STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE:

Petition for Declaratory Statement; DBPR Docket No. DS93224
Palm-Aire Country Club Condominium
Association No. 4, Inc.,

FINAL DECLARATORY STATEMENT

Comes now, the undersigned as Director of the Division of
Florida Land Sales, Condominiums, and Mobile Homes, and issues this
Declaratory Statement as follows:

PROCEDURAL STATEMENT

A Petition for Declaratory Statement was received by the
agency on June 8, 1993. Notice of receipt of the Petition for
Declaratory Statement was published in the Florida Administrative
Weekly in August, 1993. On August 2, 1993, counsel for the
Petitioner association filed a copy of the declaration of
condominium including amendments thereto. Copies of the 1994
budgets for the condominiums and the association were filed on May
18, 1994, as well as copies of the long term lease and management
agreement.
FINDINGS OF FACT

1. Petitioner in this matter is the Palm-Aire Country Club Condominium Association No. 4, Inc., the condominium association charged with the operation and management of ten (10) condominiums.

2. The ten (10) condominiums collectively contain seven hundred and sixty-eight (768) units.

3. According to the Petition, the association is desirous of undertaking the restoration of certain balcony slabs within the various condominiums which are in need of repair. The Petition alleges that the association is unsure as to its requirements for obtaining the appropriate source of funds to pay for the necessary restoration work.

4. All ten (10) of the condominiums were created between January 18, 1973, and February 15, 1974, through recordation of ten (10) separate declarations of condominium.

5. Each of the declarations identify limited common elements to include those common elements which are reserved for the use of a certain unit or units, to the exclusion of all other unit owners. Further, according to the declarations, where the limited common elements consist of an exterior balcony, the unit owner shall be responsible for the maintenance, care, repair and preservation of certain aspects of the limited common element balcony.
CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to section 718.501, Florida Statutes, and section 120.565, Florida Statutes.

2. The issue presented is how the restoration work is to be paid for. Specifically, the association seeks an opinion regarding whether the expenses should be treated as an association expense attributable to all condominiums in the proportion or percentages set forth in the various declarations for sharing certain overall association expenses, or whether the expenses should be treated as an expense specific to a condominium in which balcony work is to be done and assessed only to members within that condominium according to the percentages provided in the declaration. Implicitly the issues center about whether pursuant to the statute in effect, the association is permitted to consolidate its financial operations among the various condominiums.

3. The declaration of condominium, in article I, defines limited common elements to include those common elements reserved for the use of a certain unit or units, to the exclusion of all other units. Pursuant to article XIV, C., limited common elements shall be maintained in the manner provided by article XV of the

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1This agency does not have the authority to rule on those questions presented which seek to examine whether subsequent pertinent amendments to the statute may be applied to this association consistent with constitutional requirements.

2The association submitted a declaration of condominium for condominium number 39 which is representative of the 10 separate declarations of condominium.
declaration. Under article XIV, F., the association is responsible for the maintenance, repair, and replacement of the common elements and all portions of the condominium property not required to be maintained or repaired by the unit owners. Article XV provides in part as follows:

XV. LIMITED COMMON ELEMENTS

...Where the limited common element consists of an exterior porch, patio, terrace, balcony, entryway, or room, the unit owner who has the right to the exclusive use of same, i.e., the unit abutting same shall be responsible for the maintenance, care, repair and preservation as follows, where applicable: paint and surface of the interior walls and parapet walls, including floor and ceiling, within said exterior porch, patio, terrace, balcony and room, and any screening thereon, and the fixed and/or sliding door(s) leading into or out of said porch, patio, terrace, balcony and room, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs,....

In accordance with the foregoing, the balconies designated in the survey are limited common elements, and the association has the responsibility to maintain and repair those aspects of the balcony not specifically made the maintenance responsibility of the individual unit owner. The association accordingly has the repair responsibility for the balcony slabs which form part of the balcony.

4. The Declaration of Condominium defines "common expenses" to mean the expenses for which the unit owners are liable to the association. The word "assessment", according to the Declaration, means a share of the funds required for the payment of common
expenses which, from time to time, is assessed against the unit owner. According to article VI of the declaration, the common expenses of the condominium shall be shared by the unit owners as specified and set forth in the declaration and Exhibit A to the declaration. Pursuant to Exhibit A, units in this condominium are divided among unit types, and depending on the unit type, a percentage of ownership interest in the common elements and share of common expenses is assigned thereto. For example, while a three bedroom, two-and-a-half bath unit is assigned 1.110% interest in the common elements and share of the common expenses, a one bedroom one-and-a-half bath unit is assigned .694% ownership. Exhibit A lists and identifies every unit in condominium 39, and the product of the number and type of units multiplied by the percentage of ownership interest in the common elements assigned to each unit, results in the sum of 100%. Under article VI, the common expenses of the condominium include the obligation of each unit owner under a long-term lease and management agreement. Any common surplus of the association shall be owned by the unit owners in the same proportion as their ownership interest in the common elements, and the phrase "common surplus" is equated with the excess of all receipts of the association from this condominium over the amount of common expenses of this condominium. Article X provides that the association, through its board, shall have the power to fix and

3 An analysis of Exhibit A makes plain the fact that unit owners in a particular condominium own only a percentage of the common elements in that particular condominium. The percentages in Exhibit A add up to 100%.
determine the sums necessary and adequate to provide for the common expenses of the condominium property and such other expenses as are specifically provided for in the declaration and exhibits thereto. Based on the foregoing, it is concluded that the declaration provides that the unit owners in a particular condominium are responsible for maintaining the common elements of their respective condominium and for a share of expenses associated with the long term lease and management agreement.

5. There is no provision in the declaration for the consolidated financial operations of the various condominiums under this association, and the documents do not provide that the expenses of all independent condominiums shall be shared by the unit owners in all of the combined condominiums. Instead, the declaration contemplates that the unit owners in each condominium shall be responsible only for the expenses associated with the maintenance, repair and restoration of the common elements of their particular condominium.

4 A provision permitting the physical commingling of the funds of the association and other entities is located in the Management Agreement, Article 5(k). However, the provision does not authorize the consolidation of the expenses of this association with other entities' expenses, and the documents do not otherwise provide an overall intent to consolidate the financial records of the various condominiums. Compare, Condominium Association of La Mer Estates, Inc. v. Semel, 610 So. 2d 565 (Fla. 4th DCA 1992), in which the court held that the statute in effect in 1973 did not prohibit the commingling of funds of various separate condominiums by the association charged with operating the condominiums.

5 In the declaratory statement In re: Islandia Condominium Association, Inc., Docket No. DS93364 (March 16, 1994), the Division concluded that the similar documents involved in that case warranted no finding that consolidation of records and expenses were contemplated.
6. The documents are accordingly consistent with Chapter 711, Florida Statutes (1973). Section 711.03(1), Florida Statutes (1973) defined "assessment" as a share of the funds required for the payment of common expenses assessed against the unit owner. Section 711.12(6), Florida Statutes, authorizes the association to make and collect assessments to maintain, repair, and replace the common elements. Section 711.13, Florida Statutes, provides that maintenance of the common elements shall be the responsibility of the association. Section 711.14, Florida Statutes, provides that common expenses shall include the expenses of the operation, maintenance, repair or replacement of the common elements, cost of carrying out the powers and duties of the association, and any other expense designated as common expense by the Condominium Act, declaration, or bylaws.

7. Just as the declaration does not provide for consolidated financial management, so too the budgets currently in effect for the association, the long term lease, and the management agreement are not supportive of a finding that the documents provide for consolidated operation. According to the budgets submitted by the association, a separate budget is maintained for each of the ten condominiums operated by the association, and the breakout of expenses reveals that the unit owners in each condominium are by the budgetary process expected to pay for those expenses associated with their condominium and for a portion of the overall association expenses. Accordingly, the revenue shown on each budget is a function of the number of units contained in that condominium, and
the expenses budgeted vary from condominium budget to budget. Thus, in the area of reserves, for example, each condominium is maintaining reserve accounts for the items of capital expenditure and deferred maintenance located in that particular condominium. At the end of each budget is shown the number of units in that particular condominium, and the assessments shown pertain only to unit types within that particular condominium. There is also included in the series of budgets submitted an overall association budget which appears to be a consolidation of the ten individual condominium budgets. Also noteworthy in this respect is the management agreement which places upon the management company the obligation to maintain records sufficient to describe its services in accordance with prevailing accounting standards in order to be able to identify the source of funds collected by the management company and the disbursement thereof. Also under the agreement, the operating budget for each condominium is required to contain the management company's estimated income and expenses of the condominium for the current period.

8. In the case of Chmil v. Mediterranean Manors Association, Inc., 516 So. 2d 1109 (Fla. 2nd DCA 1987), the court was faced with the issue of whether expenses specific to a condominium should be assessed only to unit owners in that condominium or should be apportioned among all unit owners in the multi-condominium project. The declaration of condominium in that case was recorded in March of 1974, prior to the effective date of section 711.64, Florida Statutes, which allowed for the combined financial operations of
certain phase projects. The court concluded that a unit owner in a particular condominium within that project could only be assessed for the expenses associated with the maintenance of common elements contained in his/her particular condominium. As in the instant case, the condominium documents provided that each unit owner would pay a share of the common expenses equal to his ownership share in the common elements in his condominium, and, as in this case, a summation of the unit types multiplied by the ownership share for units contained in each condominium yielded 100%. In response to the argument that expenses for all the condominiums should be combined, the court stated:

...Using their construction of that article, each unit owner would pay a share of the total common expenses of the entire project which is equal to his share of the common elements of his condominium. But then, since the total of the shares of unit owners of one condominium and the common elements of that condominium will equal 100%, the expenses paid by each of the eleven condominiums will equal 100% of the total expenses of the project. To illustrate using a simplified example to show the apparent result of Plaintiffs' construction, if there were ten units in each of the eleven condominiums, then each unit owner would pay for a one-tenth share of the total common expenses for the entire project, which would result in 110 one-tenth shares being paid, or, in other words, 1100% of the total common expenses being paid. This result would obviously not be rational.

On the other hand, by construing article IX. D., as did the trial court to require an owner to pay only a share of the common expenses of the condominium in which his unit is located and not a share of the expenses of the entire project, the proportional shares referred to in article IX. D. are rational because then the shares paid by the unit owners in each condominium which equal 100% will only be the shares paying the expenses referred to in that article. [Id. at 1111].
Similar to the court's observation in *Mediterranean Manor, supra*, a conclusion here that the ownership share assigned to each unit refers to assessment liability for project-wide expenses is not warranted and would be irrational. Similar also is the court's analysis and conclusion in *Semel, supra*, where, in reference to the argument that retroactive application of the amendments requiring the maintenance of separate financial records for each condominium, the court construed those documents as being consistent with the later enacted amendments. The declarations in this case clearly provide that unit owners in a particular condominium are responsible for the common expenses of that particular condominium. Neither can the association claim that consolidation of assessments and financial records is permitted pursuant to section 711.64, Florida Statutes. The declarations of condominium were recorded prior to the existence of section 711.64, Florida Statutes, and there is no provision for consolidated operations in the declarations of condominium. Accordingly, the association is required to maintain separate accounting records for each condominium which it operates, in accordance with the condominium documents.

WHEREFORE, it is concluded that the expenses of repairing the balcony slabs which are limited common elements of a particular unit, are expenses to be borne by unit owners in that particular condominium, and such expenses shall be shared by those owners in

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6This would be consistent with *Rothenberg v. Plymouth No. 5 Condominium Association*, 511 So. 2d 651 (Fla. 4th DCA 1987).
the percentages of ownership interest in the common elements provided by the respective declaration of condominium.

DONE AND ORDERED this 14th day of July, 1994, in Tallahassee, Leon County, Florida.

[Signature]
HENRY M. SOLARES, DIRECTOR
Division of Florida Land Sales, Condominiums, and Mobile Homes
Department of Business and Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Robert L. Kaye, Kaye and Roger, P.A., 1500 West Cypress Creek Road, Suite 207, Fort Lauderdale, Florida 33309, this ____ day of ____________, 1994.

Carolyn Howard, Docket Clerk
RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY THE PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH CAROLYN HOWARD, DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUM, AND MOBILE HOMES, WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

Copies furnished to:

Faye S. Mayberry, Chief
Bureau of Condominiums

Karl M. Schuerman
Lead Attorney

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