

**EXHIBIT "4" TO DECLARATION OF  
BEACH CLUB, A CONDOMINIUM**

**BY-LAWS OF CONDOMINIUM ASSOCIATION**

((H05000114546 3)))

CERTIFICATE OF DESIGNATION  
REGISTERED AGENT/REGISTERED OFFICE

Pursuant to the provisions of section 607.0501, Florida Statutes, the undersigned corporation, organized under the laws of the State of Florida, submits the following statement in designating the registered office/registered agent, in the state of Florida.

1. The name of the corporation is:

BEACH CLUB 160 CONDOMINIUM ASSOCIATION, INC.

2. The name and address of the registered agent and office is:

Ana V. De Villiers  
201 Alhambra Circle  
Suite 601  
Coral Gables, Florida 33134



Ana V. De Villiers

Title: Incorporator

Date: 5/4, 2005.

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.



Ana V. De Villiers

Date: 5/4, 2005.

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**EXHIBIT "6" TO DECLARATION OF  
BEACH CLUB, A CONDOMINIUM**

**RULES AND REGULATIONS**

**RULES AND REGULATIONS  
FOR  
BEACH CLUB, A CONDOMINIUM**

1. The sidewalks, entrances, passages, lobbies and hallways and like portions of the Common Elements shall not be obstructed nor used for any purpose other than for ingress and egress to and from the Condominium Property or Common Elements; nor shall any carts, bicycles, carriages, chairs, tables or any other objects be stored therein, except in areas (if any) designated for such purposes.
2. The personal property of Unit Owners and occupants must be stored in their respective Units.
3. No articles other than patio-type furniture shall be placed on the balconies, patios or other Common Elements. No linens, cloths, clothing, bathing suits or swimwear, curtains, rugs, mops, or laundry of any kind, or other articles, shall be shaken or hung from any of the windows, doors, balconies, terraces or other portions of the Condominium or Association Property.
4. No Unit Owner or occupant shall permit anything to fall from a window or door of the Condominium or Association Property, nor sweep or throw from the Condominium or Association Property any dirt or other substance onto any of the balconies or elsewhere in the Building or upon the Common Elements.
5. No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the company or agency providing trash removal services for disposal or collection shall be complied with. All equipment for storage or disposal of such material shall be kept in a clean and sanitary condition.
6. Employees of the Association are not to be sent out by Unit Owners or occupants for personal errands. The Board of Directors shall be solely responsible for directing and supervising employees of the Association.
7. No repair of vehicles shall be made on the Condominium Property.
8. No sign, advertisement, notice or other graphics or lettering shall be exhibited, displayed, inscribed, painted or affixed in, or on upon any part or the Condominium or Association property, except signs used or approved by the Developer or the Board of the Association. Additionally, no awning, canopy, shutter or other projection shall be attached to or placed upon the outside walls or roof of the Building or on the Common Elements, without the prior written consent of the Board of Directors of the Association. Notwithstanding anything herein or in any of the Condominium documents to the contrary, any Unit Owner may display one (1) portable, removable United States flag in a respectful way; and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day any Unit Owner may display in a respectful way portable, removable official flags, not larger than 4.5 feet by 6 feet that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.
9. No flammable, combustible or explosive fluids, chemicals or substances shall be kept in any Unit or on the Common Elements.
10. A Unit Owner or occupant shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building. Curtains and drapes (or linings thereof) which face on exterior windows or glass doors of Units shall be white or off-white in color, or otherwise shall require the prior written approval of the Board, failing which, they shall be removed and replaced with acceptable items. Notwithstanding anything herein or in any of the Condominium documents to the contrary, any Unit Owner may display one (1) portable, removable United States flag in a respectful way; and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day any Unit Owner may display in a respectful way portable, removable official flags, not larger than 4.5 feet by 6 feet that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.
11. No air-conditioning units may be installed by Unit Owners or occupants. No Unit shall have any aluminum foil placed in any window or glass door or any reflective or tinted substance placed on any glass, unless approved, in advance by the Board of Directors in writing. No unsightly materials may be placed on any window or glass door or be visible through such window or glass door.

12. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Condominium Property and including full compliance by them with these Rules and Regulations and all other rules and regulations of the Association. Loud noises will not be tolerated. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing the recreational facilities.

13. No pets may be left unattended anywhere within the Common Elements of the Condominium. Further, no pets may be within the Common Elements of the Condominium, unless they are on a leash, which is a maximum of six (6) feet long. No pets are allowed on the pool deck, even with a leash.

14. Every Owner and occupant shall comply with these Rules and Regulations as set forth herein, any and all rules and regulations which from time to time may be adopted, and the provisions of the Declaration, By-Laws and Articles of Incorporation of the Association, as amended from time to time. Failure of an Owner or occupant to so comply shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees lessees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, Articles of Incorporation or By-Laws, provided the following procedures are adhered to:

(a) Notice: The Association shall notify the Owner or occupant of the infraction or infractions. Included in the notice shall be a date and time of the next Board of Directors meeting at which time the Owner or occupant shall present reasons why penalties should not be imposed. A committee of other Unit Owners shall also be present in addition to the Board of Directors in order for the committee to review the infraction and penalty.

(b) Hearing: The non-compliance shall be presented to the Board of Directors after which the Board of Directors, and a committee of other Unit Owners, shall hear reasons why penalties should not be imposed. A written decision of the Board and committee shall be submitted to the Owner or occupant by not later than twenty-one (21) days after the meeting.

(c) Fines: The Board of Directors may impose fines against the applicable Unit up to the maximum amount permitted by law from time to time. Notwithstanding the foregoing, if the committee of Unit owners described above does not agree with the fine, the fine may not be levied.

(d) Violations: Each separate incident which is grounds for a fine shall be the basis of one separate fine. In the case of continuing violations, each continuation of same after a notice thereof is given shall be deemed a separate incident.

(e) Payment of Fines: Fines shall be paid not later than thirty (30) days after notice of the imposition thereof.

(f) Application of Fines: All monies received from fines shall be allocated as directed by the Board of Directors.

(g) Non-exclusive Remedy: These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending owner or occupant shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such owner or occupant.

15. These rules and regulations shall be cumulative with the covenants, conditions and restrictions set forth in the Declaration of Condominium, provided that the provisions of same shall control over these rules and regulations in the event of a conflict or a doubt as to whether a specific practice or activity is or is not permitted. Anything to the contrary notwithstanding, these rules and regulations shall not apply to the Developer, nor its agents or employees and contractors, nor to the Units owned by the Developer. All of these rules and regulations shall apply to all other owners and occupants even if not specifically so stated in portions hereof. The Board of Directors shall be permitted (but not required) to grant relief to one or more Unit Owners from specific rules and regulations upon written request therefore and good cause shown in the sole opinion of the Board.

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

David Shear, Esq.  
Fieldstone Lester Shear & Denberg, LLP  
201 Alhambra Circle, Suite 601  
Coral Gables, Florida 33134

(Reserved for Clerk of Court)

**DECLARATION OF CONDOMINIUM**

**OF**

**BEACH CLUB, A CONDOMINIUM**

Beach Club 160, LLC, a Florida limited liability company, hereby declares:

1. Introduction and Submission.

- 1.1 The Land. The Developer owns the fee title to certain land located in Brevard County, Florida, as more particularly described in Exhibit 1 annexed hereto (the "Land").
- 1.2 Submission Statement. The Developer hereby submits the Land for all improvements erected or to be erected thereon, and all other property, real, personal or mixed, now or hereafter situated on or within the Land (but excluding all public or private utility installations therein or thereon) to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof. 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, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto.
- 1.3 Name. The name by which this condominium is to be identified is BEACH CLUB, A Condominium (hereinafter called the "Condominium").

2. Definitions. The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- 2.1 "**Act**" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof.
- 2.2 "**Articles**" or "**Articles of Incorporation**" mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.3 "**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.

- 2.4   **"Association"** or **"Condominium Association"** means BEACH CLUB 160 CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, the entity responsible for the operation of the Condominium.
- 2.5   **"Association Property"** means the property, real and personal, in which title or ownership is vested in the Association for the use and benefit of its members.
- 2.6   **"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.
- 2.7   **"Building"** means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.
- 2.8   **"By-Laws"** mean the By-Laws of the Association, as amended from time to time.
- 2.9   **"Common Elements"** mean and include:
- (a)   The portion of the Condominium Property which are not included within the Units.
  - (b)   Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.
  - (c)   An easement of support in every portion of a Unit which contributes to the support of the Building.
  - (d)   The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
  - (e)   Any other parts of the Condominium Property designated as Common Elements in this Declaration.
- 2.10   **"Common Expenses"** mean all expenses incurred by the Association for the Condominium. For all purposes of this Declaration, "Common Expenses" shall also include all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended, but shall not include any other separate obligations of individual Unit Owners. For all purposes of this Declaration, "Common Expenses" shall also include: (i) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (ii) the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract; and (iii) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, and in-house communications and surveillance systems.
- 2.11   **"Common Surplus"** means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.
- 2.12   **"Condominium Parcel"** means a Unit together with 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.
- 2.13   **"Condominium Property"** means the land, improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.

- 2.14 "County" means the County of Brevard, State of Florida.
- 2.15 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.
- 2.16 "Developer" means Beach Club 160, LLC, a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned and any mortgagee which is the successor to the interest of the Developer, to the extent such mortgagee accepts the rights and obligations of the Developer. 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. In the event of any partial assignment, the assignee shall not be deemed the initial Developer, but may exercise such rights of Developer as are specifically assigned to it, subject to the requirement of Florida law that a subsequent developer cannot retain control of the Association unless it has received a qualifying assignment of the creating developer's rights and obligations. Any such assignment may be made on a non-exclusive basis.
- 2.17 "Dispute" for purposes of Section 19.1, means any disagreement between two or more parties that involves: (a) the authority of the Board, under Chapter 718, Florida Statutes, or under this Declaration, the Articles or By-Laws to: (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit; or (ii) alter or add to a Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws 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 Elements; the interpretation or enforcement of any warranty; or the levy of a fee or Assessment or the collection of an Assessment levied against a party.
- 2.18 "Division" means the Division of Florida Land Sales, Condominium and Mobile Homes of the Department of Business and Professional Regulation, State of Florida.
- 2.19 "First Mortgagee" means any person or entity that is the holder of a first mortgage lien on a Unit.
- 2.20 "Improvements" mean all structures and artificial changes to the natural environment located on the Condominium Property including, but not limited to, the Buildings.
- 2.21 "Institutional First Mortgagee" means 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, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units or Condominium Property. 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.
- 2.22 "Limited Common Elements" mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

- 2.23 "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.
- 2.24 "Special Assessment" means any Assessment levied against Unit Owners other than Assessments required by a budget adopted annually.
- 2.25 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- 2.26 "Unit Owner" or "Owner of a Unit" or "Owner" means the Owner of a Condominium Parcel.
- 2.27 "Voting Interest" means the voting rights of the Association members pursuant to the Articles and By-Laws.

3. Description of the Condominium.

- 3.1 Identification of Units. The Land has constructed thereon the Buildings containing one hundred sixty (160) Units. Each such Unit is identified by a separate designation. The designation of each of such Units is set forth on Exhibit 2 attached hereto. Exhibit 2 consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit 2, together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Limited 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, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.
- 3.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:
- (a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
- (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the second story if the Unit is a two-story Unit, provided that in two-story Units 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).
- (ii) 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 if the Unit is a two-story Unit), provided that in two-story Units 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.

- (iii) Interior Divisions. Except as provided in subsections (i) and (ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the two floors or nonstructural interior walls shall be considered a boundary of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (c) Apertures. 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. Exterior surfaces made of glass or other transparent material, and the exteriors of doors, all wires, conduits, ducts, vents, concrete joists and other such facilities serving more than one Unit located within any walls, including divider walls, or above the nonstructural acoustical ceiling lying below the upper boundary of the Unit, shall not be included in the boundaries of the Unit and shall therefore be Common Elements.
- (d) 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 2 hereto shall control in determining the boundaries of a Unit, except that the provisions of Section 3.2(c) above shall control unless specifically depicted otherwise on such survey. The air-conditioning closets and air-handlers and condensing units located therein shall be part of the Unit they serve.
- (e) Property Excluded from Units. A Unit shall not be deemed to include foundations, columns, girders, beams, supports, exterior walls, interior load bearing walls, pillars, underlying floors, essential and permanent installations and equipment for power, lights, and exhaust fans, and all pipes, conduits, ducts, vents and other service and utility lines which are utilized for, serve, pass through more than one Unit or the Common Elements.
- 3.3 Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:
- (a) Patios, Balconies and Terraces. Any patio, balcony or terrace, including, but not limited to, such areas located on the roof of the Building (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s). The Association shall be responsible for the cost of maintenance of the structural and mechanical elements of any such Limited Common Elements, with the owner of the Unit to which they are appurtenant to be responsible for the general cleaning, plant care and the upkeep of the appearance of the area.
- (b) Miscellaneous Areas, Equipment. Any fixtures or equipment located not within a Unit (e.g., an air conditioning compressor or hot water heater) serving a Unit or Units exclusively and any area upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s).
- (c) Parking Spaces. Parking for the Condominium is part of the Common Elements of the Condominium on the Condominium Property. The

parking spaces shown on Exhibit 2 of the Declaration may be assigned to a Unit (which assignment need not be recorded in the public records of the County) by the Developer (for so long as the Developer offers a Unit for sale in the Condominium, and thereafter by the Association), whereupon it shall become Limited Common Elements of the Unit to which it is assigned.

A Unit Owner may assign the Limited Common Element parking space appurtenant to his Unit to another Unit by written instrument delivered to (and to be held by) the Association; provided, however, that no Unit may be left without one Limited Common Element parking space. Upon making such assignment, the Limited Common Element so assigned shall become an appurtenance to the Unit(s) and shall pass with title thereto regardless of whether or not specifically referenced in the deed or other instrument of conveyance of the Unit.

As to any Limited Common Element parking space which was originally assigned by the Developer to a Unit owned by the Developer, the Developer reserves the right, at any time provided that the Developer still owns said Unit, to reassign such parking space, provided that at all times, each Unit shall have one Limited Common Element parking space.

- (d) Cooling Tower and Other Equipment. A cooling tower, air conditioning equipment or other equipment serving one or more but not all Units shall be a Limited Common Element of the Unit(s) so served, with the Association to maintain such equipment at the sole cost and expense of the Unit Owner(s) served by said equipment. The cost of maintaining said equipment shall be divided equally among the Units served by said equipment. In the event that physical changes in the Building result in additional Units being served by such equipment or, in the alternative, Units ceasing to be so served, then the equipment shall be a Limited Common Element appurtenant to the Units added and shall cease to be one to the Units deleted.
- (e) Storage Spaces. Developer hereby reserves the right to assign (for consideration or no consideration, in Developer's sole discretion), the exclusive right to use any storage space located in the Common Elements of the Condominium, if any, to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. Such assignment shall not be recorded in the Public Records of the County but, rather, shall be made by way of instrument placed in the official records of the Association (as same are defined in the By-Laws). Upon making such assignment, the Limited Common Elements so assigned shall become an appurtenance to the Unit(s) and shall pass with title thereto regardless of whether or not specifically referenced in the deed or other instrument of conveyance of the Unit. The maintenance of any space so assigned, as well as the insurance of its contents, shall be the sole responsibility of the Owner of the Unit(s) to which it is assigned. A Unit Owner may assign the storage space appurtenant to his Unit to another Unit by written instrument delivered to (and to be held by) the Association.
- (f) Other. Any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one or more Units (other than exterior staircases and walkways not labeled as Limited Common Elements on Exhibit "2" hereto) shall be deemed Limited Common Elements of the Units served. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes Limited Common Elements or in the event of any question as to which Units are served thereby, a

decision shall be made by the Board of Directors and shall be binding and conclusive when so made.

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act):

- (a) Support. Each Unit, the Building and Improvements shall have an easement of support and of necessity under and upon, 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 improvement which abuts any Unit, the Building and the Improvements.
- (b) Utility and Other Services: Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, and other services and drainage in order to serve the Condominium. 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, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall have a right of access to each Unit to inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, hot water heaters, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in 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). Drainage systems on the Condominium Property, if any, shall be maintained continuously in good condition by the Association and easements are granted hereby over all Units in favor of all Owners and the Association with respect thereto.
- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements (c) any Improvements encroach upon Common Elements ; (d) any Common Elements or "improvements" of another condominium created within the complex encroach upon the Condominium Property; or (e) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) 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 or common areas, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements or the relevant "improvements" of another condominium within the complex shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner, resident of the Condominium, their guests and invitees and the Association and its employees and agents shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements, as from time to time may be intended

and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements, as from time to time may be paved and intended for such purposes. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium. Any such lien encumbering such easements (other than those on Condominium) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

- (e) Construction: Maintenance. The Developer (including its designees, contractors, successors mortgagees 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 completing the construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, and construct any adjacent condominium building and to construct any improvements and for repair, replacement and maintenance purposes or where the Developer, in its sole discretion, determines that it is required.
- (f) Sales and Leasing Activity. For as long as the Developer is offering any Units for sale in the ordinary course of business, the Developer, its designees, successors mortgagees and assigns, shall have the right to use any such Units and parts of the Common Elements for guest accommodations, model apartments and sales and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units, and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease and for any other similar purpose the Developer deems appropriate in its opinion.
- (g) Additional Easements. The Developer (as long as it is offering any Units for sale in the ordinary course of business) and the Association, on their behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as its attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association 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, 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. The Developer's right to grant additional easements as provided in this Section 3.4 shall be cancelable by the Association after the Unit Owners, other than the Developer, have assumed control of the Association.
- (h) Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Building, 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 (provided that the use of this easement shall not unreasonably interfere with the structure, operation or use of the Condominium Property or the Building).

- (i) Divider Walls. The wall separating the Unit of one Owner from the Unit of a vertically or horizontally adjoining Owner shall be referred to as a "divider wall". A divider wall shall not be removed or constructed by an Owner, except as provided in this subsection 3.4(i). In the event a Unit Owner acquires an adjacent Unit and a divider wall is no longer necessary to completely separate the adjoining Units, the Owner may remove the divider wall or construct or cause to be constructed a doorway or passageway between the adjoining Units (and an easement is hereby reserved and granted for such purpose) but only after having obtained all required governmental approvals, approval of the Board, and has complied with all reasonable restrictions imposed by the Board. The removal of the divider wall or the construction of such doorway or passageway shall be at the sole cost and expense of the Owner performing same and such removal or construction shall not diminish, or in any way impair, the structural integrity or soundness of the Building. When title to adjoining Units (which do not then share a complete divider wall) shall vest in two individuals or entities who thereupon become vertically or horizontally adjoining Unit Owners, then the Owners of such adjoining Units, acting together, must construct, sharing the costs and expenses therefor equally, a divider wall to completely or partially separate said adjoining Units. A divider wall may not be constructed or erected, however, until the review (at the expense of the Unit Owner) and consent of the Association and until all governmental approvals, as aforesaid, have been obtained. Any such construction shall be effected at the expense of the Owner(s) performing same and in accordance with the plans and specifications for construction. In no event may a divider wall be constructed if the structural soundness of the Building may in any way be affected thereby. Adjoining Units which share a divider wall shall have a cross-easement of support in the divider wall. Each Owner shall be responsible for any damage caused to a divider wall by its negligent or intentional acts or the negligent or intentional acts of its employees or agents, and the cost of said repair shall be the specific obligation of that Owner.
4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right, or shared right as applicable, to use all appropriate appurtenant Limited Common Elements, 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, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, 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.
5. Ownership of Common Elements and Common Surplus and Share of Common Expenses: Voting Rights.
- 5.1 Percentage Ownership and Shares. The undivided interest in the Common Elements-Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit, is set forth in Exhibit 3 attached hereto and made a part hereof. All persons are hereby notified that such percentage shares were calculated in accordance with approximate adjusted square footage computations of the Units in relation to the total square footage of all of the Units.
- 5.2 Voting. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association.

6. **Amendments.** Except as elsewhere provided herein, amendments to this Declaration may be effected as follows:

- 6.1 **By The 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 of the Association or by not less than one-third (1/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval or disapproval in writing to the Association after such meeting. However, such approval or disapproval may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum. Except as elsewhere provided, approvals must be by affirmative vote of Unit Owners owning in excess of a majority of the Units. For further information regarding proxy voting, please refer to the Association's By-laws.
- 6.2 **By The Developer.** Notwithstanding anything in this Declaration to the contrary, the Developer, during the time it has the right to elect a majority of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association or the rules and regulations of the Association, without the vote or consent of Unit Owners or the Association, except for a "material amendment" described below, which shall be approved by a vote of the majority of the total voting interests of the Association, unless required by any governmental authority, in which case no approval is required. A "material amendment" means an amendment which changes the configuration or size of any Unit in a material fashion, materially alters or modifies the appurtenances to any Unit, creates timeshare estates, or changes the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus.
- 6.3 **Execution and Recording.** An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the amendment and the applicable certificate are properly recorded in the public records of the County.
- 6.4 **Proviso Regarding Material Amendments.** Except for amendments made by the Developer as provided in Section 6.2 above, and as otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the amendment is approved by a vote of seventy-five percent (75%) of the total Voting Interests of the Association, including the Owner(s) of the Unit(s) affected by the change, and any record lien holder(s) of such affected Unit, unless the amendment is required by any governmental entity, in which event no such approval is required. 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 the Developer without the consent of said Developer in each instance. The provisions of this Section 6.4 may not be amended in any manner without the consent of the Developer as long as the Developer is offering Units for sale in the ordinary course of business. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement and maintenance of approved hurricane shutters, 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.

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 promulgated amendment.

- 6.5 Mortgagee's Consent. 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 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", 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.

7. Maintenance and Repairs.

- 7.1 Units. All maintenance, repairs and replacements of, in or to any Unit, structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, screen enclosures, windows, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or the Limited Common Elements or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.
- 7.2 Common Elements and Limited Common Elements. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements and Limited Common Elements (except as expressly provided to the contrary with respect to cooling tower, air conditioning equipment and other equipment, which service a particular Unit or Units, but not all Units) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners. Any Unit Owner who causes damages to any part of the Common Elements or Limited Common Elements shall indemnify and hold the Association and Developer harmless from all costs, expenses and claims in connection with such damage.
- 7.3 Specific Unit Owner Responsibility. Except as expressly provided to the contrary herein, obligation to maintain and repair any equipment, fixtures or other items of property which service a particular Unit or Units shall be the responsibility of the

- applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units, provided that if not within the boundaries of a Unit, same must constitute or lie within a Limited Common Element appurtenant thereto.
8. **Additions, Alterations or Improvements by the Association.** Whenever in the judgment of the Board of Directors, the Common Elements, the Association Property or any part thereof, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of 25% of the annual budget for 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 Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate less than 25% of the annual budget for the Association in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit 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.
9. **Additions, Alterations or Improvements by Unit Owner.**
- 9.1 **Common Elements.** No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, or any Limited Common Element or structural change in his Unit without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements 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 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. 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 Developer, the Association, and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium 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.
- 9.2 **Additions, Alterations or Improvements by Developer.** The foregoing restrictions of this Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, 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 the recreational facilities until the earlier of such time as the Developer no longer offers Units for sale or upon transfer of Association control.

10. **Changes in Developer-Owned Units.** Without limiting the generality of the provisions of paragraph 9.2 above, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) 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; and (ii) change the layout or number of rooms in any Developer-owned Units; provided, however, that the percentage interests 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 actions taken pursuant to this Paragraph 10 may be effected by the Developer alone, except to the extent that any of the same constitutes a material amendment, in which event the amendment must be approved by a majority of voting interests of Unit Owners. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

11. **Operation of the Condominium by the Association: Powers and Duties.**

11.1 **Powers and Duties.** The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association, as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit and the Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.
- (b) The power to make and collect Assessments (including Special Assessments) and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements.
- (c) 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 request.
- (d) 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 the 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. Any contract as aforesaid shall be entered into only after any competitive bidding requirements set forth in the Act have been met.

- (e) 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 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 By-Laws with respect to certain borrowing, provided further that, prior to transfer of Association control, or such time as the Developer no longer offers Units for sale, no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.
- (f) The power to charge a fee for the exclusive use of any Common Elements or Association Property by an Owner.
- (g) The power to adopt and amend rules and regulations concerning the details of the operation and use of the condominium property.
- (h) The Association, when authorized by a majority of the Unit Owners has been attained, shall have the power to acquire, convey, lease and encumber personal and real property, whether or not contiguous to the lands of the Condominium. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- (i) The power to employ personnel (part-time or full-time), and if part-time, such personnel may be employees of other condominium associations and allocation of their compensation shall be equitably apportioned among the associations for which employee provides services.
- (j) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles Incorporation, the By-Laws, Chapters 607 and 617 Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.
- (k) Subject to the limitations provided in this subparagraph, the power to sue and defend lawsuits. Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws of the Association, except for suits to collect assessments, suits against persons or entities who may violate the Declaration of Condominium, Articles or By-Laws of the Association or rules and regulations properly promulgated by the Board of Directors, suits or administrative actions to contest ad valorem taxes or other applicable taxes, prior to the Association proceeding with any lawsuit in connection with any claims, demands, disputes, controversies and differences that may arise in connection with this Condominium or the provisions, conditions or restrictions contained in this Declaration, the Articles or By-Laws of the Association, or any Rules or Regulations adopted by the Board of Directors, the matter shall be submitted to mediation pursuant to the rules for mediation adopted by the Circuit Court for Brevard County, Florida. The mediator's fees, if any, shall be divided equally between the parties.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended

from time to time. 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 Act.

- 11.2 **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 Unit Owners for injury or damage, other than for 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 done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9.1 hereof.
- 11.3 **Restraint Upon Assignment of Shares in Assets.** The share of a unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 11.4 **Approval or Disapproval of Matters.** Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 11.5 **Acts of the Association.** Unless the approval or action of Unit 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 or By-Laws of the Association, applicable rules and regulations 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 Unit 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 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. Notwithstanding anything to the contrary, all meetings of the Board of Directors shall be properly noticed and open to all members of the Association, as provided for in the By-Laws.
- 11.6 **Effect on Developer.** If 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:
  - (a) Assessment of the Developer as a Unit Owner for capital improvements;
  - (b) 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.
12. **Determination of Common Expenses and Fixing of Assessments Therefor.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessment are based, to all Unit Owners (and if requested in writing) to their respective mortgagees.

The Common Expenses shall include the expenses of and reserves for (if required by law) the operation, maintenance, repair and replacement of the Common Elements, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, or applicable rules and regulations by the Association. 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 the Declaration and the By-Laws.

13. Collection of Assessments.

- 13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser 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. In the case of a conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
- 13.2 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 the highest lawful rate from the date due until paid and shall be subject to an administrative late fee (in addition to such interest) in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment.

The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien is effective as of the date of the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due, the due dates and the name and address 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. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, and costs and attorneys fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, 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 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.

As an additional right and remedy of the Association, upon the filing of a claim of lien following a default in the payment of Assessments as aforesaid, the Association may declare all Assessment installments due for the remainder of the budget year in which the claim of lien was filed to be accelerated and shall thereupon be immediately due and payable. In the event that the amount of such installments changes during the twelve (12) month period, 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.

If any unpaid share of Common Expenses or Assessments is extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or Assessments are Common Expenses collectible from all Unit Owners.

- 13.3 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, 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 attorney's 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 attorney's 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 Act.
- 13.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, 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.
- 13.5 First Mortgagees. The liability of a First Mortgagee, or its successor or assignees, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the First Mortgagee's acquisition of title is limited to the lesser of:
- The Unit's unpaid Common Expenses and regular periodic Assessments 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
  - 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 mortgagee.

An Institutional 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.

Notwithstanding anything to the contrary set forth in this section 13.5, no First Mortgagee will be relieved from the obligation of paying an Assessment, whatever the amount, if such Assessment was secured by a recorded lien on the Unit prior to the recording of the First Mortgagee's Mortgage on the Unit.

- 13.6 **Developer's Guarantee and Liability for Assessments.** During the period from the date of the closing of the purchase and sale of the first Condominium Unit until six (6) months from that date, or the date Unit Owners other than the Developer are in control of the Association, whichever occurs earliest (the "Guaranty Period"), the Developer guarantees to each Unit Owner that the monthly assessment for Common Expenses during the portion of the fiscal year covered by the Guaranty Period shall not increase over the stated amounts per quarter or per month set forth in **Schedule B** to the Prospectus. Developer, at its sole discretion and option, may extend the Guaranty Period for up to two (2) additional six (6) months periods. During the Guaranty Period the Developer shall be excused from the payment of its share of the Common Expenses and Assessments attributable to Units it owns, provided that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments due from Unit Owners other than the Developer. For purposes of this Section, income to the Association other than Assessments (as defined herein and in the Act) shall not be taken into account when determining the deficits to be funded by the Developer. No funds receivable from Unit purchasers or Owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for Common Expenses as provided in this Declaration and disclosed in the Estimated Operating Budget referred to above, shall be used for the payment of Common Expenses prior to the expiration of such period. This restriction shall apply to funds including, but not limited to, capital contributions or start-up funds collected from Unit purchasers at closing.
- 13.7 **Certificate of Unpaid Assessments.** Within fifteen (15) days after a written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit, and the Association has the right to charge a reasonable fee for such certificate. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 13.8 **Installments.** Regular Assessments shall be collected monthly or quarterly, in advance, as determined by the Board of Directors.
- 13.9 **Application of Payments.** Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.
14. **Insurance.** Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 14.1 **Purchase, Custody and Payment.**
- (a) **Purchase.** All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) **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 their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
- (c) **Custody of Policies and Payment of Proceeds.** All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).

- (d) Copies to Mortgagees. One copy of each insurance 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.
- (e) Personal Property and Liability. Except as specifically provided herein or by the 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.
- (f) Insurance Trustee. The Board of Directors of the Association shall appoint an Insurance Trustee hereunder. Fees and expenses of any Insurance Trustee are Common Expenses.

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

- (a) Casualty. The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), but excluding all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners) and all Improvements located on the Common Elements from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or owned by the Association (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. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:
  - (i) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and
  - (ii) 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.

Notwithstanding the foregoing, the following items shall be excluded from the coverage described above, unless otherwise elected by the Association: (i) all wall, floor and ceiling coverings within Unit, (ii) all fixtures and furniture, equipment other personal property owned, supplied installed by Unit Owners or tenants or subtenants thereof, (iii) all alterations, capital improvements and betterments made by Unit Owners, tenants or subtenants and (iv) to the extent required by applicable law, electrical fixtures, water heaters and built-in cabinets, all of which are located within a Unit and are the repair/replacement responsibility of the Unit Owner (or its tenant or subtenant).

ALL OWNERS, MORTGAGEES, OCCUPANTS OF UNITS AND OTHER AFFECTED PARTIES ARE HEREBY ADVISED THAT IT MAY NOT BE ECONOMICALLY FEASIBLE OR OTHERWISE POSSIBLE TO INSURE THE IMPROVEMENTS FOR THEIR FULL

REPLACEMENT VALUE AS A RESULT OF THE APPLICABILITY OF ZONING OR BUILDING CODES. ACCORDINGLY, NEITHER THE ASSOCIATION NOR ANY OFFICER OR DIRECTOR THEREOF SHALL BE LIABLE TO ANY PARTY WHATSOEVER IN THE EVENT OF A CASUALTY LOSS TO THE BUILDING WHICH EXCEEDS THE COVERAGE AFFORDED BY REASONABLY AVAILABLE INSURANCE.

- (b) 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 \$2,000,000 for each accident or occurrence, \$300,000 per person and \$100,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit 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.
- (c) Worker's Compensation and other mandatory insurance, when applicable.
- (d) 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.
- (e) Fidelity Insurance, if required by the Act or FNMA/FHLMC, covering all persons who control or disburse Association funds, such insurance to be in an amount not less than the maximum funds that will be in the custody of the association or its management agent at any one time.
- (d) 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.
- (e) Such Other Insurance as the Board of Directors of the Association 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 Unit Owners individually and as a group, (ii) to 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 Unit 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 Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit 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.

- 14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insured, including all mortgagees of Units.

Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 14.5 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 Unit 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 shall be designated by the Board of Directors 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 or one or more of the Directors or Officers of the Condominium Association. 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:
- (a) Insured Property. Proceeds on account of damage to the Insured-Property shall be held in undivided shares for each Unit 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 in paragraph (b) below.
- (b) 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.
- (c) Mortgagees. No mortgagee of a Unit 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 Unit Owner and mortgagee pursuant to the provisions of this Declaration.
- 14.6 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 Trust. All expenses of the Insurance Trustee shall be first paid 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 in the same percentages as their ownership of the common elements, with remittances to Unit 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 14.5 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 Unit 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 Unit Owners and their mortgagees and their respective shares of the distribution.
- 14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit 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.
- 14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance 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 Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.
- 14.9 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.10 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitute a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
15. Reconstruction or Repair After Fire or Other Casualty.
- 15.1 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, unless 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is destroyed or substantially damaged and Unit Owners owning 80% or more of the applicable interests in the Common Elements elect not to proceed with repairs or restoration and the Primary Institutional First Mortgagee approves such election, 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 Unit 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 the Primary Institutional First Mortgagees approve such resolution and provided a recorded instrument has effected the termination of the Condominium, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit 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 Unit 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 Unit 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 a Unit 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 Unit 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.

15.2 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 Building 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 mortgagees) must approve the plans which are to be altered.

15.3 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 Unit Owners, then the Unit 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 Unit 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.

15.4 Estimate of Costs. Before making a determination as whether or not to reconstruct or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

(a) Association. The Association shall hold the sums paid upon Assessments made by the Association in order to provide funds for payment of the costs of reconstruction and repair which are the responsibility of the Association and disburse the same in payment of such costs.

(b) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit 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:

(i) 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.

(ii) 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 (i) 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.

(iii) Unit 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 underinsured), 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 Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit 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 Unit Owners and their mortgagees jointly as elsewhere herein contemplated, in the same percentages as their ownership of the common elements.

(iv) 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 Unit Owners in the manner elsewhere stated in the same percentages as their ownership of the common elements; except, however, that the 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.

(v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit 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.

15.5 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 Unit 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, in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

15.6 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

## 16. Condemnation

16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium 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 Unit Owners, the Unit 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 special Assessment shall be made against a defaulting Unit 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.

16.2 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.

16.3 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 16 specifically provided.

16.4 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:

- (a) 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 assessed against the Owner of the Unit.
- (b) 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.
- (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:
  - (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
  - (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

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

16.5 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:

- (a) 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 Unit 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.

- (b) 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 Unit 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 award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. 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 Unit Owners as follows:
  - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof (the "Percentage Balance"); and
  - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof, by the Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.
- (d) 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 Unit 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.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 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 in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Units 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.

16.6 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 Unit 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.

- 16.7 **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 of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.
- 16.8 **Discretion of Board.** In circumstances not covered by this Declaration or by law, a 2/3rds majority of Board may, upon an opinion of counsel that its decision is reasonable, deal with the condemnation in such reasonable manner as it determines to be appropriate under the circumstances.
17. **Occupancy and Use Restrictions.** In order to provide for congenial occupancy of the Condominium 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:
  - 17.1 **Occupancy.** Each Unit shall be used as a residence only. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families, provided that the Unit Owner or other permitted occupant must reside with his/her family: (i) the individual Unit Owner, (ii) an officer, director, stockholder or employee of such corporation, (iii) a partner or employee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under a lease or sublease of the Unit (as described below), as the case may be. Occupants of a leased or subleased Unit must be the following persons, and such persons' families who reside with them: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder or employee of a corporate lessee or sublessee, (iii) a partner or employee of a partnership lessee or sublessee, or a fiduciary or beneficiary of a fiduciary lessee or sublessee. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom and one (1) person per den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms, family rooms, country kitchens and the like). The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above. The provisions of this Section 17.1 shall not be applicable to Units used by the Developer for model apartments, guest accommodations, sales offices or management services.

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 of the Association, other than family of the Unit Owner or other person(s) who permanently cohabit in the Unit with the Unit Owner, occupying a Unit for more than one (1) month shall not be deemed a guest but, rather, a person 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. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Section 17 and the Board of Directors of the Association shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

The rights of the Unit Owners to use any portion of the Association Property and/or the Common Elements shall be limited to the extent granted in, and subject to the restrictions of Section 3.4(d) hereof, and the obligation for the payment of assessments as set forth in this Declaration.

- 17.2 Children. Children shall be permitted to reside in Units, subject to the provisions of Section 17.1, above.
- 17.3 Pets. Each Unit Owner or occupant (regardless of the number of joint owners or occupants) may maintain two (2) household pets (except fish and birds for which there is no limit on the number) in his Unit, to be limited to dogs and/or cats (or other household pets defined as such and specifically permitted by the Association such as fish and caged (domestic type) birds), provided that such pets are (a) permitted to be so kept by applicable laws and regulations, (b) not kept, bred or maintained for any commercial purpose, (c) not left unattended on balconies or in lanai areas, (d) generally, not a nuisance to residents of other Units or of neighboring buildings and (e) not a pit bull or other breed considered to be dangerous by the Board of Directors; provided that neither the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Unit committing such a violation shall, and does hereby, fully indemnify and hold harmless the Board of Directors, the Developer, each Unit Owner and the Association in such regard. Unit Owners must pick-up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be carried or kept on a leash no more than six (6) feet in length at all times when outside the Unit. No pets may be kept on balconies when the Owner is not in the Unit. Without limiting the generality of Section 19 hereof, violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property upon three (3) days' notice. This Section 17.3 shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that a bird(s) is not kept on Limited Common Elements and does not become a nuisance or annoyance to neighbors.
- 17.4 Alterations. Without limiting the generality of Section 9.1 hereof, but subject to Section 10 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto or Common Elements, without obtaining the prior written consent of the Association (in the manner specified in Section 9.1 hereof).
- 17.5 Use of Common Elements. The Common Elements 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.
- 17.6 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance.
- 17.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium 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 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 By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 17.7. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.

- 17.8 **Floor Coverings.** Without limiting the generality of the approval requirements set forth in Section 9 of this Declaration, no hard-surfaced floor coverings such as wood, tile, marble and stone shall be installed in any Unit or its appurtenant Limited Common Elements unless same is installed with sound-absorbing backing meeting the requirements, from time to time, of the Association.
- 17.9 **Exterior Improvements; Landscaping.** Without limiting the generality of Sections 9.1 or 17.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association.
- 17.10 **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 17 for good cause shown.
- 17.11 **Effect on Developer; Association.** As long as the Developer holds Units for sale in the ordinary course of business, the restrictions limitations set forth in this Section 17 shall not apply to the Developer or to Units owned by the Developer. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from provisions of specific restrictions contained in this Section 17 for good cause shown.

18. **Selling, Mortgaging and Leasing of Units.**

In order to insure a community of congenial residents and occupants and protect the value of the Units and to further the continuous harmonious development of the Condominium community, the sale and transfer of Units by any owner shall be subject to the following provisions. The provisions of this Article 18 shall not apply to the Developer.

- 18.1 **Sales.** There are no restrictions on the sale or transfer of Units.
- 18.2 **Leases.** Leasing of Units is permitted without the consent of the Board of Directors. No portion of a Unit (other than an entire Unit) may be rented. All leases shall provide (or be automatically deemed to provide, absent an express statement) that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, applicable rules and regulations, or other applicable provisions of any agreement, document or instrument governing the Condominium. Regardless of whether or not expressed in the applicable lease, the Unit Owner shall be jointly and severally liable to the Association for the acts and omissions of his tenant(s) which constitute a violation of, or non-compliance with, the provisions of this Declaration and of any and all rules and regulations of the Association.

Nothing herein shall interfere with the access rights of the Unit Owner landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a Unit Owner and a tenant of Association Property and Common Elements otherwise readily available for use generally by Owners.

- 18.3 **No Severance of Ownership.** No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.
- 18.4 **Gifts and Devises, etc.** Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18.
- 18.5 **Developer Leasing.** It is understood and agreed by all parties hereto and all Unit Owners that for such period of time as Developer deems appropriate, Developer may actively undertake a leasing and/or lease with option to purchase program with respect to Units owned by it. Accordingly, certain Units may be occupied by tenants of the Developer under lease agreements or month to month tenancies or other types of tenancies heretofore or hereinafter consummated and agreed upon. Such tenants of Developer shall have the full right and authority to continue to occupy said premises in accordance with their lease agreements, rental agreements or other tenancy agreements and to use and enjoy on a non-exclusive basis all Common Elements of the Condominium without any cost or expense. Developer reserves the right to maintain a leasing as well as sales office within the Condominium for so long as Developer is offering Units for sale in the ordinary course of business.
19. **Compliance and Default.** Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium 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. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 19.1 **Mandatory Non-binding Arbitration of Disputes.** Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for non-binding 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 within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded attorney's fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial *de novo* shall be assessed 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 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 the circuit court for the circuit in which the arbitration took place. A petition may 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.
- 19.2 **Negligence.** A Unit Owner 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, but only to the

extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

- 19.3 **Compliance.** In the event a Unit Owner 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 By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, and to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance.
- 19.4 **Costs or Attorneys' Fees.** In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the 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). A Unit 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 Unit Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.
- 19.5 **No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the 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.
20. **Termination of Condominium.** The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the applicable interests in the Common Elements and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee of a Unit or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit 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 the County.

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.

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

- 21.1 **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; (c) the By-Laws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.

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

(a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;

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

(c) the occurrence of a lapse, cancellation or material modification of any insurance policy maintained by the Association;

(d) any proposed action which requires the consent of a specified number of mortgage holders.

21.3 Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.

22. Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws 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 the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors 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 Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, 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, and the Articles, By-Laws and applicable rules and regulations of the Association, 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.

23. Additional Provisions.

23.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws 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 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 shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

23.2 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.

- 23.3 **Mortgagees**. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee of a Unit 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.
- 23.4 **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.
- 23.5 **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.
- 23.6 **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.
- 23.7 **Severability**. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, 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.
- 23.8 **Waiver**. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 23.9 **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 (i) all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects, and (ii) automatically consent to any rezoning, replatting, covenant in lieu of unity of title, change, addition or deletion lawfully made in, on or to the Condominium Property or adjoining property by the Developer which are implemented in accordance with the requirements of this Declaration and the requirements of F.S. 718.110(4), and in such regard, each Owner, or occupant of a Unit, hereby designates, the Association to act as agent and attorney-in-fact behalf of the Owner to consent to any such rezoning, change, addition or deletion. If requested by Developer, each Owner shall evidence their consent to rezoning, change, addition or deletion in writing (provided, however, that the refusal to give such written consent shall not obviate the automatic effect of this provision).
- 23.10 **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 the Developer, all documents or consents which may be required by all governmental agencies to

allow the Developer and its affiliates to complete the plan of development of the community as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the 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 the Developer.

- 23.11 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.
- 23.12 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.
- 23.13 Disclaimer of Warranties. EXCEPT AS IMPOSED BY THE ACT (AND THEN ONLY TO THE EXTENT THEY CAN NOT BE DISCLAIMED), NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY THE DEVELOPER OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE CONDOMINIUM PROPERTY (INCLUDING THE COMMON ELEMENTS AND THE UNITS), ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAW, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF OR IN CONNECTION WITH THE OPERATION OF THE ASSOCIATION. ALL OWNERS, BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this \_\_\_\_\_ day \_\_\_\_\_, 200\_\_\_\_.

Signed in the presence of:

BEACH CLUB 160, LLC, a Florida limited liability company

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_, Manager

STATE OF FLORIDA                                 ) )  
   ) SS:  
COUNTY OF MIAMI-DADE                             )

BEFORE ME, personally appeared \_\_\_\_\_, as Manager of BEACH CLUB 160, LLC, a Florida limited liability company, who after being first duly sworn, deposes and states that he has executed the foregoing on behalf of the limited liability company. He presented \_\_\_\_\_ as identification, or is personally known to me.

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

NOTARY PUBLIC, State of Florida at Large

Print Notary Public Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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JOINDER AND CONSENT OF MORTGAGEE  
TO DECLARATION OF CONDOMINIUM

BEACH CLUB, A CONDOMINIUM

, a \_\_\_\_\_ (the "Mortgagee"), the owner and holder of the Mortgage and Security Agreement dated \_\_\_\_\_, from Beach Club 160, LLC, a Florida limited liability company, in favor of Mortgagee, as recorded on \_\_\_\_\_, 2005 in the Official Records Book \_\_\_\_\_, at Page \_\_\_\_\_, of the Public Records of Brevard County, Florida, hereby joins in to the execution of, and consents to the Declaration of Condominium of BEACH CLUB, a Condominium.

Nothing contained herein shall be deemed to or in any way limited or affect the mortgage held by the Mortgagee or the priority of the lien created thereby and the sole purpose of this Joinder and Consent is to acknowledge the consent of the Mortgagee to the aforesaid Declaration of Condominium.

This instrument is executed and delivered by the undersigned pursuant to and for the purpose of complying with §718.104(3), Florida Statutes.

Witnesses:

\_\_\_\_\_, a \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
                    ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the corporation. He is ( ) personally known to me or ( ) has produced \_\_\_\_\_, as identification and did take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

**EXHIBIT "1" TO DECLARATION OF  
BEACH CLUB, A CONDOMINIUM**

**Legal Description**

**PARCEL I:**

A tract of land in the East three-quarters of the Southwest Quarter of the Northwest Quarter of Section 13, Township 27 South, Range 37 East, Brevard County, Florida, lying South of State Road 518, being more particularly described as follows:

Commence at the West Quarter corner of said Section 13, and run North 89 degrees 54' 28" East, along the South line of said Northwest Quarter a distance of 735.32 feet to the POINT OF BEGINNING of the herein described parcel; thence North 00°05'32" West, a distance of 259.56 feet to the point of curvature of a circular curve concave to the Southwest, having a central angle of 39°51'50" and a radius of 379.58 feet; thence Northwesterly along the arc of said curve for a distance of 264.10 feet to the point of compound curvature of a circular curve concave to the Southwest having a central angle of 04°03'00" and a radius of 284.00 feet; thence Northwesterly along the arc of said curve for a distance of 20.07 feet; thence North 45°59'38" East, a distance of 118.39 feet; thence North 75°50'18" East, a distance of 74.66 feet; thence North 68°01'36" East a distance of 45.92 feet to a point on a circular curve concave to the Northeast having a central angle of 21°58'24", and a radius of 932.00 feet; thence Northwesterly along the arc of said curve for a distance of 357.43 feet to the point of tangency; thence North a distance of 104.00 feet to the South right of way of State Road 518; thence West along the said South right of way of State Road 518, a distance of 463.24 feet; thence South 01°27'22" East, a distance of 1,089.06 feet to the said South line of the Northwest Quarter; thence North 89°54'28" East, along the said South line of the Northwest Quarter a distance of 405.62 feet to the POINT OF BEGINNING.

**PARCEL II:**

TOGETHER WITH an Easement for Egress created by Mutual Ingress/Egress Easement recorded in Official Records Book 2677, Page 399, over the following described lands:

Those certain lands lying within forty feet Easterly of the following described line:

Commence at the West Quarter corner of Section 13, Township 27 South, Range 37 East, Brevard County, Florida, and run North 89°54'28" East, along the South line of the Northwest Quarter of said Section 13, a distance of 329.70 feet to the West line of the East three-quarters of the Southwest Quarter of the Northwest Quarter of said Section 13; thence North 01°27'22" West, along said West line a distance of 1,089.06 feet to the South right of way line of State Road 518; thence on a bearing of East along said South right of way line a distance of 463.24 feet to the POINT OF BEGINNING of the herein described line; thence on a bearing of South a distance of 104.00 feet to the point of curvature of a curve concave to the East having a radius of 932.00 feet and a central angle of 21°58'24"; thence Southeasterly along said curve an arc distance of 357.43 feet to the Point of Termination.

**PARCEL III:**

TOGETHER WITH an easement for ingress and egress created by Mutual Ingress/Egress Easement recorded in Official Records Book 2677, Page 399, over the following described lands:

Those certain lands lying within twenty-five feet Easterly of the following described line:

Commence at the West Quarter of Section 13, Township 27 South, Range 37 East, Brevard County, Florida, and run North 89°54'28" East, along the South line of said Northwest Quarter, a distance of 735.32 feet to the POINT OF BEGINNING of the herein described line; thence North 00°05'32" West, a distance of 259.56 feet to the point of curvature of a circular curve concave to the Southwest having a central angle of 39°51'50", and a radius of 379.58 feet; thence Northwesterly along the arc of said curve for a distance of 264.10 feet to the point of compound curvature of a circular curve concave to the Southwest having a central angle of 04°03'00" and a radius of 284.00 feet; thence Northwesterly along the arc of said curve for a distance of 20.07 feet to the Point of Termination.

**PARCEL IV:**

TOGETHER WITH those rights created by that certain Agreement recorded in Official Records Book 2431, Page 1820 and amended by that certain First Amendment recorded in Official Records Book 2749, Page 1010,