, all doors and windows therein, and all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such Units, while all other portions of such walls, floors, and/or ceilings shall be deemed a part of the Common Elements.

(c) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a Unit, any portions thereof serving only that Unit shall be deemed a part of that Unit, while any portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

(d) Subject to the provisions of subsection (c) hereof, all space, interior partitions, and other fixtures and improvements within the boundaries of a Unit shall be deemed a part of that Unit.

(e) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single Unit shall be deemed a Limited Common Element appertaining to that Unit exclusively.

Section 13 Complementarity of Condominium Instruments

The Condominium Instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this Chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others

Section 14 Validity of Condominium Instruments

All provisions of the Condominium Instruments shall be deemed severable, and any unlawful provision shall be void. No provision of the Condominium Instruments shall be deemed void by reason of the rule against perpetuities or by reason of the rules against restraints on alienation. But no restraint on alienation shall be used for the purpose of discrimination on the basis of race or color.

Section 15 Compliance with the Condominium Instruments

Every Unit Owner and all those entitled to occupy a Unit shall comply with all lawful provisions of the Condominium Instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Unit Owners' Association, or by its Executive Organ or any Managing Agent on behalf of such Association, or, in any proper case, by one or more aggrieved Unit Owners on their own behalf or as a class action.

Section 16 Contents of the Declaration

(a) The Declaration for every Condominium shall contain the following:

(1) The name of the Condominium, which name shall include the word "Condominium" or be followed by the words "a Condominium."

(2) The name of the city or county in which the Condominium is located.

(3) A legal description by metes and bounds of the land submitted to this Chapter.

(4) A description or delineation of the boundaries of the Units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimeteric) boundaries.

(5) A description or delineation of the Limited Common Elements, if any, showing or designating the Unit or Units to which each is assigned.

(6) A description or delineation of all Common Elements not within the boundaries of any Convertible Lands which may subsequently be assigned as Limited Common Elements, together with a statement that they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with the provisions of Section 19.

(7) The allocation to each Unit of an undivided interest in the Common Elements in accordance with the provisions of Section 17.

(8) Such other matters as the Declarant deems appropriate.

(b) If the Condominium contains any Convertible Land the Declaration shall also contain the following:

(1) A legal description by metes and bounds of each Convertible Land within the Condominium.

(2) A statement of the maximum number of Units that may be created within each such Convertible Land.

(3) A statement, with respect to each such Convertible Land, of the maximum percentage of the aggregate land and floor area of all Units that may be created therein that may be occupied by Units not restricted exclusively to residential use

(4) A statement of the extent to which any structure erected on any Convertible Land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used, and architectural style

(5) A description of all other improvements that may be made on each Convertible Land within the Condominium

(6) A statement that any Units created within each Convertible Land will be substantially identical to the Units on other portions of the submitted land, or a statement describing in detail what other types of Units may be created therein

(7) A description of the Declarant's reserved right, if any, to create Limited Common Elements within any Convertible Land, and/or to designate Common Elements therein which may subsequently be assigned as Limited Common Elements, in terms of the types, sizes, and maximum number of such Elements within each such Convertible Land

Provided, that plats and plans may be recorded with the Declaration and identified therein to supplement information furnished pursuant to items (1), (4), (5), (6), and (7) of this subsection, and that item (3) of this subsection need not be complied with if none of the Units on other portions of the submitted land are restricted exclusively to residential use

(c) If the Condominium is an Expandable Condominium the Declaration shall also contain the following

(1) The explicit reservation of an option to expand the Condominium

(2) A statement of any limitations on that option (including, without limitation, a statement as to whether the consent of any Unit Owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained), or a statement that there are no such limitations

(3) A time limit, not exceeding seven years from the recording of the Declaration, upon which the option to expand the Condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified

(4) A legal description by metes and bounds of all land that may be added to the Condominium (henceforth referred to as "additional land")

(5) A statement as to whether, if any of the additional land is added to the Condominium, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added or a statement that there are no such limitations

(6) A statement as to whether portions of the additional land may be added to the Condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be added to the Condominium

(7) A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the Condominium, or a statement that no assurances are made in that regard

(8) A statement of the maximum number of Units that may be created on the additional land. If portions of the additional land may be added to the Condominium and the boundaries of those portions are fixed in accordance with item (6) of this subsection, the Declaration shall also state the maximum number of Units that may be created on each such portion added to the Condominium. If portions of the additional land may be added to the Condominium and the boundaries of those portions are not fixed in accordance with item (6) of this subsection, then the Declaration shall also state the maximum number of Units per acre that may be created on any such portion added to the Condominium.

(9) A statement, with respect to the additional land and to any portion or portions thereof that may be added to the Condominium, of the maximum percentage of the aggregate land and floor area of all Units that may be created thereon that may be occupied by Units not restricted exclusively to residential use.

(10) A statement of the extent to which any structures erected on any portion of the additional land added to the Condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards.

(11) A description of all other improvements that will be made on any portion of the additional land added to the Condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard.

(12) A statement that any Units created on any portion of the additional land added to the Condominium will be substantially identical to the Units on the submitted land, or a statement of any limitations as to what types of Units may be created thereon, or a statement that no assurances are made in that regard.

(13) A description of the Declarant's reserved right, if any, to create Limited Common Elements within any portion of the additional land added to the Condominium, and/or to designate Common Elements therein which may subsequently be assigned as Limited Common Elements, in terms of the types, sizes, and maximum number of such Elements within each such portion, or a statement that no assurances are made in those regards.

Provided, that plats and plans may be recorded with the Declaration and identified therein to supplement information furnished pursuant to items (4), (5), (6), (7), (10), (11), (12), and (13) of this subsection, and that item (9) of this subsection need not be complied with if none of the Units on the submitted land are restricted exclusively to residential use.

(d) If the Condominium is a Contractable Condominium the Declaration shall also contain the following:

(1) The explicit reservation of an option to contract the Condominium.

(2) A statement of any limitations on that option (including, without limitation, a statement as to whether the consent of any Unit Owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained), or a statement that there are no such limitations.

(3) A time limit, not exceeding seven years from the recording of the Declaration, upon which the option to contract the Condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified.

(4) A legal description by metes and bounds of all land that may be withdrawn from the Condominium (henceforth referred to as “withdrawable land”)

(5) A statement as to whether portions of the withdrawable land may be withdrawn from the Condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be withdrawn from the Condominium

(6) A legal description by metes and bounds of all of the submitted land to which the option to contract the Condominium does not extend

Provided, that plats may be recorded with the Declaration and identified therein to supplement information furnished pursuant to items (4), (5), and (6) of this subsection, and that item (6) of this subsection shall not be construed in derogation of any right the Declarant may have to terminate the Condominium in accordance with the provisions of Section 33

(e) If the Condominium is a Leasehold Condominium the Declaration shall set forth, with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the Condominium, the city or county wherein the same are recorded and the deed book and page number where the first page of each such lease is recorded, and the Declaration shall also contain the following

(1) The date upon which each such lease is due to expire

(2) A statement as to whether any land and/or improvements will be owned by the Unit Owners in fee simple, and if so, either (a) a description of the same, including without limitation a legal description by metes and bounds of any such land, or (b) a statement of any rights the Unit Owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights

(3) A statement of the rights the Unit Owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights

Provided, that after the recording of the Declaration, no lessor who executed the same, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any Unit Owner who makes timely payment of his share of the rent to the Person or Persons designated in the Declaration for the receipt of such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease

(f) Wherever this Section requires a legal description by metes and bounds of land that is submitted to this Chapter or that may be added to or withdrawn from the Condominium, such requirement shall be deemed to include a legal description of any easements that are submitted to this Chapter or that may be added to or withdrawn from the Condominium, as the case may be. In the case of each such easement, the Declaration shall contain the following

(1) A description of the permitted use or uses

(2) If less than all of those entitled to the use of all of the Units may utilize such easement a statement of the relevant restrictions and limitations on utilization

(3) If any persons other than those entitled to the use of the Units may utilize such easement, a statement of the rights of others to utilization of the same

(g) Wherever this Section requires a legal description by metes and bounds of land that is submitted to this Chapter or that may be added to or withdrawn from the Condominium, such requirement shall be deemed to include a separate legal description by metes and bounds of all lands in which the Unit Owners shall or may be tenants in common or joint tenants with any other persons, and a separate legal description by metes and bounds of all lands in which the Unit Owners shall or may be life tenants. No Units shall be situated on any such lands, however, and the Declaration shall describe the nature of the Unit Owners' estate therein. No such lands shall be shown on the same plat or plats showing other portions of the Condominium, but shall be shown instead on separate plats.

Section 17 Allocation of Interests in the Common Elements

(a) The Declaration may allocate to each Unit depicted on plats and plans that comply with Section 20 (a) and (b) an undivided interest in the Common Elements proportionate to either the Area or Par Value of each such Unit.

(b) Otherwise, the Declaration shall allocate to each such Unit an equal undivided interest in the Common Elements, subject to the following exception: each Convertible Space so depicted shall be allocated an undivided interest in the Common Elements proportionate to the Area of each such Space (vis-a-vis the aggregate Area of all Units so depicted), while the remaining undivided interest in the Common Elements shall be allocated equally to the other Units so depicted.

(c) The undivided interests in the Common Elements allocated in accordance with subsection (a) or (b) hereof shall add up to one (1) if stated as fractions or one hundred per cent (100%) if stated as percentages.

(d) If, in accordance with subsection (a) or (b) hereof, an equal undivided interest in the Common Elements is allocated to each Unit, the Declaration may simply state that fact and need not express the fraction or percentage so allocated.

(e) Otherwise, the undivided interest allocated to each Unit in accordance with subsection (a) or (b) hereof shall be reflected by a table in the Declaration, or by an exhibit or schedule accompanying the Declaration and recorded simultaneously therewith, containing three columns. The first column shall identify the Units, listing them serially or grouping them together in the case of Units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective Areas or Par Values of those Units and the fraction or percentage of undivided interest in the Common Elements allocated thereto.

(f) Except to the extent otherwise expressly provided by this Chapter, the undivided interest in the Common Elements allocated to any Unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the Unit to which it appertains shall be void.

(g) The Common Elements shall not be subject to any suit for partition until and unless the Condominium is terminated.

Section 18 Reallocation of Interests in the Common Elements

(a) If a Condominium contains any Convertible Lands or is an Expandable Condominium, then the Declaration shall not allocate undivided interests in the Common Elements on the basis of Par Value unless the Declaration

(1) prohibits the creation of any Units not substantially identical to the Units depicted on the plats and plans recorded pursuant to Section 20 (a) and (b), or

(2) prohibits the creation of any Units not described pursuant to Section 16 (b) (6) (in the case of Convertible Lands) and Section 16 (b) (12) in the case of additional land), and contains from the outset a statement of the Par Value that shall be assigned to every such Unit that may be created

(b) Interests in the Common Elements shall not be allocated to any Units to be created within any Convertible Land or within any additional land until plats and plans depicting the same are recorded pursuant to Section 20 (c) But simultaneously with the recording of such plats and plans the Declarant shall execute and record an Amendment to the Declaration reallocating undivided interests in the Common Elements so that the Units depicted on such plats and plans shall be allocated undivided interests in the Common Elements on the same basis as the Units depicted on the plats and plans recorded simultaneously with the Declaration pursuant to Section 20 (a) and (b)

(c) If all of a Convertible Space is converted into Common Elements (including without limitation Limited Common Elements), then the undivided interest in the Common Elements appertaining to such Space shall thenceforth appertain to the remaining Units, being allocated among them in proportion to their undivided interests in the Common Elements The principal Officer of the Unit Owners' Association, or such other Officer or Officers as the Condominium Instruments may specify, shall forthwith prepare, execute, and record an Amendment to the Declaration reflecting the reallocation of undivided interests produced thereby

(d) In the case of a Leasehold Condominium, if the expiration or termination of any lease causes a contraction of the Condominium which reduces the number of Units, then the undivided interest in the Common Elements appertaining to any Units thereby withdrawn from the Condominium shall thenceforth appertain to the remaining Units, being allocated among them in proportion to their undivided interests in the Common Elements The principal Officer of the Unit Owners' Association, or such other Officer or Officers as the Condominium Instruments may specify, shall forthwith prepare, execute, and record an Amendment to the Declaration reflecting the reallocation of undivided interests produced thereby

Section 19 Assignments of Limited Common Elements

(a) All assignments and reassignments of Limited Common Elements shall be reflected by the Condominium Instruments No Limited Common Element shall be assigned or reassigned except in accordance with the provisions of this Chapter No Amendment to any Condominium Instrument shall alter any rights or obligations with respect to any Limited Common Element without the consent of all Unit Owners adversely affected thereby as evidenced by their execution of such Amendment, except to the extent that the Condominium Instruments expressly provided otherwise prior to the first assignment of that Limited Common Element

(b) Unless expressly prohibited by the Condominium Instruments, a Limited Common Element may be reassigned upon written application of the Unit Owners concerned to the principal Officer of the Unit Owners' Association, or to such other Officer or Officers as the Condominium Instruments may specify The Officer or Officers to whom such application is duly made shall forthwith prepare and execute an Amendment to the Declaration reassigning all rights and obligations with respect to the Limited Common Element involved Such Amendment shall be delivered forthwith to the Unit Owners of the Units concerned upon payment by them of all reasonable costs for the preparation and acknowledgment thereof Said Amendment shall become effective when the Unit Owners of the Units concerned have executed and recorded it

(c) A Common Element not previously assigned as a Limited Common Element shall be so assigned only in pursuance of Section 16 (a) (6) The Amendment to the Declaration making such an assignment shall be prepared and executed by the principal Officer of the Unit Owners' Association, or by such other Officer or Officers as the Condominium Instruments may specify Such Amendment shall be delivered to the Unit Owner or Owners of the Unit or Units concerned upon payment by them of all reasonable costs for the preparation and acknowledgment thereof Said Amendment shall become effective when the aforesaid Unit Owner or Owners have executed and recorded it, and the recordation thereof shall be conclusive evidence that the method prescribed pursuant to Section 16 (a) (6) was adhered to

Section 20 Contents of the Plats and Plans

(a) There shall be recorded simultaneously with the Declaration one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any Convertible Lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any Convertible Lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this Chapter as a part of the Common Elements If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land The plats shall label every Convertible Land as a Convertible Land, and if there be more than one such Land the plats shall label each such Land with one or more letters and/or numbers different from those designating any other Convertible Land and different also from the Identifying Number of any Unit The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a Withdrawable Land If, with respect to any portion or portions (but less than all) of the submitted land, the Unit Owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as a Leased Land If there is more than one Withdrawable Land, or more than one Leased Land, the plats shall label each such land with one or more letters and/or numbers different from those designating any Convertible Land or other Withdrawable or Leased Land, and different also from the Identifying Number of any Unit The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible The plats shall also show all encroachments by or on any portion of the Condominium In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any Convertible Lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "(NOT YET BEGUN)," and which, if any, have been begun but have not been substantially completed by the use of the phrase "(NOT YET COMPLETED)" In the case of any Units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection (b) hereof are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the Units (or portions thereof) thus depicted shall bear their Identifying Numbers Each plat shall be certified as to its accuracy and compliance with the provisions of this subsection by a registered land surveyor, and the said surveyor shall certify that all Units (or portions thereof) depicted thereon pursuant to the preceding sentence of this subsection have been substantially completed The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys

(b) There shall also be recorded, simultaneously with the Declaration, plans of every structure which contains or constitutes all or part of any Unit or Units, and which is located on any portion of the submitted land other than within the boundaries of any Convertible Lands. The plans shall show the location and dimensions of the vertical boundaries of each Unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the Units (or portions thereof) thus depicted shall bear their Identifying Numbers. In addition, each Convertible Space thus depicted shall be labelled a Convertible Space. The horizontal boundaries of each Unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the Condominium Instruments expressly provide otherwise, it shall be presumed that in the case of any Unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such Unit, at the same elevation with regard to any part of such Unit lying outside of such structures, subject to the following exception: in the case of any such Unit which does not lie over any other Unit other than basement Units, it shall be presumed that the lower horizontal boundary, if any, of that Unit lies at the level of the ground with regard to any part of that Unit lying outside of such structures. The plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer, and the said architect or engineer shall certify that all Units (or portions thereof) depicted thereon have been substantially completed.

(c) When converting all or any portion of any Convertible Land, or adding additional land to an Expandable Condominium, the Declarant shall record new plats of survey conforming to the requirements of subsection (a) hereof. (In any case where less than all of a Convertible Land is being converted, such plans shall show the location and dimensions of the remaining portion or portions of such Land in addition to otherwise conforming with the requirements of subsection (a) hereof.) At the same time, the Declarant shall record, with regard to any structures on the land being converted, either plans conforming to the requirements of subsection (b) hereof, or certifications, conforming to the certification requirements of said subsection, of plans previously recorded pursuant to Section 21.

(d) When converting all or any portion of any Convertible Space into one or more Units and/or Limited Common Elements, the Declarant shall record, with regard to the structure or portion thereof constituting that Convertible Space, plans showing the location and dimensions of the vertical boundaries of each Unit formed out of such Space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer.

(e) For the purposes of subsections (a), (b), and (c) hereof, all provisions and requirements relating to Units shall be deemed equally applicable to Limited Common Elements. Each Limited Common Element shall be labelled as a Limited Common Element, and each Limited Common Element depicted on the plats and plans shall bear the Identifying Number or Numbers of the Unit or Units to which it is assigned (if it has been assigned) unless the provisions of Section 12 (e) make such designations unnecessary.

Section 21 Preliminary Recordation of Plans

Plans previously recorded pursuant to the provisos set forth in Section 16 (b) and (c) may be used in lieu of new plans to satisfy in whole or in part the requirements of Section 23 (b) and/or Section 25 if certifications thereof are recorded by the Declarant in accordance with Section 20 (c).

Section 22 Easement for Encroachments

To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or repair of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. The purpose of this Section is to protect the Unit Owners, except in cases of wilful and intentional misconduct by them or their agents or employees, and not to relieve the Declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason of any failure to adhere to the plats and plans.

Section 23 Conversion of Convertible Lands

(a) The Declarant may convert all or any portion of any Convertible Land into one or more Units and/or Limited Common Elements subject to any restrictions and limitations which the Condominium Instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) hereof and Section 20 (c).

(b) Simultaneously with the recording of plats and plans pursuant to Section 20 (c), the Declarant shall prepare, execute, and record an Amendment to the Declaration describing the conversion. Such Amendment shall assign an Identifying Number to each Unit formed out of a Convertible Land and shall reallocate undivided interests in the Common Elements in accordance with Section 18 (b). Such Amendment shall describe or delineate the Limited Common Elements formed out of the Convertible Land, showing or designating the Unit or Units to which each is assigned.

(c) All Convertible Lands shall be deemed a part of the Common Elements except for such portions thereof as are converted in accordance with the provisions of this Section. No such conversion shall occur after five years from the recordation of the Declaration, or such shorter time period as the Declaration may specify.

Section 24 Conversion of Convertible Spaces

(a) The Declarant may convert all or any portion of any Convertible Space into one or more Units and/or Common Elements (including, without limitation, Limited Common Elements) subject to any restrictions and limitations which the Condominium Instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) hereof and Section 20 (d).

(b) Simultaneously with the recording of plats and plans pursuant to Section 20 (d), the Declarant shall prepare, execute, and record an Amendment to the Declaration describing the conversion. Such Amendment shall assign an Identifying Number to each Unit formed out of a Convertible Space and shall allocate to each such Unit a portion of the undivided interest in the Common Elements appertaining to that Space. Such Amendment shall describe or delineate the Limited Common Elements formed out of the Convertible Space, showing or designating the Unit or Units to which each is assigned.

(c) Because it is impossible to ascertain how much of a Convertible Space will be converted into Units prior to the conversion of all of that Space, the Declarant shall, if necessary, reallocate the undivided interests in the Common Elements appertaining to the Units formed out of that Space as soon as all of that Space has been converted, so that all of the undivided interest in the Common Elements originally allocated to that Space shall be allocated among

all the Units formed therefrom on the same basis for all such Units Such reallocation shall be reflected by an Amendment to the Declaration prepared, executed, and recorded by the Declarant

(d) Any Convertible Space not converted in accordance with the provisions of this Section, or any portion or portions thereof not so converted, shall be treated for all purposes as a single Unit until and unless it is so converted, and the provisions of this Chapter shall be deemed applicable to any such Space, or portion or portions thereof, as though the same were a Unit

Section 25 Expansion of the Condominium

No Condominium shall be expanded except in accordance with the provisions of the Declaration and of this Chapter Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to Section 20 (c), together with an Amendment to the Declaration, duly executed by the Declarant (including, without limitation, all of the owners and lessees of the additional land added to the Condominium) Such Amendment shall contain a legal description by metes and bounds of the land added to the Condominium, and shall reallocate undivided interests in the Common Elements in accordance with the provisions of Section 18 (b)

Section 26 Contraction of the Condominium

No Condominium shall be contracted except in accordance with the provisions of the Declaration and of this Chapter Any such contraction shall be deemed to have occurred at the time of the recordation of an Amendment to the Declaration, executed by the Declarant, containing a legal description by metes and bounds of the land withdrawn from the Condominium If portions of the withdrawable land were described pursuant to Section 16 (d) (5), then no such portion shall be so withdrawn after the conveyance of any Unit on such portion If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any Unit thereon

Section 27 Easement to Facilitate Conversion and Expansion

Subject to any restrictions and limitations the Condominium Instruments may specify, the Declarant shall have a transferable easement over and on the Common Elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those Instruments and of this Chapter, and for the purpose of doing all things reasonably necessary and proper in connection therewith

Section 28 Easement to Facilitate Sales

The Declarant and his duly authorized agents, representatives, and employees may maintain sales offices and/or model Units on the submitted land if and only if the Condominium Instruments provide for the same and specify the rights of the Declarant with regard to the number, size, location, and relocation thereof Any such sales office or model Unit which is not designated a Unit by the Condominium Instruments shall become a Common Element as soon as the Declarant ceases to be a Unit Owner, and the Declarant shall cease to have any rights with regard thereto unless such sales office or model Unit is removed forthwith from the submitted land in accordance with a right reserved in the Condominium Instruments to make such removal

Section 29 Declarant's Obligation to Complete and Restore

(a) No covenants, restrictions, limitations, or other representations or commitments in the Condominium Instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully

withdrawn from the Condominium or never added thereto except to the extent that the Condominium Instruments so provide. But in the case of any covenant, restriction, limitation, or other representation or commitment in the Condominium Instruments or in any other agreement requiring the Declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done thereon or with regard thereto, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the Condominium or any portion thereof, this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

(b) To the extent that damage is inflicted on any part of the Condominium by any Person or Persons utilizing the easements reserved by the Condominium Instruments or created by Sections 27 and 28, the Declarant together with the Person or Persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the Condominium.

Section 30 Alterations within Units

(a) Except to the extent prohibited by the Condominium Instruments, and subject to any restrictions and limitations specified therein, any Unit Owner may make any improvements or alterations within his Unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the Condominium. But no Unit Owner shall do anything which would change the exterior appearance of his Unit or of any other portion of the Condominium except to such extent and subject to such conditions as the Condominium Instruments may specify.

(b) If a Unit Owner acquires an adjoining Unit, or an adjoining part of an adjoining Unit, then such Unit Owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a Common Element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any Common Element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of Section 31.

Section 31 Relocation of Boundaries Between Units

(a) If the Condominium Instruments expressly permit the relocation of boundaries between adjoining Units, then the boundaries between such Units may be relocated in accordance with (1) the provisions of this Section and (2) any restrictions and limitations not otherwise unlawful which the Condominium Instruments may specify. The boundaries between adjoining Units shall not be relocated unless the Condominium Instruments expressly permit it.

(b) If the Unit Owners of adjoining Units whose mutual boundaries may be relocated desire to relocate such boundaries, then the principal Officer of the Unit Owners' Association, or such other Officer or Officers as the Condominium Instruments may specify, shall, upon written application of such Unit Owners, forthwith prepare and execute appropriate instruments pursuant to subsections (c), (d), and (e) hereof.

(c) An Amendment to the Declaration shall identify the Units involved and shall state that the boundaries between those Units are being relocated by agreement of the Unit Owners thereof, which Amendment shall contain conveyancing between those Unit Owners. If the Unit Owners of the Units involved have specified in their written application a reasonable reallocation as

between the Units involved of the aggregate undivided interest in the Common Elements appertaining to those Units, the Amendment to the Declaration shall reflect that reallocation

(d) If the Unit Owners of the Units involved have specified in their written application a reasonable reallocation as between the Units involved of the aggregate number of votes in the Unit Owners' Association allocated to those Units, an Amendment to the By-Laws shall reflect that reallocation and a proportionate reallocation of liability for common expenses and rights to common profits as between those Units

(e) Such plats and plans as may be necessary to show the altered boundaries between the Units involved together with their other boundaries shall be prepared, and the Units depicted thereon shall bear their Identifying Numbers. Such plats and plans shall indicate the new dimensions of the Units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (1) by a registered land surveyor in the case of any plat and (2) by a registered architect or registered engineer in the case of any plan.

(f) When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be delivered forthwith to the Unit Owners of the Units involved upon payment by them of all reasonable costs for the preparation and acknowledgment thereof. Said instruments shall become effective when the Unit Owners of the Units involved have executed and recorded them, and the recordation thereof shall be conclusive evidence that the relocation of boundaries thus effectuated did not violate any restrictions or limitations specified by the Condominium Instruments and that any reallocations made pursuant to subsections (c) and (d) hereof were reasonable.

(g) Any relocation of boundaries between adjoining Units shall be governed by this Section and not by Section 32. Section 32 shall apply only to such subdivisions of Units as are intended to result in the creation of two or more new Units in place of the subdivided Unit.

Section 32 Subdivision of Units

(a) If the Condominium Instruments expressly permit the subdivision of any Units, then such Units may be subdivided in accordance with (1) the provisions of this Section and (2) any restrictions and limitations not otherwise unlawful which the Condominium Instruments may specify. No Unit shall be subdivided unless the Condominium Instruments expressly permit it.

(b) If the Unit Owner of any Unit which may be subdivided desires to subdivide such Unit, then the principal Officer of the Unit Owners' Association, or such other Officer or Officers as the Condominium Instruments may specify, shall, upon written application of the Subdivider (as such Unit Owner shall henceforth be referred to in this Section), forthwith prepare and execute appropriate instruments pursuant to subsections (c), (d), and (e) hereof.

(c) An Amendment to the Declaration shall assign new Identifying Numbers to the new Units created by the subdivision of a Unit and shall allocate to those Units, on a reasonable basis acceptable to the Subdivider, all of the undivided interest in the Common Elements appertaining to the subdivided Unit. The new Units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any Limited Common Elements assigned to the subdivided Unit except to the

extent that the Subdivider may have specified in his written application that all or any portions of any Limited Common Element assigned to the Subdivided Unit exclusively should be assigned to one or more (but less than all) of the new Units, in which case the Amendment to the Declaration shall reflect the desires of the Subdivider as expressed in such written application

(d) An Amendment to the By-Laws shall allocate to the new Units, on a reasonable basis acceptable to the Subdivider, the votes in the Unit Owners' Association allocated to the subdivided Unit, and shall reflect a proportionate allocation to the new Units of the liability for Common Expenses and rights to Common Profits formerly appertaining to the subdivided Unit

(e) Such plats and plans as may be necessary to show the boundaries separating the new Units together with their other boundaries shall be prepared, and the new Units depicted thereon shall bear their new Identifying Numbers. Such plats and plans shall indicate the dimensions of the new Units, and the horizontal boundaries thereof, if any, shall be identified thereon with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (1) by a registered land surveyor in the case of any plat and (2) by a registered architect or registered engineer in the case of any plan

(f) When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be delivered forthwith to the Subdivider upon payment by the Subdivider of all reasonable costs for the preparation and acknowledgment thereof. Said instruments shall become effective when the Subdivider has executed and recorded them, and the recordation thereof shall be conclusive evidence that the subdivision thus effectuated did not violate any restrictions or limitations specified by the Condominium Instruments and that any reallocations made pursuant to subsections (c) and (d) hereof were reasonable

(g) Notwithstanding the provisions of Sections 3 (d) and 24 (d), this Section shall have no application to Convertible Spaces, and no such Space shall be deemed a Unit for the purposes of this Section. However, this Section shall apply to any Units formed by the conversion of all or any portion of any such Space, and any such Unit shall be deemed a Unit for the purposes of this Section

Section 33 Termination or Amendment Before Conveyance of any Unit

If there is no Unit Owner other than the Declarant, the Declarant may unilaterally terminate the Condominium or amend the Condominium Instruments, and any such termination or Amendment shall become effective upon the recordation thereof if the same has been executed by the Declarant. But this Section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred

Section 34 Termination or Amendment after the Conveyance of any Unit

(a) If there is any Unit Owner other than the Declarant, then the Condominium shall be terminated only by the agreement of Unit Owners of Units to which four-fifths of the votes in the Unit Owners' Association appertain, or such larger majority as the Condominium Instruments may specify

(b) If there is any Unit Owner other than the Declarant, then the Condominium Instruments shall be amended only by agreement of Unit Owners of Units to which two-thirds of the votes in the Unit Owners' Association appertain, or such larger majority as the Condominium

Instruments may specify, except in cases for which this Chapter provides different methods of Amendment

(c) If none of the Units in the Condominium are restricted exclusively to residential use, then the Condominium Instruments may specify majorities smaller than the minimums specified by subsections (a) and (b) hereof

(d) Agreement of the required majority of Unit Owners to termination of the Condominium or to any Amendment of the Condominium Instruments shall be evidenced by their execution of the termination agreement or Amendment, or of ratifications thereof, and the same shall become effective only when such agreement is so evidenced of record For the purposes of this Section and Section 33, an instrument terminating a Condominium shall be deemed a Condominium Instrument subject to the provisions of Section 11, and for the purposes of this Section, any ratification of such an Amendment shall also be deemed such an Instrument

(e) Except to the extent expressly permitted or expressly required by other provisions of this Chapter, no Amendment to the Condominium Instruments shall change the boundaries of any Unit, the undivided interest in the Common Elements appertaining thereto, the liability for common expenses or rights to common profits appertaining thereto, or the number of votes in the Unit Owners' Association appertaining thereto

(f) Upon recordation of an instrument terminating a Condominium, all of the property constituting the same shall be owned by the Unit Owners as tenants in common in proportion to their respective undivided interests in the Common Elements immediately prior to such recordation But as long as such tenancy in common lasts, each Unit Owner (or the heirs, successors, or assigns thereof) shall have an exclusive right of occupancy of that portion of said property which formerly constituted his Unit

(g) Upon recordation of an instrument terminating a Condominium, any rights the Unit Owners may have to the assets of the Unit Owners' Association shall be in proportion to their respective undivided interests in the Common Elements immediately prior to such recordation

Section 35 Contents of the By-Laws

(a) There shall be recorded simultaneously with the Declaration a set of By-Laws providing for the self-government of the Condominium by an Association of all the Unit Owners The Unit Owners' Association may be incorporated

(b) The By-Laws shall provide whether or not the Unit Owners' Association shall elect an Executive Organ If there is to be such an Organ, the By-Laws shall specify the powers and responsibilities of the same and the number and terms of its members The By-Laws may delegate to such Organ, *inter alia*, any of the powers and responsibilities assigned by this Chapter to the Unit Owners' Association The By-Laws shall also specify which, if any, of its powers and responsibilities the Unit Owners' Association and/or its Executive Organ may delegate to a Managing Agent

Section 36 Control by the Declarant

(a) The Condominium Instruments may authorize the Declarant, or a Managing Agent or some other Person or Persons selected or to be selected by the Declarant, to appoint and remove some or all of the Officers of the Unit Owners' Association and/or its Executive Organ, or to exercise powers and responsibilities otherwise assigned by the Condominium Instruments and by this Chapter to the Unit Owners' Association, the Officers, and/or the Executive Organ But no Amendment to the Condominium Instruments shall

increase the scope of such authorization if there is any Unit Owner other than the Declarant, and no such authorization shall be valid after the time limit set by the Condominium Instruments or after Units to which four-fifths of the undivided interests in the Common Elements appertain have been conveyed, whichever occurs first. The time limit initially set by the Condominium Instruments shall not exceed seven years in the case of an Expandable Condominium, five years in the case of a Condominium containing any Convertible Land, or two years in the case of any other Condominium.

(b) If entered into during the period of control contemplated by subsection (a) hereof, no management contract, lease of recreational areas or facilities, or any other contract or lease executed by or on behalf of the Unit Owners' Association, its Executive Organ, or the Unit Owners as a group, shall be binding after such period of control unless then renewed or ratified with the consent of Unit Owners of Units to which a majority of the votes in the Unit Owners' Association appertain.

(c) If the Unit Owners' Association is not in existence or does not have Officers at the time of the creation of the Condominium, the Declarant shall, until there is such an Association with such Officers, have the power and the responsibility to act in all instances where this Chapter requires action by the Unit Owners' Association, its Executive Organ, or any Officer or Officers.

(d) This Section shall be strictly construed to protect the rights of the Unit Owners.

Section 37 Meetings

Meetings of the Unit Owners' Association shall be held in accordance with the provisions of the Condominium Instruments at least once each year after the formation of said Association. The By-Laws shall specify an Officer who shall, at least twenty-one days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each Unit Owner notice of the time, place, and purpose of such meeting. Such notice shall be sent by United States mail, return receipt requested, to all Unit Owners of record at the address of their respective Units and to such other addresses as any of them may have designated to such Officer.

Section 38 Quorums

Unless the Condominium Instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the Unit Owners' Association until adjourned if persons entitled to cast more than one-third of the votes are present at the beginning of such meeting. Unless the Condominium Instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the Executive Organ if persons entitled to cast one-half of the votes in that body are present at the beginning of such meeting.

Section 39 Voting

(a) The By-Laws may allocate to each Unit depicted on plats and plans that comply with Section 20 (a) and (b) a number of votes in the Unit Owners' Association proportionate to the undivided interest in the Common Elements appertaining to each such Unit.

(b) Otherwise, the By-Laws shall allocate to each such Unit an equal number of votes in the Unit Owners' Association, subject to the following exception: each Convertible Space so depicted shall be allocated a number of votes in the Unit Owners' Association proportionate to the Area of each such Space (vis-a-vis the aggregate Area of all Units so depicted), while the

remaining votes in the Unit Owners' Association shall be allocated equally to the other Units so depicted

(c) Since a Unit Owner may be more than one Person, if only one of those Persons is present at a meeting of the Unit Owners' Association, that Person shall be entitled to cast the votes appertaining to that Unit. But if more than one of those Persons is present, the vote appertaining to that Unit shall be cast only in accordance with their unanimous agreement unless the Condominium Instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a Person need not be a natural person, the word "Person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any Person (excluding natural persons) which is, either alone or in conjunction with another Person or Persons, a Unit Owner.

(d) The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one Person, by or on behalf of all such Persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Unit Owner or by any of such Persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid, or if the signatures of any of those executing the same has not been duly acknowledged. The proxy of any Person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that Person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy.

(e) If fifty per cent or more of the votes in the Unit Owners' Association appertain to twenty-five per cent or less of the Units, then in any case where a majority vote is required by the Condominium Instruments or by this Chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the Unit Owners of a like majority of the Units.

(f) Anything in this Section to the contrary notwithstanding, no votes in the Unit Owners' Association shall be deemed to appertain to any Condominium Unit during such time as the Unit Owner thereof is the Unit Owners' Association.

Section 40 Officers

(a) If the Condominium Instruments provide that any Officer or Officers must be Unit Owners, then any such Officer who disposes of all of his Units in fee and/or for a term or terms of six months or more shall be deemed to have disqualified himself from continuing in office unless the Condominium Instruments otherwise provide, or unless he acquires or contracts to acquire another Unit in the Condominium under terms giving him a right of occupancy thereto effective on or before the termination of his right of occupancy under such disposition or dispositions.

(b) If the Condominium Instruments provide that any Officer or Officers must be Unit Owners, then notwithstanding the provisions of Section 12 (a), the term "Unit Owner" in such context shall, unless the Condominium Instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any Person which is, either alone or in conjunction with another Person or Persons, a Unit Owner. Any Officer who would not be eligible to serve as such were he not a director, officer, partner in,

or trustee of such a Person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that Person, or if that Person would itself have been deemed to have disqualified itself from continuing in such office under subsection (a) hereof were it a natural person holding such office

Section 41 Upkeep of the Condominium

Except to the extent otherwise provided by the Condominium Instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement shall appertain (1) to the Unit Owners' Association in the case of the Common Elements, and (2) to the individual Unit Owner in the case of any Unit or any part thereof. Each Unit Owner shall afford to the other Unit Owners and to the Unit Owners' Association (and to any agents or employees of either) such access through his Unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the Common Elements or any Unit through which access is taken, the Unit Owner causing the same, or the Unit Owners' Association if it caused the same, shall be liable for the prompt repair thereof.

Section 42 Control of the Common Elements

(a) Except to the extent prohibited by the Condominium Instruments, and subject to any restrictions and limitations specified therein, the Unit Owners' Association shall have the power to

(1) Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the said Association arising under Section 41

(2) Make or cause to be made additional improvements on and as a part of the Common Elements

(3) Grant or withhold approval of any action by one or more Unit Owners or other persons entitled to the occupancy of any Unit which would change the exterior appearance of any Unit or of any other portion of the Condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as Officers, to grant or withhold such approval

(b) Except to the extent prohibited by the Condominium Instruments, and subject to any restrictions and limitations specified therein, the Executive Organ of the Unit Owners' Association shall have the irrevocable power as attorney-in-fact on behalf of all the Unit Owners and their successors in title to grant easements through the Common Elements and accept easements benefitting the Condominium or any portion thereof

(c) This Section shall not be construed to prohibit the grant, by the Condominium Instruments, of other powers and responsibilities to the Unit Owners' Association and/or its Executive Organ

Section 43 Insurance

(a) The Condominium Instruments may require the Unit Owners' Association, or the Executive Organ or Managing Agent on behalf of said Association, to obtain

(1) A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the Condominium, or of such structures that in whole or in part comprise portions of the Common Elements

(2) A master liability policy, in an amount specified by the Condominium Instruments, covering the Unit Owners' Association, the Executive Organ (if any), the Managing Agent (if any), all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Condominium, and all Unit Owners and other persons entitled to occupy any Unit or other portion of the Condominium

(3) Such other policies as may be required by the Condominium Instruments, including, without limitation, workmen's compensation insurance, liability insurance on motor vehicles owned by the Association, and specialized policies covering lands or improvements in which the Unit Owners' Association has or shares ownership or other rights

(b) When any policy of insurance has been obtained by or on behalf of the Unit Owners' Association, written notice of the obtention thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Unit Owner by the Officer required to send notices of meetings of the Unit Owners' Association. Such notices shall be sent in accordance with the provisions of the last sentence of Section 37

Section 44 Rights to Common Profits

The Common Profits shall be applied to the payment of Common Expenses, and rights in any surplus remaining shall appertain to the Condominium Units in proportion to the number of votes in the Unit Owners' Association appertaining to each such Unit. Any such surplus shall be distributed accordingly to the Unit Owners, except to such extent as the Condominium Instruments may require the same to be added to reserves maintained pursuant to those Instruments

Section 45 Liabilities for Common Expenses

(a) Except to the extent that the Condominium Instruments provide otherwise, any Common Expenses associated with the maintenance, repair, renovation, restoration, or replacement of any Limited Common Element shall be specially assessed against the Condominium Unit to which that Limited Common Element was assigned at the time such Expenses were made or incurred. If the Limited Common Element involved was assigned at that time to more than one Condominium Unit, however, such Expenses shall be specially assessed against each such Condominium Unit equally (so that the total of such special assessments equals the total of such Expenses), except to the extent that the Condominium Instruments provide otherwise

(b) To the extent that the Condominium Instruments expressly so provide, any other Common Expenses benefiting less than all of the Condominium Units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the Condominium Unit or Units involved, in accordance with such reasonable provisions as the Condominium Instruments may make for such cases

(c) The amount of all Common Expenses not specially assessed pursuant to subsections (a) and/or (b) hereof, less the amount of all Common Profits, shall be assessed against the Condominium Units in proportion to the number of votes in the Unit Owners' Association appertaining to each such Unit. Such assessments shall be made by the Unit Owners' Association annually, or more often if the Condominium Instruments so provide. No change in the number of votes in the Unit Owners' Association appertaining to any Condominium Unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change

Section 46 Lien for Assessments

(a) The Unit Owners' Association shall have a lien on every Condominium Unit for unpaid assessments levied against that Condominium Unit in accordance with the provisions of this Chapter and all lawful provisions of the Condominium Instruments. The said lien shall be prior to all other liens and encumbrances except tax liens on that Condominium Unit and sums unpaid on any purchase money mortgage or purchase money deed of trust encumbering the same.

(b) The lien created by subsection (a) hereof shall be perfected by the recordation of a memorandum thereof, which need not be acknowledged, in the city or county in which the Condominium is situated. Such memorandum of lien shall be recordable only if it is signed by the principal Officer of the Unit Owners' Association, or such other Officer or Officers as the Condominium Instruments may specify, and contains the following:

(1) A description of the Condominium Unit in accordance with the provisions of Section 9.

(2) The names of the record owners of that Condominium Unit and, in the case of a Leasehold Condominium, the names of the Persons constituting the Unit Owner of that Unit.

(3) The amount of unpaid assessments currently due or past due together with the date when each fell due.

(4) The date of issuance of the memorandum.

(c) A lien perfected pursuant to subsection (b) hereof shall expire only when all sums secured thereby have been paid in full with interest at the maximum legal rate and with full reimbursement for the cost of the filing of the memorandum of lien, or when three years have elapsed from the date of recordation of the said memorandum without the commencement of a suit in equity as contemplated by subsection (d) hereof, whichever shall first occur. A lien not perfected pursuant to subsection (b) hereof shall expire, as to each unpaid assessment, three years after such assessment, or the last installment thereof, became due and payable.

(d) The lien created by subsection (a) hereof, unless it has expired under the provisions of subsection (c) hereof, may be enforced by a suit in equity brought by the Unit Owners' Association, or on behalf of said Association by the principal Officer of the same or by such other Officer or Officers as the Condominium Instruments may specify.

(e) Nothing in this Section shall be construed to prohibit actions at law to recover sums for which subsection (a) hereof creates a lien, maintainable pursuant to Section 15.

(f) The judgment or decree in an action brought pursuant to this Section shall include, without limitation, reimbursement for costs and reasonable attorneys' fees plus a reasonable rental for the Unit from the time of the commencement of the action or suit, together with interest at the maximum legal rate for the sums secured by the lien from the time each such sum became due and payable.

(g) When payment or satisfaction is made of a debt secured by the lien created by subsection (a) hereof, said lien shall be released in accordance with the provisions of Code of Virginia (1950) Section 55-66.3. For the purposes of that Section the principal Officer of the Unit Owners' Association, or such

other Officer or Officers as the Condominium Instruments may specify, shall be deemed the duly authorized agent of the lien creditor

(h) Any Unit Owner or Purchaser of a Condominium Unit, having executed a contract for the sale of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that Unit. Such request shall be in writing, directed to the principal Officer of the Unit Owners' Association or to such other Officer as the Condominium Instruments may specify. Failure to furnish or make available such a statement within five business days from the receipt of such request shall extinguish the lien created by subsection (a) hereof as to the Condominium Unit involved. Such statement shall be binding on the Unit Owners' Association, the Executive Organ, and every Unit Owner. Payment of a fee not exceeding ten dollars may be required as a prerequisite to the issuance of such a statement if the Condominium Instruments so provide.

Section 47 Restraints on Alienation

If the Condominium Instruments create any rights of first refusal or other restraints on free alienability of the Condominium Units, such rights and restraints shall be void unless the Condominium Instruments make provision for promptly furnishing to any Unit Owner or Purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the Condominium Instruments shall make all such rights and restraints inapplicable to any disposition of a Condominium Unit in contemplation of which such statement was requested. Any such statement shall be binding on the Association of Unit Owners, the Executive Organ, and every Unit Owner. Payment of a fee not exceeding twenty-five dollars may be required as a prerequisite to the issuance of such a statement if the Condominium Instruments so provide.

Section 48 Administrative Agency

This Act shall be administered by The Virginia Real Estate Commission which hereinafter is called the agency.

Section 49 Exemptions

Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of Sections 50, 51, 52 and 59 of this chapter do not apply to

- (1) Dispositions in a condominium in which all units are restricted to commercial, industrial, or other non-residential use,
- (2) Dispositions pursuant to court order,
- (3) Dispositions by any government or government agency,
- (4) Offers by the Declarant on non-binding reservation agreements.

Section 50 Prohibitions on Dispositions of Units

Unless exempt by Section 49

(1) No Declarant may offer or dispose of any interest in a Condominium unit located in this Commonwealth, nor offer or dispose in this Commonwealth of any interest in a Condominium unit located without this Commonwealth prior to the time the condominium is registered in accordance with this chapter.

(2) No Declarant may dispose of any interest in a Condominium unit unless he either

- (a) Delivers to the purchaser a current public offering statement at least ten (10) days prior to such disposition, or
- (b) Delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within ten (10) days from the date of the disposition or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, such cancellation shall be without penalty and any deposit made by the purchaser shall be promptly refunded in its entirety.

Section 51 Application for Registration

(a) The application for registration of the condominium shall be filed as prescribed by the agency's rules and shall contain the following documents and information

(1) An irrevocable appointment of the agency to receive service of any lawful process in any non-criminal proceeding arising under this chapter against the applicant or his personal representative,

(2) The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court,

(3) The applicant's name, address, and the form, date, and jurisdiction or organization, and the address of each of its offices in this State,

(4) The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions, the extent and nature of his interest in the applicant or the condominium as of a specified date within 30 days of the filing of the application,

(5) A statement, in a form acceptable to the agency, of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the agency,

(6) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements which a purchaser will be required to agree to or sign,

(7) Copies of any management agreements, employment contracts or other contracts or agreement affecting the use, maintenance or access of all or a part of the condominium,

(8) A statement of the zoning and other governmental regulations affecting the use of the condominium, including site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments which affect the condominium,

(9) A narrative description of the promotional plan for the disposition of the units in the condominium,

(10) Detailed plats and plans of the condominium that comply with the provisions of Section 20 hereof

(11) The proposed public offering statement,

(12) Any other information, including any current financial statement, which the agency by its rules requires for the protection of purchasers

(b) If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan

(c) The declarant shall immediately report any material changes in the information contained in an application for registration

(d) The application shall be accompanied by a fee in the amount equal to \$10 per unit contained in this application except that such fee shall not be less than \$500 nor more than \$1000 All fees shall be remitted by the agency to the Treasurer of the Commonwealth, and shall be placed to the credit of the special fund of the Virginia Real Estate Commission, which is hereby established and shall be expended solely for compliance with the provisions of this chapter

Section 52 Public Offering Statement

(a) A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and shall include the following

(1) The name and principal address of the declarant and the condominium,

(2) A general narrative description of the condominium stating the total number of units in the offering, the total number of units planned to be sold and rented, the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant

(3) Copies of the Declaration, By-Laws or Plans and Rules and Regulations with a brief narrative statement describing each such document and including information on declarant control, budget, assessments, and provisions for reserve-for-replacement funds and restraints on alienation,

(4) Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser,

(5) A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium,

(6) The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium,

(7) The significant terms of any financing offered by the declarant to purchaser of units in the condominium,

(8) Provisions of any warranties provided by the declarant on the condominium and the units,

(9) Additional information required by the agency to assure full and fair disclosure to prospective purchasers

(b) The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires it.

(c) The agency may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

(d) The provisions of this section shall be deemed to be complied with if the public offering statement filed pursuant to the provisions of Section 51 (a) 11 is for offers of units currently registered with the Securities Division of the State Corporation Commission or the Securities and Exchange Commission.

Section 53 Inquiry and Investigation

Upon receipt of an application for registration in proper form, the agency shall forthwith initiate an investigation to determine that

(1) The declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer,

(2) There is reasonable assurance that all proposed improvements will be completed as represented,

(3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the agency in its rules and afford full and fair disclosure,

(4) The declarant has not, or if a corporation, its officers, and principals have not, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in this State, United States, or any other State or foreign country within the past ten (10) years and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions,

(5) The public offering statement requirements of this chapter have been satisfied.

Section 54 Notice of Filing and Registration

(a) Upon receipt of the application for registration in proper form, the agency shall issue a notice of filing to the applicant. Within thirty (30) days from the date of the notice of filing, the agency shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within thirty (30) days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

(b) If the agency affirmatively determines, upon inquiry and examination, that the requirements of Section 53 have been met, it shall enter an order registering the condominium and shall designate the form of the public offering statement.

(c) If the agency determines upon inquiry and examination that any of the requirements of Section 53 have not been met, the agency shall notify the

applicant that the application for registration must be corrected in the particulars specified within ten (10) days. If the requirements are not met within the time allowed the agency shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty (20) days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

Section 55 Annual Report, Termination of Registration

Within thirty (30) days after each annual anniversary date of an order registering a condominium the declarant shall file a report in the form prescribed by the rules of the agency. The report shall reflect any material changes in information contained in the original application for registration.

In the event that the annual report reveals that all of the units in the condominium have been disposed of, the agency shall issue an order terminating the registration of the condominium.

Section 56 Conversion Condominiums, Special Provisions

(a) Any declarant of a conversion condominium shall include in his public offering statement in addition to the requirements of Section 52 the following:

(1) A specific statement of the amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee,

(2) Information on the actual expenditures made on all repairs, maintenance, operation or up-keep of the subject building or buildings within the last three (3) years and set forth tabularly with the proposed budget of the condominium. If such building or buildings have not been occupied for a period of three years then the information shall be set forth for the maximum period such building or buildings have been occupied,

(3) A description of the provisions made in the budget for a reserve for replacement fund and an explanation of the basis for the amount.

(b) In the case of a conversion condominium, the declarant shall give at least ninety (90) days written notice to each of the tenants of the building or buildings which the declarant intends to submit to the provisions of this act. Such notice shall inform the tenants of the declarant's intent to create a conversion condominium. Such notice may also constitute the notice to terminate the tenancy as provided for in Section 55-222 of this code, except that, despite the provisions of Section 55-222, a tenancy from month to month may only be terminated upon ninety (90) days notice as set forth herein when such termination is in regard to the creation of a conversion condominium.

(c) The declarant of a conversion condominium, shall, in addition to the requirements of Section 51, include with the application for Registration a copy of the notice set forth in paragraph (b) and a certified statement that such notice, fully complying with the provisions of paragraph (b), has been mailed to each of the tenants in the building or buildings for which registration is sought.

Section 57 Escrow of Deposit

Any deposit made in regard to any disposition of a unit, including upon a non-binding reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds shall be deposited in a separate account designated for this purpose, except where such deposits are being held by a real estate broker licensed under the laws of this Com-

monwealth such funds may be placed in that brokers regular escrow account and need not be placed in a separate designated account

Section 58 Declarant to Deliver Declaration, etc., to Purchaser

The declarant shall within ten (10) days of recordation of the Declaration, By-Laws and Plans as provided for in Sections 7 and 11 hereof, forward to each purchaser at his last known address by first class mail, postage prepaid, an exact copy of such recorded Declaration, By-Laws and Plans

Section 59 Resale by Purchaser

(a) In the event of any resale of a unit by an owner other than the declarant, such owner shall obtain from the Board of Directors of the association of unit owners and furnish to the purchaser or prospective purchaser, prior to consummation of the transaction, the following

(1) A statement that the owner is current on his payment of all charges and assessments for repairs and maintenance of the condominium as set forth in Section 46 hereof,

(2) A statement that any provision of the Declaration, By-Laws or Plans concerning restraint of alienation have been complied with, a description of how such restraints may be complied with,

(3) A statement of any and all major repair and replacement expenditures anticipated by the Board of Directors within the current fiscal year,

(4) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board of Directors

(b) The Board of Directors of the Association of unit owners shall furnish the information in (a) (1) to (4) above upon written request of any unit owner within ten (10) days of such request

Section 60 General Powers and Duties of The Agency

(a) The agency shall prescribe reasonable rules which shall be adopted, amended or repealed in compliance with the administrative procedure act. The rules shall include but not be limited to provisions for advertising standards to assure full and fair disclosure, provisions for operating procedures, and other rules as are necessary and proper to accomplish the purpose of this Act

(b) The agency by rule or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to condominiums prior to its distribution

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this Act, or a rule or order hereunder, the agency, with or without prior administrative proceedings may bring an action in the Circuit Court of the City of Richmond to enjoin the acts or practices and to enforce compliance with this Act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The agency is not required to post a bond in any court proceedings

(d) The agency may intervene in a suit involving a condominium. In any suit by or against a declarant involving a condominium, the declarant promptly shall furnish the agency notice of the suit and copies of all pleadings

(e) The agency may

(1) Accept registrations filed in other states or with the federal government,

(2) Contract with similar agencies in this State or other jurisdictions to perform investigative functions,

(3) Accept grants in aid from any source

(f) The agency shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices

Section 61 Investigations and Proceedings

(a) The agency may

(1) Make necessary public or private investigations within or outside of this State to determine whether any person has violated or is about to violate this Act or any rule or order hereunder, or to aid in the enforcement of this Act or in the prescribing of rules and forms hereunder,

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the agency determines, as to all the facts and circumstances concerning the matter to be investigated

(b) For the purpose of any investigation or proceeding under this Act, the agency or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the agency may apply to the Circuit Court of the City of Richmond for an order compelling compliance

Section 62 Cease and Desist Orders

(a) If the agency determines after notice and hearing that a person has

(1) Violated any provision of this Act,

(2) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit,

(3) Made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without obtaining prior written approval from the agency,

(4) Disposed of any units which have not been registered with the agency,

(5) Violated any lawful order or rule of the agency, it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this Act

(b) If the agency makes a finding of fact in writing that the public interest

will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

Section 63 Revocation

(a) A registration may be revoked after notice and hearing upon a written finding of fact that the declarant has

(1) Failed to comply with the terms of a cease and desist order,

(2) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions,

(3) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers,

(4) Failed faithfully to perform any stipulation or agreement made with the agency as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement,

(5) Made intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the agency finds after notice and hearing that the developer has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

Section 64 Judicial Review

Proceedings for judicial review shall be in accordance with the administrative agencies act, Article 9, Chapter 1.

Section 65 Penalties

Any person who willfully violates any provision of Sections 49, 50, 51, 52, 55, 56, 57, 58, 59, 62 and 63 or of a rule adopted under it or any person who willfully, in an application for registration makes any untrue statement of a material fact or omits to state a material fact is guilty of a misdemeanor and may be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger but not more than \$50,000, or he may be imprisoned for not more than 6 months, or both for each offense.

