

DECLARATION OF CONDOMINIUM
FOR
MARINER COURT, A CONDOMINIUM

This instrument prepared by, or
under the supervision of
(and, after recording, return to):

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West Palm Beach, FL 33401

DECLARATION OF CONDOMINIUM
OF
MARINER COURT, A CONDOMINIUM

MARINER COURT, LLC, a Florida limited liability company (the “Developer”) hereby declares:

1. **Introduction and Submission.**

- 1.1 **The Land.** The Developer is the owner of fee simple title of record to certain land located in Palm Beach County, Florida, as more particularly described in **Exhibit “E”** attached hereto and incorporated herein by this reference (the “Land”).
- 1.2 **Submission Statement.** Developer hereby submits the Land and all improvements now and hereafter erected thereon, and all other property, real, personal or mixed, now or hereafter situated on or within the Land, except as otherwise provided in this Declaration of Condominium to the condominium form of ownership and use pursuant to the provisions of Chapter 718 of the Florida Statutes as it exists on the date hereof and as it may be hereafter renumbered (hereinafter referred to as the “Condominium Act”). Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association (as later defined), the operation and effect of the Condominium Act, Chapter 718 of the Florida Statutes or any rules or regulations promulgated pursuant thereto, unless expressly provided.
- 1.3 **Name.** The name by which this condominium is to be identified is **MARINER COURT, A CONDOMINIUM** (the condominium to be created by this Declaration of Condominium is hereinafter referred to as the “Condominium”).

2. **Definitions.** The following terms when used in this Declaration of Condominium and in its exhibits, including the Articles of Incorporation and Bylaws of Mariner Court Condominium Association, Inc., and as it and they may hereafter be amended, shall be defined in accordance with the provisions of the Condominium Act and as follows, unless the context clearly indicates a different meaning:

- 2.1 “Articles” or “Articles of Incorporation” mean the Articles of Incorporation of the Association, as amended from time to time, which are attached hereto as **Exhibit “B”**.
- 2.2 “Assessment” means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.
- 2.3 “Association” means MARINER COURT CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, and its successors.
- 2.4 “Association Property” means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.5 “Board” or “Board of Directors” means the board of directors and the members of the board of directors, from time to time, of the Association.
- 2.6 “Building(s)” means the structure(s) in which the Units are located.
- 2.7 “Bylaws” mean the Bylaws of the Association, as amended from time to time, which are attached hereto as **Exhibit “C”**.
- 2.8 “Capital Contributions” shall have the meaning set forth in **Section 14.12** of this Declaration.
- 2.9 “Committee” means a group of members of the Board, Unit Owners or members of the Board and Unit Owners appointed by the Board as provided in the Bylaws, to make recommendations to the Board or to take action on behalf of the Board.
- 2.10 “Common Elements” means and includes:
- 2.10.1 All of those items described as Common Elements in the Condominium Act;
- 2.10.2 All Condominium Property not included in the Units;
- 2.10.3 Easements as set forth herein or future easements as determined to be advisable by Developer in his sole discretion and in accordance herewith;
- 2.10.4 An easement of support in every portion of a Unit which contributes to the support of a Building;
- 2.10.5 Easements through Units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of Utility Services and other services to Units and the Common Elements;
- 2.10.6 All structural columns and bearing walls within the Buildings, regardless of whether they are located within or without the Unit boundary lines;

- 2.10.7 Except as otherwise provided in this Declaration (including, without limitation, in **Section 6.10** hereof), the property and installations required for the furnishing of Utility Services to more than one Unit or to the Common Elements; and
- 2.10.8 All other parts of the Condominium Property designated as Common Elements in this Declaration.
- 2.11 “Common Expenses” means and includes:
- 2.11.1 Costs of operation, maintenance, repair, replacement, insurance and protection of: (a) the Common Elements, (b) the Limited Common Elements (except where the maintenance, repair insurance, or replacement or the cost is the responsibility of less than all of the Owners of the Units in the Condominium), and (c) the Association Property;
- 2.11.2 Costs of management of the Condominium and administrative costs of the Association including professional fees and expenses and salary of a general manager and his assistants and agents, and/or the cost of a management company; if deemed desirable by the Board of Directors;
- 2.11.3 Costs of water, sewer, electricity, and other utilities which are not metered to the individual Units;
- 2.11.4 Costs of security monitoring system and basic cable service to the whole Condominium (including the Units), and other services described in **Section 6.10** hereof that are available to the whole Condominium (including all the Units), including, without limitation, high speed data/internet/intranet services, basic cable service, and security monitoring, all pursuant to a bulk rate service agreement(s) with respect to the same which may be executed by the Association;
- 2.11.5 Labor, materials and supplies used in conjunction with the Common Elements;
- 2.11.6 Damages to the Condominium Property in excess of insurance coverage;
- 2.11.7 Insurance premiums for fire, windstorm, flood and other property insurance, directors and officers coverage and liability insurance and other insurance as provided herein;
- 2.11.8 All reserves required by the Condominium Act or otherwise established by the Association, regardless of when reserve funds are expended;
- 2.11.9 If applicable, all costs and expenses relating to: (a) road maintenance and operation expenses, (b) real property taxes, (c) Assessments and other maintenance expenses attributable to any Units acquired by the Association and any Association Property;

- 2.11.10 Any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure;
- 2.11.11 All other expenses that may be duly incurred by the Association from time to time in operating, protecting, managing and conserving the Condominium Property and in carrying out its duties and responsibilities as provided by the Condominium Act, this Declaration, the Articles of Incorporation or the Bylaws;
- 2.11.12 All other expenses designated as Common Expenses by the Condominium Act, this Declaration, the Articles of Incorporation or the Bylaws.
- 2.12 “Common Surplus” means the excess of all receipts or revenues of the Association collected on behalf of the Condominium, including, but not limited to, Assessments, rents and revenues on account of the Common Elements, over the Common Expenses.
- 2.13 “Condominium” shall have the meaning ascribed thereto in **Section 1.3** hereof.
- 2.14 “Condominium Act” means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter renumbered.
- 2.15 “Condominium Parcel” means a Unit together with the right to use the Limited Common Elements appurtenant to said Unit as provided in this Declaration, the undivided share in the Common Elements which is appurtenant to said Unit and, when the context permits, the term includes all other appurtenances to the Unit.
- 2.16 “Condominium Property” means all of the Land, Improvements and other property described in **Section 1.2** hereof, (except for all wires, cables and equipment comprising the cable television, telecommunications and other related Systems described in **Section 6.10** hereof), subject to the limitations and exclusions set forth in this Declaration.
- 2.17 “County” means the County of Palm Beach, State of Florida.
- 2.18 “Declaration” or “Declaration of Condominium” means this instrument and all exhibits attached hereto, as same may be amended from time to time.
- 2.19 “Developer” means MARINER COURT, LLC, a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium Property. In the event of any partial assignment, the assignee shall not be deemed Developer, but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of Developer under this Declaration are independent of Developer’s rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or

assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association.

- 2.20 “Dispute” means any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or Bylaws to: (i) require any Owner to take any action, or not to take any action, involving that Owner’s Unit or the appurtenances thereto; or (ii) alter or add to the Common Elements; or (b) the failure of the Association, when required by law or this Declaration, the Articles or Bylaws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. “Dispute” shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; the levy of a fee or Assessment or the collection of an Assessment levied against a party; the eviction or other removal of a tenant from a Unit; alleged breach of fiduciary duty by one or more directors or claims for damages to a Unit based upon the alleged failure of the Association to maintain the Common Elements or Condominium Property.
- 2.21 “Division” means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.22 “First Mortgagee” shall have the meaning set forth in **Section 14.6** hereof.
- 2.23 “Improvements” means all improvements erected or to be erected on the Land and all other property, real, personal or mixed, now or hereafter situated on or within the Land, but excluding all public or private (e.g. cable television and/or other receiving or transmitting lines, antennae or equipment, including, without limitation, all wires, cables and equipment comprising the Systems described in **Section 6.10** hereof) utility installations therein or thereon.
- 2.24 “Institutional First Mortgagee” means the Developer, a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, real estate investment trust, the Federal National Mortgage Association (“FNMA”), or any other lender generally recognized as an institutional lender, holding a first mortgage encumbering a Unit or Units. A “Majority of Institutional First Mortgagees” shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.25 “Insured Property” shall have the meaning given to it in **Section 15.1.1** hereof.
- 2.26 “Land” shall have the meaning given to it in **Section 1.1** above.
- 2.27 “Limited Common Elements” mean those portions of the Common Elements the use of which is reserved for the exclusive use of a certain Unit or certain Units to the exclusion of other Units, as specified in this Declaration, and/or shown on the

survey and plot plan attached hereto as **Exhibit “A”** and incorporated herein by this reference. References herein to Common Elements also shall include all Limited Common Elements unless the context shall otherwise require.

- 2.28 “Optional Property” shall have the meaning set forth in **Section 15.6.2** hereof.
- 2.29 “Owner” or “Unit Owner” or “Owner of a Unit” means a record Owner of legal title to a Condominium Parcel.
- 2.30 “Primary Institutional First Mortgagee” means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.31 “Special Assessment” means any Assessment levied against Owners (other than the Assessments required by a budget adopted annually) and representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature or for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any property and/or capital improvements located or to be located within the Common Elements or Association Property.
- 2.32 “Turnover” or “Turnover Date” means the date when Developer no longer has the right to elect or appoint a majority of the Board of Directors of the Association as provided in the Bylaws.
- 2.33 “Unit” means a part of the Condominium Property which is subject to exclusive ownership.
- 2.34 “Unit Owner” or “Owner of a Unit” or “Owner” means a record owner of legal title to a Condominium Parcel.
- 2.35 “Utility Services” may include, but not be limited to electric power, gas, water, air-conditioning, phone service, and garbage and sewage disposal, and drainage.
- 2.36 “Voting Certificate” means a document which designates one of the record title owners, or the corporation, partnership, or entity representative who is authorized to vote on behalf of a Unit owned by more than one Owner or by an entity.
- 2.37 “Voting Interest” means the voting rights distributed to the members of the Association pursuant to the Bylaws of the Association.

3. **Survey and Plot Plan.** A survey of the Land and plot plan locating the Improvements thereon and identifying each Unit, the Common Elements and the Limited Common Elements, and their relative locations and approximate dimensions, is attached hereto as **Exhibit “A”**. The locations, dimensions, descriptions, identification and numbering of the respective Units shall be as described in **Exhibit “A”** and any subsequent amendments thereto. If construction of a portion of the Buildings are not substantially completed as of the date of this Declaration, then upon substantial completion of such portion of the Buildings, this Declaration shall be amended

to include a certificate of a licensed surveyor in conformity with the requirements of the Condominium Act.

4. **Identification of Units.** The Condominium shall contain the Units identified in **Exhibit “A”**. Each Unit shall consist of the area within the boundaries described in **Section 4.1** below defined herein and as depicted in **Exhibit “A”**. In the event that the actual physical location, dimensions and/or boundaries of any Unit at any time do not precisely coincide with **Exhibit “A”** and subsequent amendments thereto, the actual physical location of a Unit shall control over the locations, dimensions and descriptions contained in **Exhibit “A”** and subsequent amendments thereto. In the event of a total or substantial destruction of a Building, the locations, dimensions and descriptions of the respective Units as contained in **Exhibit “A”** and subsequent amendments will control. By acceptance of a deed to any Unit, the respective Owners agree for themselves, their heirs, successors and assigns, and the holders of any mortgages, liens or other interests in or to any Unit agree that Developer alone (without the joinder or consent of the Owners, the Association or holders of recorded liens) shall have the right to amend **Exhibit “A”** as the Developer deems necessary or desirable from time to time to identify, locate and show dimensions and boundaries of any Units which are not completed as of the date of recording this Declaration. In addition, in the event that any location, dimension or boundary of any Unit as shown on **Exhibit “A”** is erroneous, the Developer (before the Turnover Date) or the President of the Association (after the Turnover Date) shall have the right to unilaterally amend this Declaration to correct **Exhibit “A”**, and any such amendment shall not require the joinder of any Owner or holders of recorded liens so long as the purpose of the amendment is merely to correct an error and correctly describe the location, dimension or boundaries of a Unit.

There shall pass with each Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

Each Unit shall include that part of the Building containing the Unit that lies within the boundaries of the Unit, which boundaries shall be determined in the following manner:

4.1 **Unit Boundaries.** The upper and lower boundaries of each Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries.

4.1.1 **Upper Boundaries.** The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top story of the Unit), provided that where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.

4.1.2 **Lower Boundaries.** The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first story

of the Unit), provided that where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.

4.1.3 Interior Divisions. Except as provided in **Sections 4.1.1** and **4.1.2** above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, or nonstructural interior walls or partitions shall be considered a boundary of the Unit.

4.1.4 Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the undecorated unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

4.1.5 Boundaries Further Defined. The boundaries of the Units shall exclude all pipes, ducts, wires, conduit and other facilities running through any interior wall or partition for Utility Services to other Units and/or for Common Elements.

4.2 Apertures and Attachments. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials.

When there is a covered entry, porch, balcony, utility room, mechanical room, or other similar area attached to a Unit and serving only the Unit being bounded, and such area is not designated in **Exhibit "A"**, as a Limited Common Element or Common Element, such Unit's boundary shall be in the intersecting horizontal, vertical, and/or other planes which include the planes of the undecorated finished ceiling(s) and floor(s) and the undecorated finished interior of all such areas.

4.3 Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as **Exhibit "A"** shall control in determining the boundaries of a Unit, except that the provisions of **Sections 4.1 and 4.2** above shall control unless specifically depicted and labeled otherwise on such survey.

5. **Limited Common Elements.** The Limited Common Elements, the use of which shall be limited to those Owners to whom such use is assigned by means of this Declaration, amendments thereto, assignments executed by Developer, or by the Association, include:

5.1 Covered Entries, Porches and Balconies. Any covered entry, porch or balcony adjacent to a Unit as shown on **Exhibit "A"**, shall be a Limited Common Element of such Unit. The Association shall be responsible for the maintenance, repair, replacement and insurance of the structural and mechanical elements of any such

Limited Common Elements (the cost of which shall be assessed to the applicable Unit Owner), with the Owner of the Unit to which they are appurtenant responsible for the general cleaning, plant care and the upkeep of the appearance of the area(s).

- 5.2 Driveway. Any driveway adjacent to a Unit (and any front yard sidewalks from a driveway to a Unit) shall be a Limited Common Element of such Unit, as shown in **Exhibit "A"**, subject to rights of access reserved herein.
- 5.3 Backyard Area. The backyard area behind each Unit shall be a Limited Common Element of such Unit, subject to the rights of access reserved herein. Notwithstanding the foregoing, the fences and/or gates surrounding each backyard area are Common Elements: only the backyard area inside said fences or gates shall be a Limited Common Element of the applicable Unit. The Association shall maintain the landscaping of each backyard area, with the costs of such maintenance to be assessed as a Common Expense. Notwithstanding the foregoing, for any swimming pool constructed by a Unit Owner within its Limited Common Element backyard area, the maintenance and insurance of the swimming pool shall be the sole responsibility of that Unit Owner.
- 5.4 Stairwells. The stairwells located along the outermost edges of each Building shall be a Limited Common Element of the Unit adjacent to the applicable stairwell. The Association shall maintain each stairwell at the expense of the Owner of the Unit to which such stairwell is appurtenant.
- 5.5 Swimming Pool. An Owner is permitted to construct one (1) swimming pool in its Limited Common Element backyard area (with the swimming pool being a Limited Common Element of the applicable Unit) provided that the Owner satisfies the requirements of **Section 12.1** of this Declaration.
- 5.6 Miscellaneous Areas, Equipment. Any fixtures or equipment (e.g., an air conditioning compressor or hot water heater) serving a Unit or Units exclusively and any area (e.g., a closet or ground slab) upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s). The maintenance (and cost) of any such equipment and/or areas so assigned shall be the sole responsibility of the Owner of the Unit(s) to which it is assigned.
- 5.7 Other Areas. All other areas, if any, designated as Limited Common Elements on **Exhibit "A"**, and any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one (1) Unit shall be deemed a Limited Common Element of the Unit served and shall be maintained and kept clean by such Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors of the Association and shall be binding and conclusive when so made.

6. **Easements.** The following easements are hereby created (in addition to any easements created under the Condominium Act and any easements affecting the Condominium Property and recorded in the Public Records of the County):

- 6.1 **Support.** Each Unit, Building, and any structure and/or Improvement now or hereafter constructed upon the Land or the Condominium Property shall have the benefit of an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements, and any other structure or improvements which abuts any Unit, any Building or any Improvements.
- 6.2 **Utility and Other Services.** Easements are reserved under, through and over the Condominium Property as may be required from time to time for Utility Services and other services and drainage in order to serve the Condominium and/or members of the Association. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such Utility Services, or other service or drainage facilities or the use of these easements. The Association shall have a right of access to each Unit to maintain, repair or replace any Common Element or other facilities, pipes, wires, ducts, vents, cables, conduits providing Utility Services and other services to the Condominium contained in the Unit or elsewhere in or around the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).
- 6.3 **Encroachments.** If (i) any portion of the Common Elements encroaches upon any Unit (or Limited Common Elements appurtenant thereto); (ii) any Unit (or Limited Common Elements appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements; or (iii) any encroachment shall hereafter occur as a result of (1) construction of the Improvements on the Land; (2) settling or shifting of the Improvements; (3) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate; or (4) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.
- 6.4 **Pedestrian Traffic.** A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, and for each member of the Association (and its and their guests, tenants and invitees) shall exist for pedestrian traffic over, through and across sidewalks, as the same may from time to time exist upon the Common Elements (but not Limited Common Elements) and/or Association Property as from time to time may be intended and designated for such purpose

and use by the Board; and for pedestrian traffic over, through and across, such other portions of the Common Elements and/or Association Property as may from time to time be intended for such purposes. Further, easements are hereby reserved over, through and across such portions of the Condominium Property as are necessary or convenient to afford access by police, fire, emergency and service personnel while providing services to the Condominium, the Unit Owners or the Association Property.

- 6.5 Construction, Maintenance and Repairs. Developer (including its affiliates and its designees, contractors, successors and assigns) shall have the right, in its and their sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of undertaking and completing the construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, or upon the Association Property, provided such activity does not prevent or unreasonably interfere, in the opinion of Developer, with the use or enjoyment by the Owners of the Condominium Property. Developer's use of the Condominium Property or any portion thereof, pursuant to the easement created in this **Section 6.5** shall include, but not be limited to, active construction activities, staging and all activities directly or indirectly related to the construction process, such as, but not limited to, maintenance, repairs, stacking and storage of materials and supplies, scaffolding, maintenance and placement of construction trailers and equipment.
- 6.6 Sales, Resales, Leasing and/or Development Activities. For as long as there are any Units owned by Developer, Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property for model apartments and/or for sales, re-sales, leasing, administrative, management and construction offices relating to the Condominium or other properties owned by Developer, its designees, successors and assigns, to show model Units and the Common Elements to prospective purchasers and tenants of Units, and to erect on the Condominium Property and/or Association Property signs and other promotional materials to advertise or otherwise market the Units, and/or any facilities built or to be constructed upon any portion of the Condominium Property for sale, re-sale, lease or occupancy, and/or other properties owned by Developer, its designees, successors and assigns.
- 6.7 Association Easements. The Association shall have the irrevocable right of access into any Unit during reasonable hours when necessary to make emergency repairs and do other work necessary for the proper maintenance repair or replacement of any Common Elements.
- 6.8 Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Buildings, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjacent structure which are necessarily or conveniently located within the Condominium Property or Association Property (provided that

the use of this easement shall not unreasonably interfere with the structure, operation or use of the Condominium Property, the Association Property or the Buildings).

6.9 Warranty. For as long as Developer remains liable under any warranty for acts or omissions of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time, to enter the Common Elements, the Units and the Association Property for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for Developer to fulfill any of its warranty obligations. Failure of the Association or any Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. **Nothing herein shall be deemed or construed as Developer making or offering any warranty, all of which are disclaimed (except to the extent the same may not be disclaimed) as set forth in Section 25 hereof.**

6.10 Central Cable, Telecommunication, Receiving and Distribution System. Developer hereby reserves the exclusive (to the extent permitted by law) and perpetual right (but not obligation) and easement to install, provide, repair, operate, replace, expand, remove, relocate and maintain (including the right to solicit customers) in the Condominium, and within all Units and Common Elements therein, such systems and equipment as deemed appropriate by Developer for the purposes of: (i) transmitting pay television services (including cable service), and/or (ii) telecommunication services (including high speed data/internet/intranet services, and security monitoring), including receiving and distribution system, including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment therefor (all of the foregoing, the "**Systems**"), all as Developer in its sole discretion deems appropriate. The Owners, by acceptance of the deed to their Unit, hereby acknowledge and agree that the easement created in this **Section 6.10** is a reservation of rights to Developer, and that no fees, consideration or other amounts shall be paid to, or otherwise accrue in favor of, the Association or the Owners with respect to the use of this easement. Such exclusive and perpetual right shall include, without limitation, Developer's right to select and contract (on behalf of the Association) with companies licensed to provide the foregoing services to the Condominium for a reasonable fee not to exceed the maximum allowable charge for such service, as such from time to time is defined by the laws, rules and regulations of the relevant government authority, if applicable. In furtherance of the foregoing, the Association may enter into a bulk rate service agreement for the provision of the foregoing services to all Units and the Common Elements. The Association's expenses in this regard shall be a Common Expense, except if related to a bulk cable television or master television antenna contract which shall be a charge. If particular services or benefits are provided to particular Owners, the benefitted Owner(s) shall pay the service provider directly for such services.

All wires, cables and equipment comprising such Systems and any revenues or profits derived therefrom shall be and remain the exclusive property of Developer,

its successors and/or assigns. Developer may, in its sole discretion, remove and/or relocate the wires, cables and equipment comprising such Systems. The Association and each Owner does hereby further give and grant to Developer, and Developer does hereby reserve unto itself such perpetual easements over, under, through and across the Condominium Property as may be necessary, from time to time, to install, repair, replace and maintain such Systems. Developer further reserves the right to assign on an exclusive or non-exclusive basis, lease, transfer, license and/or convey the exclusive rights, privileges and easements herein reserved. The easement in favor of Developer contained in this **Section 6.10**, shall be subject to cancellation by the Association in accordance with Section 718.302 of the Condominium Act. In the event of such cancellation, the Owner of the Systems shall have the right to remove all such Systems from the Condominium.

- 6.11 **Additional Easements.** Developer, so long as it owns any Unit, and the Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific Utility Services or other service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.
- 6.12 **Support Elements.** All columns and other structural elements supporting any portion of the Improvements, whether or not located within the Common Areas shall be and are hereby declared Common Elements whether or not included in **Exhibit "A"**.

7. **The Association.**

- 7.1 **Power and Duties.** The Association shall be the entity responsible for the operation of the Condominium and the Association Property. All persons owning a vested present interest in the fee title to any of the Units, which interest is evidenced by a proper instrument duly recorded in the Public Records of Palm Beach County, Florida, are required to be and shall automatically be members of the Association and their respective memberships shall terminate as their vested interest in the fee title to a Unit terminates. All of the affairs and property of the Condominium and of the Association shall be controlled by the officers and Board of Directors of the Association. Subject to the provisions of this Declaration, the operation of the Association shall be governed by the Articles of

Incorporation and the Bylaws as such may be amended from time to time. A copy of the Articles of Incorporation which has been filed with and certified by the Secretary of State of Florida is attached hereto as **Exhibit "B"**. A copy of the Bylaws is attached hereto as **Exhibit "C"**. The Association shall have all of the rights, duties and powers provided by the Condominium Act, the Articles of Incorporation, the Bylaws and this Declaration, including without limitation:

- 7.1.1 The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to make emergency repairs. The Association shall also have the irrevocable right of access to the Limited Common Element backyards of each Unit from time to time during reasonable hours as may be necessary for the maintenance of these backyard areas. The Association shall have a master key to provide it access to the Limited Common Element backyards of each Unit. No Owner shall be permitted to alter the lock or install a new lock on the fence door leading into their backyard area. If the Association is required to enter the Unit or backyard area by force for any purpose provided herein or in the rules and regulations, the Association shall not be liable to the Owner, tenant, or permitted user of the Unit for any damage caused to the Unit, the backyard area or any personal property in the Unit or backyard area by such forcible entry.
- 7.1.2 The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property.
- 7.1.3 The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior written request.
- 7.1.4 The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- 7.1.5 The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the Bylaws with respect to certain borrowing.
- 7.1.6 The power to adopt and amend rules and regulations concerning the details of the operation and use of the Common Elements and Association Property.
- 7.1.7 The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, subject to **Section 7.7** hereof. Real property (including, without limitation, Units) shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors alone; provided that the requirements of **Section 7.7** hereof pertaining to the Owners' approval of costs in excess of the threshold amount stated therein (including the proviso regarding the debt incurred) shall also apply to the acquisition of real property, provided further, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for the same, and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- 7.1.8 The power to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit Owner by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- 7.1.9 All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the Bylaws, Chapters 607 and 617, Florida Statutes and the Condominium Act, in all cases except as expressly limited or restricted in the Condominium Act.

7.1.10 The right and power to grant and relocate easements, licenses and permits over the Common Elements and the Association Property for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration, exhibits attached hereto, or otherwise, this Declaration shall take precedence over the Articles of Incorporation, Bylaws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the Bylaws and applicable rules and regulations; and the Bylaws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding the foregoing, nothing in this Declaration shall conflict with the powers and duties of the Association or the rights of the Unit Owners under the Condominium Act. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Condominium Act.

- 7.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Owners regardless of whether or not the same shall have been approved by the Association in accordance with this Declaration. The Association also shall not be liable to any Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.
- 7.3 Restraint Upon Assignment of Shares in Assets. An Owner's share of the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 7.4 Approval or Disapproval of Matters. Whenever the decision of an Owner is required upon any matter, whether or not the subject of a Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at a Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 7.5 Acts of the Association. Unless the approval or action of Owners and/or a certain specific percentage of the Board of Directors of the Association is specifically required in this Declaration, the Articles of Incorporation, the Bylaws or applicable law, all approvals or actions required or permitted to be given or taken

by the Association shall be given or taken by the Board of Directors, without the consent of Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner that the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

- 7.6 Developer Control. The Developer has and hereby reserves the right to control the management and operation of the Condominium and the affairs and decisions of the Association and its Board of Directors during the development and sales period of the Condominium by electing initially all, and thereafter a majority, of the directors of the Association in accordance with Section 718.301(1), Florida Statutes, and the Articles of Incorporation attached as hereto as **Exhibit "B"**. Notwithstanding the foregoing, the Developer may terminate such right of control at any time by relinquishing and waiving such right in writing and turning over control of the Board of Directors and the Association to the Owners, who shall accept such turnover. During the period that the Developer retains such control, the Developer shall have the right to take all actions, make all decisions and do all things on behalf of the Association. When the Developer conveys the Association Property (if any) to the Association, the Association will accept such conveyance from the Developer.

So long as the Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer:

- 7.6.1 Assessment of the Developer as an Owner for capital improvements.
- 7.6.2 Any action by the Association that would be detrimental to the sales of Units by the Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.
- 7.7 Additions, Improvements or Alterations by the Association. In lieu of the voting requirement set forth in Section 718.113(2), Florida Statutes, whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of three percent (3%) of the then applicable budget of the Association in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Voting Interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing in the aggregate three percent (3%) of the then applicable budget of the Association or less in a calendar year may be made by

the Association without approval of the Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Owners as Common Expenses. For purposes of this Section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

8. **Restraint Upon Separation and Partition of Common Elements.** The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

9. **Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.**

9.1 **Percentage of Ownership of Common Elements and Surplus.** The ownership and undivided shares of each respective Unit in the Common Elements and the Common Surplus shall be equal and based upon a fraction, the numerator shall be one, and the denominator shall equal the number of Units submitted to condominium ownership at that time.

9.2 **Liability for Common Expenses.** Each Owner shall be liable for a share of the Common Expenses, such share being the same as the undivided share of the Common Elements appurtenant to the Unit.

9.3 **Voting Rights; Membership in the Association.** Each Unit shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the Bylaws of the Association. Each Unit Owner shall be a member of the Association.

10. **Amendment.** Except as elsewhere provided herein, amendments may be effected as follows:

10.1 **Amendments by Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the Voting Interests. Except as otherwise specifically provided in this Declaration, approvals of proposed amendments must be by an affirmative vote representing not less than two-thirds (2/3) of all Voting Interests in the Condominium. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in

writing, provided that such approval is delivered to the secretary at or prior to the meeting. The Articles of Incorporation and Bylaws may be amended as provided therein.

- 10.2 Material Amendments. No amendment of this Declaration shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, permit timeshare estates, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a “Material Amendment”), unless the record Owner(s) thereof and all record owners affected thereby of mortgages or other liens thereon shall join in the execution of the amendment, and the amendment is otherwise approved by a majority of the Voting Interests in the Condominium. The acquisition of property by the Association, material alterations or substantial additions to such property, the Common Elements or Association Property by the Association, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.
- 10.3 Mortgagee’s Consent. No amendment to this Declaration may be adopted which would materially and adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of said mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled “Insurance”, “Reconstruction or Repair after Casualty”, “Termination of Condominium” or “Condemnation” unless the Primary Institutional First Mortgagee shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.
- 10.4 Developer Amendments. Notwithstanding anything contained in this Declaration to the contrary, during the time Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation or the Bylaws of the Association may be amended by Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment: (a) to permit time-share estates; or (b) to effect a “Material Amendment”, which amendments must be approved, if at all, in the manner set forth in Section 10.2 above. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to Developer, without the prior written consent of Developer in each instance.
- 10.5 Execution and Recording. An amendment, other than amendments made by Developer alone pursuant to the Condominium Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with

the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the Public Records of Palm Beach County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

11. **Maintenance and Repairs.**

11.1 **Maintenance, Repair and Replacement.** Responsibility for the maintenance, repair and replacement of Association Property, Common Elements, Limited Common Elements and Units shall be as follows:

11.1.1 **By the Association.** The Association shall maintain, repair and replace all of the Association Property, Common Elements, and Limited Common Elements (other than those Limited Common Elements which shall be maintained by the Owner(s) of the Unit(s) to which the Limited Common Element is appurtenant as provided in this Declaration). The Association shall provide maintenance and replacement of all irrigation systems, lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Association Property, Common Elements or the Limited Common Elements. The Association's cost and expense of maintenance, repair and replacement of all irrigation systems and landscaping within the Association Property, Common Elements and Limited Common Elements as described above shall be charged to Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Owners, in which case such cost and expense shall be paid solely by such Owners.

11.1.2 **By the Owners.** Each Owner shall maintain, repair and replace certain Limited Common Elements as set forth in this Declaration and everything within the confines of his Unit which is not part of the Common Elements or Limited Common Elements, including but not limited to:

- (a) Paint, finish, covering, wallpaper and decoration of all walls, floors and ceiling of the Unit;
- (b) All built-in shelves, cabinets, counters, storage areas, and closets;

- (c) Any refrigerators, stoves, ovens, disposals, dishwashers and other kitchen equipment and appliances, and all bathroom fixtures, equipment and apparatus, within his Unit;
- (d) All electrical, plumbing, telephone and television fixtures, apparatus, equipment, outlets, switches, serving only his Unit;
- (e) All mechanical, ventilating, heating and air conditioning equipment serving only the Unit, regardless of whether such equipment may be located partially or entirely outside of the boundaries of the Unit;
- (f) All interior doors, walls, partitions, and room dividers;
- (g) All furniture, furnishings and personal property contained within a Unit; and
- (h) Glass or screened surfaces of windows, wood louvers, exterior doors, porches, or lanais, provided that any replacement or modification of same must be approved in advance by the Association.

12. **Additions, Alterations or Improvements by Unit Owner and Developer.**

12.1 **Consent of the Board of Directors.** No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, his Unit or any Limited Common Element without the prior written consent of the Board of Directors of the Association. The Board shall have the obligation to answer, in writing, any written request by a Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor or subcontractor to perform the work and requiring the Unit Owner to obtain insurance naming Developer (if prior to Turnover) and the Association as additional insureds containing such limits, deductibles, terms and conditions as are determined by the Board in its sole discretion. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. The Association shall have the right to enter into a Unit at reasonable times upon reasonable advance notice in order prevent damage to the other Units and/or to the Common Elements. Once approved by the Board of Directors, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and

assigns, as appropriate, to hold the Association, Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association or this Declaration. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Developer, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from Developer and/or the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder.

12.2 Improvements, Additions or Alterations by Developer. Notwithstanding anything herein to the contrary, the foregoing restrictions of this **Section 12** shall not apply to the Developer or to the Developer-owned Units. Subject to the terms of **Section 10** hereof and compliance with the Condominium Act (including, without limitation, Section 718.110(4) thereof), the Developer shall have the additional right to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), and (b) expand, alter or add to all or any part of the Common Elements and recreational facilities. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section shall be adopted in accordance with **Section 10** and **Section 12.3** of this Declaration.

12.3 Changes in Developer-Owned Units. Without limiting the generality of the provisions of **Section 12.2** above, and notwithstanding anything herein to the contrary, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (a) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-

structural, interior or exterior, ordinary or extraordinary; (b) change the layout or number of rooms in any Developer-owned Units; (c) change the size of Developer-owned Units by combining separate Developer-owned Units into a single apartment (although being kept as two separate legal Units), or otherwise; and (d) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section may be effected by the Developer alone pursuant to **Section 10.4** hereof, without the vote or consent of the Association or Unit Owners (or their mortgagees), except to the extent that such amendment constitutes a Material Amendment, in which event, the material amendment must be approved as set forth in **Section 10.2** hereof. Without limiting the generality of **Section 10.4** hereof, the provisions of this **Section 12.3** may not be added to, amended or deleted without the prior written consent of the Developer.

13. **Determination of Common Expenses, Charges and Fixing of Assessments Therefor.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium and the Association, determine the amount of: (a) Assessments payable by the Owners to meet the Common Expenses of the Condominium, and (b) any other charges payable by such Owners required to pay the same as provided in this Declaration. The Board of Directors shall allocate and assess such expenses among the Owners in accordance with the provisions of this Declaration, the Articles of Incorporation and the Bylaws. The Board of Directors shall advise all Owners promptly in writing of the amount of the Assessments and charges payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, on which such Assessments and charges are based, to all Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Condominium Act, this Declaration, the Articles of Incorporation or the Bylaws. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any budget adopted shall be subject to change to cover actual expenses at any

time. Any such change shall be adopted consistent with the provisions of this Declaration, the Articles of Incorporation and the Bylaws.

14. **Collection of Assessments**

14.1 **Liability for Assessments and Charges.** A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous Owner for all unpaid Assessments and any other charges due under this Declaration that came due up to the time of the conveyance, without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the grantee Owner. The liability for Assessments and any other charges due under this Declaration may not be avoided by waiver or abandonment, either voluntarily or involuntarily of the use or enjoyment of any Common Elements, Limited Common Elements, appurtenances to a Unit, or by abandonment of the Unit for which Assessment and charges are made or otherwise. The Board shall approve the annual budgets or projected anticipated income and estimated expenses for each fiscal year, and each Unit Owner will be responsible for his Unit's share of such annual Assessment based upon its share of the Common Expenses as provided herein.

14.2 **Special Assessments.** In addition to Assessments and other amounts levied by the Association to meet the Common Expenses and other expenses of the Condominium and the Association, the Board of Directors shall have the power to levy Special Assessments in proportion to each Unit's share of the Common Expenses upon the following terms and conditions:

14.2.1 Special Assessments levied by the Board shall be payable in lump sums or installments, in the discretion of the Board; provided that the specific purpose or purposes of any Special Assessment approved by the Board of Directors shall be set forth in a written notice of such Special Assessments sent or delivered to each Unit Owner.

14.3 **Default in Payment of Assessments for Common Expenses.** Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at eighteen percent (18%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment per occurrence. The Association has a lien on each Condominium Parcel to secure the payment of Assessments and any other charges due under this Declaration. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County. To be valid, the claim of lien must state the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates, and the claim of lien must be executed and

acknowledged by an officer or authorized signatory of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner or any other person claiming an interest in the Unit. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments and other charges due under this Declaration, which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments and any other charges due under this Declaration in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments and any other charges due under this Declaration.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may accelerate and declare immediately due and payable all installments of Assessments for the remainder of the fiscal year. In the event that the amount of such installments changes during the remainder of the fiscal year, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 14.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments and any other charges due under this Declaration, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice

requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Condominium Act.

- 14.5 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.
- 14.6 First Mortgagee. The liability of the holder of a first mortgage on a Unit (each, a “First Mortgagee”), or its successors or assigns, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments and other amounts due under this Declaration (or installments thereof) that became due prior to the First Mortgagee’s acquisition of title is limited to the lesser of:
- (a) The Unit’s unpaid Common Expenses and regular periodic Assessments and other periodic amounts pursuant to this Declaration which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
 - (b) One percent (1%) of the original mortgage debt.

As to a Unit acquired by foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the First Mortgagee.

A First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

- 14.7 Certificate of Unpaid Assessments and Other Charges. Within fifteen (15) days after written request by an Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments, any other charges due under this Declaration and other moneys owed to the Association by the Owner with respect to his Unit. Any person other than the Owner who relies upon such certificate shall be protected thereby.
- 14.8 Installments. Regular Assessments and other periodic amounts due under this Declaration shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, Assessments and any other charges due under this

Declaration will be collected quarterly and shall be due on the first day of January, April, July and October.

- 14.9 Application of Payments. Any payments received by the Association from a delinquent Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection, and then to the delinquent and any accelerated Assessments and any other charges due under this Declaration. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.
- 14.10 Waiver of Reserves. Pursuant to Section 718.112(2)(f) of the Condominium Act, the Developer may vote to waive reserves for capital expenditures and deferred maintenance during the first two (2) fiscal years of the Association's operation, beginning with the fiscal year in which this Declaration is recorded. Thereafter, reserves may be waived only as permitted by the Condominium Act.
- 14.11 Developer's Liability for Assessments. During the period from the date of the recording of the Declaration until the earlier of the following dates (the "Guaranty Expiration Date"; also the "Guaranty Period"): (a) December 31st of the first full calendar year following the year of recording of this Declaration, or (b) the date that Turnover occurs, Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to the Units owned by Developer, provided: (i) that the regular Assessments for Common Expenses imposed on each Unit Owner other than Developer prior to the Guaranty Expiration Date shall not increase during Guaranty Period over the amounts set forth in Exhibit "D" (the "Guaranteed Assessments"), subject only to the occurrence of an Extraordinary Financial Event, as set forth below; and (ii) that Developer shall be obligated to pay any amount of Common Expenses actually incurred during the Guaranty Period and not produced by the Assessments at the Guaranteed Assessments receivable from other Unit Owners and/or from income of the Association. Notwithstanding the above and as provided in Section 718.116(9)(a)(2), Florida Statutes, in the event of an Extraordinary Financial Event (as hereinafter defined), the costs necessary to effect restoration shall be assessed against all Unit Owners on the date of such Extraordinary Financial Event, and their successors and assigns, including Developer (with respect to Units owned by Developer). An "Extraordinary Financial Event" shall mean a casualty loss affecting the Condominium resulting from a natural disaster or act of God, which is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a), Florida Statutes.

Subject to the Guaranty Expiration Date, within the Guaranty Period there shall be three distinct consecutive intervals as to which different Guaranteed Assessments apply as set forth in Exhibit "D", being: (i) the first interval of the Guaranty Period shall commence on the date of the recording of this Declaration and expire on December 31st of the year in which this Declaration is recorded (the "First Guaranty Interval"); (ii) the second interval of the Guaranty Period shall be a six (6) month period commencing on January 1st of the year following

the First Guaranty Interval and shall expire on the last day of June of the same year (the "Second Guaranty Interval"); and (iii) the third interval of the Guaranty Period shall be a six (6) month period commencing on July 1st of the same year as the Second Guaranty Interval and shall expire on December 31st of the same year (the "Third Guaranty Interval").

After the Guaranty Expiration Date, Developer shall have the option of extending the Guaranty for one (1) or more additional six month periods, or paying the share of Common Expenses and Assessments attributable to Units it then owns.

14.12 Capital Contributions. Upon acquisition of record title to a Unit from the Developer or an Owner, such new Owner will contribute to the capital of the Association an amount equal to the quarterly Assessment determined by the Board of Directors for the Unit for the year in which the new Owner acquired title ("Capital Contributions"). Such Capital Contributions shall be used to establish adequate reserve funds for replacement and/or capital refurbishment of the Common Elements and the Limited Common Elements, and the portions of Units which the Association is responsible for maintaining and the payment of other expenses in the amounts determined proper and sufficient by the Board, if any. Each Owner acknowledges and understands that Capital Contributions are the exclusive property of the Association as a whole, and that no Owner shall have any interest, claim or right to any such Capital Contributions or funds composed of the same. The Association shall be responsible for maintaining the Capital Contribution in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid.

15. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

15.1 Coverage. The Association shall maintain insurance covering the following:

15.1.1 Casualty. The Buildings (including all fixtures, installations or additions comprising that part of the Buildings within the boundaries of the Units and required by the Condominium Act to be insured under the Association's policies) and all Improvements located on the Common Elements and the Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude, all furniture, furnishings, Unit floor coverings, wall coverings and ceiling coverings, other personal property owned, supplied or installed by Owners or tenants of Owners, and all electrical fixtures, appliances, air conditioner and heating equipment, water heaters and built-in cabinets, to the extent that any of same are required to be repaired or replaced by the Owners. Such policies

may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

- 15.1.2 Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees in such amounts and under such terms and conditions as the Association deems appropriate in its sole and absolute discretion.
- 15.1.3 Worker's Compensation. Workers compensation insurance and other mandatory insurance, to the extent applicable.
- 15.1.4 Flood Insurance. Flood insurance covering the Common Elements, Association Property and Units if required by the Primary Institutional First Mortgagee or FNMA/FHLMC, or if the Association so elects.
- 15.1.5 Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.
- 15.1.6 Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- 15.1.7 Other Insurance. Such other insurance as the Board of Directors shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Owners individually and as a group, (ii) pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Owners that are not under the control of the Association, and that the policy shall be primary, even if an Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association, if required by FNMA/FHLMC, shall have the following endorsements: (i) agreed amount and inflation guard, and (ii) steam boiler coverage (providing at least \$50,000 coverage for each accident at each location), if applicable.

15.2 Purchase, Custody and Payment.

15.2.1 Purchase. All insurance policies described herein covering portions of the Condominium and Association Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.

15.2.2 Approval. Each insurance policy, the agency and company issuing the policy and the insurance trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.

15.2.3 Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for any Institutional First Mortgagee, without naming them. The Unit Owners and Institutional First Mortgagees shall be deemed additional insureds.

15.2.4 Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Association, and all policies and endorsements thereto shall be deposited with the Association.

15.2.5 Copies to Institutional First Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than

ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

- 15.3 Personal Property, Swimming Pool and Liability. Except as specifically provided herein or by the Condominium Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith. Further, the Association shall not be responsible for insuring any swimming pool constructed by or on behalf of a Unit Owner in its backyard area or for any liability arising from the construction or use of any such swimming pool.
- 15.4 Additional Provisions. All policies of insurance shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all Institutional First Mortgagees. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Association may obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the insured property, without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this **Section 15.**
- 15.5 Premiums. Premiums upon insurance policies purchased by the Association pursuant to this **Section 15** shall be a Common Expense.
- 15.6 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors as provided in **Section 15.11** below, and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:
- 15.6.1 Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described below.

- 15.6.2 Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the “Optional Property”), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
- 15.6.3 Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Owner and mortgagee pursuant to the provisions of this Declaration.
- 15.7 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:
- (a) Expenses of the Trustee. All expenses of the Insurance Trustee shall be paid first or provision shall be made therefor.
 - (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Owners and their mortgagees being payable jointly to them.
 - (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in **Section 15.6** above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
 - (d) Certificate. In making distributions to Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Owners and their mortgagees and their respective shares of the distribution.

- 15.8 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner and for each Institutional First Mortgagee and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 15.9 Owners' Personal Coverage. The insurance required to be purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance required to be carried by the Association.
- 15.10 Benefit of Mortgagees. Certain provisions in this **Section 15** entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 15.11 Appointment of Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Insurance Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 15.12 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
16. **Reconstruction or Repair After Fire or Other Casualty.**
- 16.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto), and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.
- If 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in

which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to an Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words “promptly repair” are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) notifies the Board of Directors and the Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

- 16.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and, if the damaged property which is to be altered is the Buildings or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgages) the plans for which are to be altered.
- 16.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Owners, then the Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

16.4 Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

16.4.1 Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

16.4.2 Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (a) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

16.4.3 Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Owner bears to the total of such estimated costs to all affected Owners, as determined by the Board; provided, however, that no Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Owners and their mortgagees jointly as elsewhere herein contemplated.

16.4.4 Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an

Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

16.4.5 Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

16.4.6 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, the Association shall charge the Owner (but shall not levy an Assessment) in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

16.4.7 Benefit of Mortgagees. Certain provisions in this **Section 16** are for the benefit of mortgagees of Units and may be enforced by any of them.

17. Condemnation.

17.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Owners, the Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a charge shall be made against a defaulting Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided

for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

- 17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this **Section 17** specifically provided.
- 17.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:
- 17.4.1 Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and paid by the Owner of the Unit.
- 17.4.2 Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
- 17.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:
- 17.5.1 Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- 17.5.2 Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Owners in

the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

17.5.3 Adjustment of Share. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Owners as follows:

- (a) add the total of all percentages of all Units of continuing Owners prior to this adjustment (the "Percentage Balance"); and
- (b) divide the percentage of each Unit of a continuing Owner prior to this adjustment by the Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

17.5.4 Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Owners who will continue as owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

17.5.5 Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and mortgagees of the Unit and the Association within thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

- 17.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.
- 17.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration that is only required to be approved by, and executed upon the direction of, a majority of the Board.

18. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

- 18.1 Occupancy. Each Unit shall be used as a single-family residence only and no more than five (5) persons shall be allowed to permanently reside in any one Unit. The use of a portion of a Unit as an office by an Owner or his tenant shall be allowed if such use does not create regular customer, client or employee traffic. The foregoing prohibitions shall not be applicable to Developer with respect to its development of the Condominium Property, its construction, decoration, repair, administration and sale, resale or lease of Units, or its use of Units as models or guest suites. Nothing herein shall be construed to prohibit ownership of a Unit by a corporation, domestic or foreign. A Unit owned or leased by an individual(s), corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families: (i) the individual Unit Owner(s), (ii) an officer, director, stockholder, employee or designee of such corporation, (iii) a partner, employee or designee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) the permitted occupants under an approved lease or sublease of the Unit (as provided in **Section 19** hereof), as the case may be. The Board shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above.

As used herein, "family" or words of similar import shall be deemed to include a spouse, children, parents, brothers, sisters, grandchildren and other persons permanently cohabiting the Unit as or together with the Owner or permitted occupant thereof. As used herein, "guest" or words of similar import shall include only those persons who have a principal residence other than the Unit. Unless otherwise determined by the Board of Directors, and except as otherwise provided in **Section 19** hereof, a person(s) occupying a Unit for more than two (2) weeks without the Unit Owner or a member of his family being present shall not

be deemed a guest but, rather, shall be deemed a lessee for purposes of this Declaration (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to lessees.

- 18.2 Articles, Bylaws, Rules and Regulations. No Owner, tenant or subtenant shall fail to conform to and abide by the Articles of Incorporation, the Bylaws and the rules and regulations adopted by the Association in regard to the use of the Units, the Common Elements, the Limited Common Elements, or the Association Property.
- 18.3 Pet Restrictions. No animals other than cats or dogs (except for Pit Bulls, German Shepards, Doberman Pinchers, Rotweilers, or any other mixed-breed dog with elements of any of these breeds of dog) (collectively, “Pets”) shall be raised, bred or kept by any Unit Owner upon any portion of the Condominium Property, provided that (i) each Pet is permitted to be kept on the Condominium Property under all applicable laws and regulations, (ii) up to two (2) Pets, whose collective weight shall not exceed one hundred pounds (100 lbs) (as measured by typical adult weight), may be kept in Units, subject to rules and regulations adopted by the Association through its Board of Directors, (iii) each Pet is kept or maintained solely as a domestic pet and not for any commercial purpose, (iv) each Pet is not a nuisance to residents of other Units, as determined by the Association in its sole discretion, and (v) no Pet shall be left unleashed or unattended in any Limited Common Element or Common Element area at any time. No Pet shall be permitted to leave its excrement on any portion of the Common Areas or Limited Common Areas, and the Owner of such Pet shall immediately clean up after such Pet. Failure to do so shall entitle the Association to fine such Owner. No Pets shall be kept by a Unit Owner in any Unit without first registering the Pet with the Association, which registration shall describe such Pet by species, height, weight and coloring. Only Pets owned by the Unit Owner may be kept in the Unit and Limited Common Elements appurtenant thereto, and no Pets owned by tenants, guests or invitees may be kept in the Unit or the Limited Common Elements appurtenant thereto.
- 18.4 Alterations. Without limiting the generality of Section 12.1 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, or to any Limited Common Elements, Common Elements or Association Property, which could in any way affect the structural, electrical, plumbing or mechanical systems of the Buildings, without obtaining the prior written consent of the Association.
- 18.5 Use of Common Elements and Association Property. Owners shall not make any structural additions or alterations (except the erection or removal of non-support carrying interior partitions located wholly within Units). The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. No Owner shall obstruct the ingress or egress to the other Units, the Common Elements, the Limited Common Elements or the Association Property. No Owner shall allow anything to remain in or on the Common Elements, Limited Common Elements or Association Property which would be unsightly or hazardous. No Owner shall allow any rubbish, refuse,

garbage or trash, and each Unit, the Common Elements, the Limited Common Elements and Association Property shall at all times be kept in a clean and sanitary condition. Local recycling programs, if any, shall be enforced. Garbage shall be disposed of through the kitchen garbage disposal so far as possible and the remainder, along with bottles, cans and other trash shall be placed in waterproof bags or similar containers before being placed in garbage containers. No Owner shall make use of the Common Elements, the Limited Common Elements or the Association Property in such a manner as to abridge the equal rights of the other Unit Owners entitled to their use and enjoyment.

- 18.6 Nuisances. No portion of the Units, Limited Common Elements or Common Elements shall be used, in whole or in part, for the storage of any property or thing that will cause such property to appear to be, in the view of the Association, in an unclean or untidy condition or that will be obnoxious or unsightly to the eye; nor shall any substance, thing, or material be kept on any portion of the Units or the Limited Common Elements appurtenant thereto that will emit foul or obnoxious odors or cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding properties. No activity deemed by the Association as noxious or offensive shall be carried on in any Units, Limited Common Elements, Common Elements or other portions of the Condominium Property, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any Owner. The Board of Directors shall have the right to determine if any equipment, fixture, improvement, materials or activity producing such noise or odor constitutes a nuisance. In particular, no sound speakers shall be installed on the outside of the Units or on the Common Elements or Limited Common Elements. Further, no Unit Owner shall play (or permit to be played in its Unit, or on the Limited Common Elements or Common Elements) any musical instrument, phonograph, television, radio, sound system or the like in a way that unreasonably disturbs or annoys other Unit Owners or occupants. No vocal or instrumental practice is permitted during the hours from 10:00 p.m. through 9:00 a.m. Additionally, there shall not be maintained outside the Units or on the Limited Common Elements or Common Elements any plants, outdoor furniture, devices or things of any sort whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the Units, or any other portions of the Condominium Property. No activity specifically permitted by this Declaration shall be deemed a nuisance.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS DECLARATION, EACH OWNER AND THEIR RESIDENTS, GUESTS AND INVITEES WITHIN THE CONDOMINIUM PROPERTY ACKNOWLEDGE AND AGREE THAT PERMITTED USES OF AIR CONDITIONING UNITS INHERENTLY INVOLVE SOME LEVEL OF NOISE AND THAT SUCH NOISE, IF ANY, SHALL NOT BE DEEMED TO CONSTITUTE A NUISANCE IN ANY MANNER.

- 18.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all

valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or Bylaws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this **Section 18.7**. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section. No Owner shall permit or suffer anything to be done or kept in his Unit, the Common Elements, the Limited Common Elements or the Association Property which will increase insurance rates on any Unit, the Common Elements, the Limited Common Elements or Association Property.

- 18.8 Plants. No Unit owner shall keep or plant any plants that are higher than (or expected to grow higher than) four feet (4 ft.) without the approval of the Association.
- 18.9 Backyard Areas. The backyard areas of each Unit are Limited Common Elements, but shall be maintained by the Association, at the expense of the Unit Owners as a Common Expense. Unit Owner(s)' use of these backyard areas must be in compliance with this Declaration and the rules and regulations of the Association, as amended from time to time.
- 18.10 Outdoor Furniture. Outdoor playsets, yard sculptures, clotheslines, fountains, recreational equipment, exterior televisions and yard art are permitted only with the approval of the Association. Further, no outdoor intercoms, bird feeders, wind chimes, storage areas, or similar outdoor items are permitted outside Units. In addition, no temporary or permanent structures (such as tiki huts, dog houses, tents, wishing wells, and gazebos) are permitted in the Limited Common Elements and Common Elements. Notwithstanding the foregoing, patio furniture and permissible potted/boxed plants are permitted, but only on the patio areas or pool deck of each Unit.
- 18.11 Vehicles. Vehicles shall be parked only in the garages or in the driveways serving the Units or in the appropriate spaces or designated areas in which parking may be assigned, and then subject to the reasonable rules and regulations adopted by the Association. No repair, except emergency repair, of vehicles shall be made within the Condominium Property, except in the garage of a Unit. In the event a vehicle is parked in a driveway servicing a Unit, such vehicle must be completely within the boundaries of such driveway space and no part of the vehicle may extend outside the driveway space. No "commercial vehicle" (as such term is defined in the municipal or county code in effect on the date of recordation of the Condominium Declaration): (i) shall be permitted to be parked within the Condominium Property for a period of more than four (4) hours per day unless such commercial vehicle is temporarily present and necessary in the actual construction, maintenance, or repair of a Unit or other improvements

within the Condominium Property or (ii) shall be permitted to be parked overnight or stored within the Condominium Property unless fully enclosed within a garage. Notwithstanding the foregoing, “commercial vehicle” shall not include any sports utility vehicle used for family transportation purposes, but shall include pick-up trucks and any vehicle exhibiting any commercial sign or lettering, equipment or cargo. No mobile home, motor home, campers, bus or trailer of any kind shall be permitted within the Condominium Property. No boats, boat trailers, wave runners or ATVs shall be permitted to be parked within the Condominium Property, unless kept fully enclosed within a garage. No vehicle shall be used as a domicile or residence, either temporary or permanent. Developer, the Association and the Board of Directors shall have no obligation to move or protect any vehicle parked on the Condominium Property in the event of any adverse weather conditions (including, but not limited to, hurricanes, tropical storms, or flooding).

18.12 Swimming Pools. Each Unit Owner may, at its sole expense, construct one (1) swimming pool in the backyard area appurtenant to its Unit upon obtaining the prior written approval of the Association. Notwithstanding the foregoing, no above-ground swimming pools shall be permitted. Further, neither the Association nor Developer is responsible for determining whether the backyard area appurtenant to any Unit is suitable for the construction of a swimming pool or for ensuring that permits for the construction of a swimming pool can or will be issued. In the event a swimming pool is constructed by a Unit Owner within its backyard area, it shall be a Limited Common Element of such Unit. Further, it shall be the sole responsibility of each Unit Owner, not the Association or Developer, to obtain all required permits and government approvals necessary to construct a swimming pool. Each Unit Owner shall properly maintain and provide liability insurance for any swimming pool constructed within a Unit’s backyard area, with the Association being named as an “additional insured” on the insurance policy for the swimming pool. Each Unit Owner shall maintain their swimming pool in clean, working condition, at all times. If the Association, in its sole discretion, determines that a Unit Owner has failed to properly maintain its swimming pool at any time, the Association shall notify the Unit Owner of such finding and the Unit Owner shall take reasonable corrective measures to properly maintain the pool. If a Unit Owner fails to timely remediate the condition of the swimming pool, the Association shall have the right, but not the obligation, to enter the Unit Owner’s backyard area to remediate and maintain the swimming pool, all at the Unit Owner’s expense. Notwithstanding the foregoing, the Association shall have no liability whatsoever for any actions of a Unit Owner (or its tenants or guests) relating to any Unit Owner’s swimming pool.

18.13 Leases. No Unit Owner shall lease less than an entire Unit or enter into more than one (1) lease for a Unit in any one calendar year. Each Unit Owner shall obtain the Association’s prior written approval of a prospective tenant for a Unit prior to entering into a lease for such Unit. During the time a Unit is leased or occupied by others, the Unit Owner shall not have the right to use the Common Elements and Association Property, except as a guest of a Unit Owner or lessee or to enforce it’s rights as landlord pursuant to Chapter 83, Florida Statutes. All leases

shall be in writing and shall provide that the Association shall have the right (i) to terminate the lease upon default by the tenant in observing any of the provisions of the Condominium Declaration, the Articles of Incorporation or the Bylaws, the rules and regulations of the Association or any other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association, and (ii) to collect all rental payments due to the Owner and to apply same against unpaid Assessments if, and to the extent that, the Owner is in default in the payment of Assessments.

- 18.14 Subdivisions. No Owner shall divide or subdivide a Unit for purpose of sale.
- 18.15 Exterior Improvements. Except with the prior written consent of the Board of Directors, no Owner shall perform or permit any of the following: (i) paint or otherwise change or alter the appearance of any exterior wall, door, window, balcony, driveway, stairwell, porch, covered entry or any exterior surface of the Buildings; (ii) place any sunscreen, screen enclosures, blind, shutter or awning on any covered entry, porch or exterior opening of the Units or Buildings; (iii) place any draperies or curtains at the windows of any Unit facing the exterior of the Unit without a solid, light color liner acceptable in color to the Board of Directors; (iv) erect any exterior lights or signs (except seasonal holiday lights between November 16 and January 6, which may be subject to the rules of the Association) or (v) tint, color or otherwise treat or apply anything to any window which will adversely affect the uniform exterior appearance of the Buildings in the opinion of the Board of Directors. Developer shall be exempt from the restrictions set forth in this **Section 18.15**, but only so long as Developer is a Unit Owner.
- 18.16 Sound Transmission. Each Unit Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound and impact noise transmission in a building such as within the Condominium is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can be heard in another Unit. The Developer does not make any representation or warranty as to the level of sound or impact noise transmission between and among Units and between and among Units and the other portions of the Condominium Property, and each Unit Owner hereby waives and expressly releases, to the extent not prohibited by applicable law as of the date of this Declaration, any such warranty and claims for loss or damages resulting from sound or impact noise transmission.
- 18.17 Children. Children shall be permitted to be occupants of Units.
- 18.18 Signs/Flags. Except as may be required by legal proceedings, no signs, flags, banners or advertising posters of any kind shall be maintained or permitted within any windows, on the exterior of any Units, Limited Common Elements or Common Elements, or elsewhere on any portion of the Condominium Property, without the prior written consent of the Association. The Association may establish reasonable restrictions regarding the display of the said signs, flags, banners and posters. Notwithstanding the foregoing, nothing in this Declaration

shall prohibit a Unit Owner from displaying one portable, removable United States flag in a respectful way and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, from displaying, in a respectful way, portable, removable official flags, not larger than 4½ feet by 6 feet, that represent the United States Army, Navy Air Force, Marine Corps, or Coast Guard. Such display shall be in accordance with the rules promulgated by the Board. The Association may also require that only standardized “For Sale” or “For Rent” signs shall be used. The approval of any signs, flags and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the Association and may be arbitrarily withheld to the extent provided in this **Section 18.18**. Notwithstanding the foregoing, the restrictions of this **Section 18.18** shall not apply to Developer. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Elements and Limited Common Elements.

- 18.19 **Air Conditioning Units**. No window or wall mounted air conditioning units which are visible from outside of the Unit may be installed in any Unit.
- 18.20 **Hurricane Protection**. No type of hurricane protection may be installed in or around the Units and the Limited Common Elements appurtenant thereto, other than hurricane shutters or other hurricane protection approved by the Association, which shall be installed or affixed in a manner approved by the Association. The Association may require that such shutters be the same color as the Buildings. Any such hurricane shutters and similar equipment shall be kept in an open position, except during periods of hurricane or tropical storm watches or warnings. Each Owner who is not a permanent resident shall appoint an agent to be available during the hurricane season if needed and shall notify the Association of the name, address and telephone number of such person. Owners who will be absent from the Unit, shall do likewise for and during the periods of their absences.
- 18.21 **Casualty Clean-up**. The Association shall be responsible for the repair and clean up of all Common Elements and Limited Common Elements after any casualty, natural disaster or similar event, including but not limited to hurricanes, floods or terrorism, affecting the Condominium. The Association shall effect such repair and clean-up in an expeditious manner. In such event, the Association President may act on behalf of the Association and expend Association funds therefor on an emergency basis without the need for Board approval, if a quorum of the Board cannot reasonably be assembled for such purpose.
- 18.22 **Hazardous Substances**. No flammable, combustible or explosive fluids, chemicals or other substances may be kept in any Unit or Limited Common Element, except such as are generally used for normal household purposes. Electric, gas, charcoal or other cooking devices or outside cooking shall be permitted only in the backyard areas (but not the front or side yards) of a Unit and only in accordance with all local fire codes.

- 18.23 Antennas, Satellite Dishes. No Owner may install any antenna, satellite dish or other transmitting, receiving or telecommunications apparatus which may be visible from the outside of the Unit, or located on the Limited Common Elements, or the Common Elements of the Condominium without obtaining the prior written approval of the Association with respect to the location, color, manner of installation, operation, maintenance and proper screening of the such devices.
- 18.24 Play Equipment, Strollers, Etc. Bicycles, tricycles, scooters, skateboards, and other play equipment, baby strollers and similar items shall not at any time be left on Common Elements or the Limited Common Elements (including backyards and porches), except for those areas specifically designated by the Association as a storage area for such items, such as the garage.
- 18.25 Garbage Pickup. All garbage receptacles shall be stored in the garage of the Unit. Such garbage receptacles shall be transported by Owner to edge of the driveway serving the Unit no earlier than sunset of the evening prior to day of garbage collection. Garbage receptacles shall be returned to the garage by 6:00 p.m. on the day of such collection.
- 18.26 Lock Boxes. No lock boxes shall be permitted to be placed upon any Unit doors.
- 18.27 Documents. Each Owner shall be obligated to deliver the documents received from Developer, or from any prior Owner, containing this Declaration and any other declarations and documents, and any modifications thereto, to any purchaser or grantee of their Unit
- 18.28 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this **Section 18** for good cause shown as determined by the Association in its sole discretion.
- 18.29 Mitigation of Dampness and Humidity. No Unit Owner shall install, within his or her Unit, or upon the Common Elements or Condominium Property, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture, and/or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at 78°F, to minimize humidity in the Unit. Leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that Developer is not responsible, and hereby disclaims any responsibility for any illness, personal injury, death or allergic reactions which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees and/or the pets of all of the aforementioned persons, as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free

of contamination. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. Developer does not make any representations or warranties regarding the existence or development of molds or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. In the event that the Association reasonably believes that the provisions of this **Section 18.29** are not being complied with, then, the Association shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Owner or any other party) to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Owner to the Association). Each Unit Owner, by acceptance of a deed or other conveyance of a Unit, holds Developer harmless and agrees to indemnify Developer from and against any and all claims made by the Unit Owner and the Unit Owner's guests, tenants and invitees on account of any illness, allergic reactions, personal injury and death to such persons and to any pets of such persons, including all expenses and costs associated with such claims including, without limitation, inconvenience, relocation and moving expenses, lost time, lost earning power, hotel and other accommodation expenses for room and board, all attorneys fees and other legal and associated expenses through and including all appellate proceedings with respect to all matters mentioned in this **Section 18.29**.

18.30 **Effect on Developer.** Subject to the following exceptions, the restrictions and limitations set forth in this **Section 18** shall not apply to Developer nor to Units owned by Developer. Developer shall not be exempt from the restrictions, if any, relating to requirements that leases or lessees be approved by the Association, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to Developer's construction, maintenance and marketing activities.

19. **Selling and Leasing of Units.** The sale, transfer and leasing of Units by any Owner other than the Developer shall be subject to the following provisions:

19.1 **Approval by Association of Transfers.** It shall be necessary for the Board of Directors to approve or not approve in writing all sales, transfers of title, leases, subleases or other occupation of a Unit for which the occupant(s) pay rent, a fee or charge, before such sale, transfer, lease, sublease or occupation for which the occupant(s) pay rent, a fee or charge shall be valid and effective. Prior written approval of the Board of Directors shall also be required for any renewal or extension of the term of any lease, sublease or occupation of a Unit for which the occupant(s) pay a fee or charge before any such renewal or extension shall be

valid. Written application for such approval shall contain such information as may be required by application forms promulgated by the Board (the "Application") and shall be accompanied by a transfer fee as required by regulation of the Board; provided however, such fee shall not exceed the maximum amount permitted by law (the "Transfer Fee") and there shall be no Transfer Fee charged in connection with the approval of the renewal of a lease, sublease or occupation for which the occupants pay rent, a fee or charge. As of the date of this Declaration, the Transfer fee is \$100.00. When considering such application, consideration shall be given to good moral character, social compatibility, personal habits, and financial responsibility of the proposed purchaser, transferee, lessee, sublessee or occupant(s). Further, in considering approval of a lessee, sublessee or occupant paying rent, a fee or charge for occupation of a Unit, grounds for disapproval shall include an Owner's delinquency in the payment of Assessments at the time approval is sought. In addition to the foregoing, the Association may require that a prospective lessee of a Unit deposit with the Association an amount equal to one month's rent, as security (and not as an application against the last month's rent required to be paid under the lease), which the Association will deposit in an escrow account. Payment of interest, if any, claims against such deposits, refunds and disputes relating to the security deposit shall be governed by Part II of Chapter 83, Florida Statutes. A waiver of this provision or the failure to enforce it in any particular instance shall not constitute a waiver by, or estop, the Association from enforcing this provision in any other instance. A lessee of a Unit shall not assign his lease or sublet his Unit without the prior written approval of the Board of Directors or its duly authorized officers or Committee. In the event a lease, sublease, or occupation of a Unit for which the occupant(s) pay a fee or charge or any renewal or extension of the term thereof, is disapproved (and notwithstanding the payment of such fee or charge), the Unit shall not be leased, subleased or so occupied or the same shall not be so renewed or the term so extended, as the case may be.

19.2 Right of First Refusal of Developer & Association. Resales of all Units are subject to rights of first refusal by the Developer and the Association as follows. Developer's right of first refusal shall be in force for a period of four (4) years from the date of recording of this Declaration ("Developer's Option Period"). The Association's right of first refusal shall exist in perpetuity from the date of recording of this Declaration. The Developer's right of first refusal shall be superior to the Association's right of first refusal during Developer's Option Period. All Unit Owners hereby disclaim any and all actions or claims against Developer for Developer's exercise of such right during this four (4) year period. Unit Owners shall take the following procedures upon the resale of their Unit.

19.2.1 During Developer's Option Period.

- (a) Offer to Developer. Any Unit Owner who receives a bona fide offer to purchase a Unit (such offer to purchase a Unit is called an "Outside Offer", the party making any such Outside Offer is called an "Outside Offeror", and the Unit Owner to whom the Outside Offer is made is called an "Offeree Unit Owner") which he intends

to accept shall deliver such Outside Offer to Developer. The delivery of such Outside Offer to the Developer shall constitute an offer by such Unit Owner to sell his Unit to the Developer or to its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation to the Developer by the Unit Owner who has received such Outside Offer that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Developer may reasonably request. Not later than ten (10) days after receipt of such Outside Offer by Developer, together with such further information as may have been requested, Developer or its designee may elect, by sending written notice to such Offeree Unit Owner before the expiration of said ten (10) day period to purchase such Unit upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner. In the event the Developer shall timely elect to purchase such Unit or to cause the same to be purchased by its designee, title shall close at the office of the attorneys for the Developer, in accordance with the terms of the Outside Offer, within forty-five (45) days after the giving of notice by the Developer of its election to accept such offer. If, pursuant to such Outside Offer, the Outside Offeror was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, the Developer may purchase the Unit and assume or take title to the Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Unit Owner shall convey the same to the Developer, or to its designee, by statutory warranty deed, with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sale. Title shall be good and marketable and insurable and the Offeree Unit Owner shall deliver an abstract or provide a title binder (and subsequently, title insurance) at its expense at least thirty (30) days prior to such closing. Real estate taxes, mortgage interest, if any, and Assessments shall be apportioned between the Offeree Unit Owner and the Developer, or its designee, as of the closing date.

- (b) Offer to Association. In the event Developer or its designee fails to accept the offer set forth in **Section 19.2.1(a)** above within the ten (10) day option period, the Offeree Unit Owner shall deliver a complete Application and Transfer Fee to the Board. Upon such delivery, the Association shall have a right of first refusal to purchase the Unit on the same terms as set forth in **Section 19.2.1(a)** above.

19.2.2 After Developer's Option Period. Subsequent to the expiration of Developer's Option Period, Unit Owners shall comply with the provisions

of **Section 19.2.1(a)** hereof, with the Association having all rights therein, in place of Developer, except the Unit Owner shall deliver a complete Application and the Transfer Fee to the Board along with the Outside Offer.

19.2.3 **Failure to Exercise Right.** In the event both the Developer (during Developer's Option Period) and the Association or its designee shall fail to accept such offer within the above time periods, the Offeree Unit Owner shall be free to accept the Outside Offer within thirty (30) days after (i) notice of refusal is given by the Developer (during Developer's Option Period) and Association, or (ii) the expiration of the period in which the Developer (during Developer's Option Period) and Association might have accepted such offer, as the case may be. In the event the Offeree Unit Owner shall not, within such thirty (30) day period, accept, in writing, the Outside Offer or if the Offeree Unit Owner shall accept the Outside Offer within such thirty (30) day period, but such sale shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing thereunder, then should such Offeree Unit Owner hereafter elect to sell such Unit, as the case may be, the Offeree Unit Owner shall be required to again comply with all of the terms and provisions of this **Section 19.2.**

19.3 **Miscellaneous.** Any deed to an Outside Offeror shall automatically be deemed to provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the Bylaws, the Articles of Incorporation, applicable rules and regulations, and all other agreements, documents or instrument affecting the Condominium Property, as the same may be amended from time to time. Any purported sale of a Unit in violation of this **Section 19** shall be voidable at any time at the election of the Developer and/or Association and if the Board of Directors shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Developer and/or Association, as applicable, to institute legal proceedings to evict the purported tenant (in case of an unauthorized leasing), or to void the conveyance (in case of an unauthorized sale). Said Unit Owner shall reimburse the Developer or Association for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings. Notwithstanding anything herein contained to the contrary, the Developer and/or Board of Directors, in exercising their rights as provided in this **Section 19**, shall not make any decision in a discriminatory manner, and no decision shall be made on the basis of race, gender, religion, national origin or physical or mental handicap.

19.4 **Anti-Flipping Provision.** If a Unit Owner contracts to resell its Unit to a third party purchaser within one (1) year of the closing of such Owner's initial purchase of such Unit from Developer, that Unit Owner shall pay a fee to Developer equal to one and one-half percent (1.5%) of the total purchase price of the Unit paid by such third party purchaser. This fee shall be paid to the Developer at the closing of the sale to the third party purchaser.

- 19.5 Exemption for First Mortgagees and Others. The foregoing provisions of **Sections 19.1, 19.2 and 19.4** shall not apply to: (i) a transfer to, or purchase by a First Mortgagee which acquires title as a result of owning a mortgage upon the Unit involved, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; (ii) a transfer or sale by such First Mortgagees; (iii) a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding which is provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale; and (iv) the sale or resale by the Developer of a Unit.
- 19.6 Transfer of Interest in Unit Owner. For purposes of this **Section 19**, if Unit Owner is a corporation (or a partnership or joint venture or trust or other business entity), if any stock or partnership interest or joint venture interest or beneficial interest in Unit Owner shall be transferred in any manner, or if such stock or partnership interest or joint venture interest or beneficial interest shall be assigned, pledged, hypothecated, mortgaged or otherwise encumbered with the primary goal being the avoidance of the obligations of Unit Owner pursuant to this **Section 19**, such shall constitute a sale of the Unit.
- 19.7 Amendment. Notwithstanding anything to the contrary in this Declaration of Condominium, this **Section 19** shall not be amended without the prior written approval of Owners having not less than one hundred percent (100%) of the Voting Interests (as well as Developer, for any amendment which would affect Developer).

20. **Rights of Developer.** It is recognized that as of the date of recording hereof, construction of all of the Improvements and the Units contemplated by the survey and plot plan described in **Exhibit "A"** may not be completed. Developer expressly reserves every right, necessary or desirable, relative to the Common Elements and the Condominium Property generally, for the purpose of constructing and completing all Improvements within the Condominium Property and the Units and effecting the sale, re-sale or lease of all of the Units.

During such time as the Developer is in the process of construction on any portion of the Condominium Property, the Developer, its successors or assigns, reserves the right to prohibit access to any portion of the Common Elements, and to utilize various portions of the Condominium Property in connection with such construction and development. No Owner or his guests, or invitees shall in any way interfere or hamper the Developer, its employees, successors or assigns, in connection with such construction.

21. **Termination of Condominium.** The Condominium shall continue until (a) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (b) such time as withdrawal of the Condominium Property from the provisions of the Condominium Act is authorized by a vote of Owners owning at least eighty percent (80%) of the applicable interests in the Common Elements and by the Institutional First Mortgagees of Units to which at least sixty-seven percent (67%) of the Voting Interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant. In the event such withdrawal is authorized as aforesaid, and provided that the Board first notifies the Division of an intended withdrawal, the Condominium Property shall be subject to an action for partition by any Owner,

mortgagee or lienor as if owned in common in which event the net proceeds of the partition sale shall be divided among all Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to an Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the Public Records of Palm Beach County. The Association shall, within thirty (30) days following such recordation, provide the Division with a copy of such recorded certificate.

This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.

22. **Compliance and Default.** The Association, each Owner, occupant of a Unit, tenant and other invitee of an Owner shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Condominium Act:

22.1 **Mandatory Nonbinding Arbitration of Disputes.** Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and reasonable attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be charged the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

22.2 Negligence and Compliance. An Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees. In the event an Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the Bylaws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines, to sue at law for damages, to enforce its Collateral Assignment of Rents and to charge the Owner for the sums necessary to do whatever work is required to put the Owner or Unit in compliance, provided, however, that nothing contained in this section shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of an Owner, a tenant or the Association to comply with the requirements of the Condominium Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). An Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

23. **Additional Rights of Mortgagees and Others.**

23.1 Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles of Incorporation; (c) the Bylaws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.

23.2 Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of:

23.2.1 Any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;

23.2.2 A sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;

23.2.3 The occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

23.2.4 Any proposed action which requires the consent of a specified number of mortgage holders.

24. **Covenant Running With the Land**. All provisions of this Declaration, the Articles of Incorporation, Bylaws, and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successor, and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and applicable rules and regulations of the Association, all as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, the Articles of Incorporation, Bylaws, and applicable rules and regulations of the Association, all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

25. **DISCLAIMER OF WARRANTIES.**

DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND, INCLUDING BUT NOT LIMITED TO, CONTINUANCE OF ANY PARTICULAR VIEW (IT BEING UNDERSTOOD AND AGREED THAT CONSTRUCTION ON ANY ADJACENT PROPERTIES MAY OBSTRUCT OR ALTER SUCH VIEW), DESIGN, CONSTRUCTION, SOUND TRANSMISSION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, AND COMPLIANCE WITH GOVERNMENTALLY APPROVED PLANS AND SPECIFICATIONS (INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND HABITABILITY), EXCEPT ONLY (I) ANY BONDED BUILDERS OR OTHER WARRANTY PROVIDED TO AN OWNER PURSUANT TO THEIR PURCHASE AGREEMENT WITH DEVELOPER, AND (II) THOSE SET FORTH IN SECTION 718.203 OF THE CONDOMINIUM ACT, TO THE EXTENT APPLICABLE AND TO THE EXTENT THAT SAME HAVE NOT EXPIRED BY THEIR TERMS. SELLER'S SOLE WARRANTIES ARE THOSE MENTIONED ABOVE AND SELLER HAS MADE NO ADDITIONAL WARRANTIES OR REPRESENTATIONS IN CONNECTION WITH EITHER THE CONDOMINIUM PROPERTY OR THE UNIT INCLUDING, WITHOUT LIMITATION, WORKMANSHIP OR MATERIALS EXCEPT AS SPECIFICALLY SET FORTH HEREIN. WARRANTIES ON APPLIANCES AND AIR CONDITIONING SYSTEMS FURNISHED WITH THE UNIT ARE MANUFACTURER'S WARRANTIES ONLY AND BUYER AGREES TO BE LIMITED TO THE MANUFACTURER'S WARRANTIES FOR ANY RELIEF PERTAINING TO BREACH OF EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING

THEREFROM ARE HEREBY DISCLAIMED. ALL OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

26. **Mold.** Given the climate and humid conditions in Florida, molds, mildew, toxins and fungi may exist and/or develop within the Unit and/or the Condominium Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi, and to have released Developer from any and all liability resulting from same, including, without limitation, any liability for incidental or consequential damages (which may result from, without limitation, the inability to possess the Unit, inconvenience, moving costs, hotel costs, storage costs, loss of time, lost wages, lost opportunities and/or personal injury). Without limiting the generality of the foregoing, leaks, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that Developer is not responsible for any illness or allergic reactions, personal injury or death which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees and to any pets of persons aforementioned in this sentence, as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free of contamination.

27. **Square Footage.** Each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage of the Unit may vary. Additionally, as a result of "in the field" construction, other permitted changes to the Unit, and settling and shifting of Improvements, actual square footage of a Unit may also be affected. By accepting title to a Unit, the applicable Owner shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included in Developer's promotional materials or otherwise. Without limiting the generality of this **Section 27**, Developer does not make any representations or warranty as to the actual size, dimensions (including ceiling heights) or square footage of any Unit, and each Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage of the Unit.

28. **Construction; Nearby Activities.** Due to the fact that the Condominium is located in an urban area in North Palm Beach, Florida, demolition and/or construction of buildings and other structures within the immediate area or within the views of the Condominium or any Unit therein may occur. Such construction of other buildings and structures may block, obstruct, shadow or otherwise affect any views which may currently be visible from the Condominium or any Unit, and may cause noise, commotion or other unpleasant effects. All Owners agree to release Developer and every affiliate of Developer from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind, including attorneys' fees and costs and appellate fees and costs, related to or arising out of any claim against Seller or its

affiliates related to loss of views or other effects of nearby construction and development activities.

A public service building is located near the North side of the Condominium Property. The public service building contains a natural gas/propane engine/generator that emits noise that may be heard by and disturb some Unit Owners. By acquiring title to a Unit, all Unit Owners acknowledge the existence of the public service building and agree that any noise from its natural gas/propane engine/generator, or related mechanisms, shall not be deemed a nuisance hereunder or at law and that Developer shall not be liable, in any way, for such noise.

The Condominium Property is located along U.S. Highway 1, which, from time to time, undergoes construction. Developer makes no representations or warranties that this portion of U.S. Highway 1 will not undergo construction or widening in the future. By acquiring title to a Unit, all Unit Owners agree that any noise from such construction shall not be deemed a nuisance hereunder or at law and that Developer shall not be liable, in any way, for such noise. and shall not give a Purchaser or Unit Owner any additional rights under the Purchase Agreement or the Condominium Declaration.

29. **Additional Provisions.**

- 29.1 **Notices.** All notices to the Association required or desired hereunder or under the Bylaws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Condominium Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices and communication to Developer shall be sent by certified mail (return receipt requested) to Mariner Court, LLC, P.O. Box 926, Lake Worth, FL 33460, or such other address as may have been designated by Developer from time to time, in writing. All notices shall be deemed to have been given the earlier of when received, or three (3) days after they are mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given the earlier of when received, or five (5) business days after proper mailing.
- 29.2 **Interpretation.** The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 29.3 **Mortgagees.** Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and

may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.

- 29.4 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.
- 29.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 29.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 29.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 29.8 Waiver. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
- 29.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and Bylaws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 29.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of Developer, all documents or consents which may be required by all governmental agencies to allow Developer and its affiliates to complete the plan of development of the Condominium as such plan may be hereafter amended, and each such Owner

further appoints hereby and thereby Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of Developer.

- 29.11 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 29.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 29.13 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, Bylaws, any rules or regulations of the Association or any other document governing or binding the Association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:
- (a) It is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;
 - (b) The Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, County and/or any other jurisdiction or the prevention of tortuous activities; and
 - (c) The provisions of the Association Documents setting forth the uses of Assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of Assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if Assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of his acceptance of title to his Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to

have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed hereby. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and Board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns. The provisions hereof shall also inure to the benefit of Developer, which shall be fully protected hereby.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the ____ day of _____, 200__.

Signed in the presence of

MARINER COURT, LLC, a Florida limited liability company

By: _____

Name: _____

Print Name: Paul F. Guillaro

Its: Managing Member

Name: _____

STATE OF FLORIDA)

) SS:

COUNTY OF PALM BEACH)

The foregoing Declaration was acknowledged before me, this __ day of _____ 200__, by Paul F. Guillaro, as Managing Member of Mariner Court, LLC, a Florida limited liability company, on behalf of said limited liability company. He is personally known to me or has produced _____ as identification.

Name: _____

Notary Public, State of Florida

My Commission Expires: _____

Commission No.: _____

(Notarial Seal)

JOINDER OF ASSOCIATION

MARINER COURT CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, hereby joins in and consents to the foregoing Declaration of Condominium and hereby agrees to the provisions thereof and assumes the obligations imposed upon it therein.

IN WITNESS WHEREOF, MARINER COURT CONDOMINIUM ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its

corporate seal to be affixed this _____ day of _____, 200__.

Witnessed by:

MARINER COURT CONDOMINIUM ASSOCIATION, INC.,
a Florida corporation not for profit

By: _____

Name: _____

Name: Christopher J. Amorosana
President

Name: _____

[CORPORATE SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

The foregoing Joinder was acknowledged before me this _____ day of _____, 200__, by Christopher J. Amorosana, as President of **MARINER COURT CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not-for-profit, on behalf of said corporation. He/she is personally known to me or has produced _____ as identification.

Name: _____
Notary Public, State of Florida
My Commission Expires: _____
Commission No.: _____

(Notarial Seal)

MORTGAGEE JOINDER

to

Declaration of Condominium for Mariner Court, a Condominium

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (the "Mortgagee"), the holder of that certain _____, recorded in Official Records Book _____, Page _____, of the Public Records of Palm Beach County, Florida (collectively, the "Mortgage"), which Mortgage constitutes a lien upon the real property described in the foregoing Declaration of Condominium of Mariner Court, a Condominium (the "Declaration"), hereby consents to MARINER COURT, LLC, a Florida limited liability company, ("Declarant"), subjecting the lands described therein to the provisions of the Declaration and agrees that the lien and encumbrance of the Mortgage shall be subordinate to the Declaration.

The subordination set forth herein is limited strictly to the rights of Declarant, its successors and assigns, created by the Declaration and this subordination shall not constitute a subordination to the rights of any other person or entity that holds any interest in the Property, as defined in the Declaration.

Dated this _____ day of _____, 200_.

Witnesses: _____

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA _____)
_____)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 200__, by _____ as _____ of _____, on behalf of the bank, and such individual [] produced _____ as identification or [] is personally known to me.

My commission expires: _____
NOTARY PUBLIC, State of _____
Print Name: _____

EXHIBIT INDEX

Exhibit "A"	Survey and Plot Plan
Exhibit "B"	Articles of Incorporation
Exhibit "C"	Bylaws
Exhibit "D"	Guaranteed Assessments
Exhibit "E"	Legal Description

EXHIBIT "A"
Survey and Plot Plan

EXHIBIT “B”

Articles of Incorporation

EXHIBIT “C”

Bylaws

EXHIBIT “D”

Guaranteed Assessments

EXHIBIT "E"

Legal Description

LOT B, PLAT NO. 2, PALM BEACH LAKE WORTH ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 35, PAGE 143, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.