

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

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333 S.E. 2nd Avenue
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(Reserved for Clerk of Court)

**DECLARATION
OF
SELENE CONDOMINIUM**

KT Seabreeze Atlantic LLC, a Florida limited liability company, hereby declares:

1. Introduction and Submission.

- 1.1 The Land. The Developer (as hereinafter defined) owns the fee simple title to that certain land located in Broward County, Florida, more particularly described in **Exhibit "1"** attached hereto (the "Land").
- 1.2 Submission Statement. Except as set forth in this Subsection 1.2, the Developer hereby submits the Land and all improvements erected or to be erected thereon and all other property, real, personal (excluding any furniture or furnishings within a Unit) or mixed, now or hereafter situated on or within the Land and all easements and rights appurtenant thereto intended for use in connection with the Condominium - but excluding: (i) all public or private (e.g. cable television and/or other receiving or transmitting lines, fiber, antennae or equipment) utility installations, technology wires, cables or other equipment therein or thereon reserved by the company installing same (to the extent the ownership of same is reserved to the company in the agreement allowing the installation of same) and (ii) all leased property 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 and as it may be hereafter renumbered. 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, unless expressly provided.
- 1.3 Name. The name by which this condominium is to be identified is **SELENE CONDOMINIUM** (hereinafter called the "Condominium").

- 1.4 Alternative Dispute Resolution. SECTION 18.7 OF THIS DECLARATION CONTAINS PROCEDURES FOR THE RESOLUTION OF CERTAIN DISPUTES IDENTIFIED THEREIN, INCLUDING THE WAIVER OF THE RIGHT TO A JURY TRIAL FOR SUCH DISPUTES.
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 (and nothing in this Declaration shall be deemed to alter or change the statutory definitions contained in Section 718.103, Florida Statutes, w hich section is entitled "Definitions"):
- 2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter renumbered.
- 2.2 "Alternative Fueling Station" or "AFS" means a station that is designed in compliance with applicable Federal, State and local building codes and delivers either electricity or natural gas fuel from a source outside of a vehicle into one or more vehicles capable of being powered by either electricity or natural gas fuel. An Alternative Fueling Station includes any related equipment needed to facilitate powering or fueling vehicles.
- 2.3 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended, supplemented and/or restated from time to time.
- 2.4 "Assessment" means a share of the funds required for the payment of Common Expenses and Residential Limited Common Expenses which from time to time is assessed against the Unit Owner.
- 2.5 "Association" or "Condominium Association" means **SELENE CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium. Nothing in this declaration shall alter the statutory definition of "association" contained in Section 718.103(2) of the Act.
- 2.6 "Association Property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.7 "Board" or "Board of Directors" means the board of directors, from time to time, of the Association.

- 2.8 "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.
- 2.9 "By-Laws" or "Bylaws" mean the By-Laws of the Association, as amended from time to time.
- 2.10 "Charge" shall mean and refer to the imposition of any financial obligation by the Association which is not an Assessment as defined by Subsection 2.4 above. Accordingly, as to Charges, the Association will not have the enforcement remedies that the Act grants for the collection of Assessments.
- 2.11 "Neighboring Association" means the Alhambra Place Condominium Association, Inc., which is the entity responsible for operating the condominium adjacent to the Condominium.
- 2.12 "City" shall mean and refer to the City of Fort Lauderdale, located within the County
- 2.13 "Commercial Unit" means and refers to each of Unit CU-1 and Unit CU-2, as depicted on Exhibit "2" attached hereto. References herein to "Units" or "Parcels" shall include the Commercial Units unless the context would prohibit or it is otherwise expressly provided. The designation of a Unit as "Commercial" is for ease of reference only and is not intended to limit or define the permitted uses of such Unit.
- 2.14 "Commercial Unit Owner" means a record owner of legal title to a Commercial Unit.
- 2.15 "Committee" means a group of Board Members, Unit Owners and/or Board Members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the proposed annual budget or to take action on behalf of the Board.
- 2.16 "Common AFS" shall have the meaning given to it in Section 11.6 below.
- 2.17 "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within the Units and/or the Association Property.
 - (b) All structural columns and bearing walls regardless of where located.

- (c) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units, Common Elements and/or the Association Property.
- (d) An easement of support in every portion of a Unit which contributes to the support of the Building.
- (e) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements and/or to the Association Property.
- (f) Any and all portions of the Life Safety Systems (as hereinafter defined), regardless of where located within the Condominium Property.
- (g) Any other parts of the Condominium Property designated as Common Elements in this Declaration, which shall specifically include the surface water management system, if any, serving the Condominium Property.

Some components of the Condominium which are typical "common elements" of a condominium have instead been designated as Residential Limited Common Elements. References herein to Common Elements also shall include the Residential Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.18 "Common Expenses" mean all expenses incurred by the Association, including those incurred prior to the recordation of this Declaration, for the operation, management (including property management fees), maintenance, insurance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include, without limitation and without creating any obligation, the following (although portions of same may be designated as part of the Residential Limited Common Expenses (as hereinafter defined)):

- (a) Except as provided to the contrary elsewhere, if any, in this Declaration, the costs of maintaining, operating and insuring the Common Elements, including any areas burdened by the Existing Encumbrances and/or any expenses incurred in connection with the Existing Encumbrances and the costs of valet parking services (if any);

- (b) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended;
- (c) the cost of a master antenna television system or duly franchised cable or satellite television service obtained (if obtained) pursuant to a bulk contract;
- (d) the cost of any bulk contract for broadband, telecommunications, satellite and/or internet services and/or smart home technology, if any;
- (e) the cost of communications services as defined in Chapter 202, Florida Statutes, information services, or Internet services obtained pursuant to a bulk contract, if any serving all Units (collectively "Communication Services");
- (f) if applicable, costs relating to reasonable transportation services, road maintenance and operation expenses, management, administrative, professional and consulting fees and expenses, and in-house and/or interactive communications and surveillance systems;
- (g) the real property taxes, and other costs or maintenance expenses attributable to any Units acquired by the Association or any Association Property;
- (h) except as otherwise expressly provided to the contrary, all expenses for the installation, replacement, operation, repair, or maintenance of Hurricane Protection (as hereinafter defined) on Common Elements and Association Property;
- (i) any lease or maintenance agreement payments required under leases or maintenance agreements for mechanical or other equipment and/or supplies, including without limitation, leases for trash compacting and/or recycling equipment, if same is leased by the Association rather than being owned by it;
- (j) all expenses related to the installation, repair, maintenance, operation, alteration and/or replacement of Life Safety Systems (as hereinafter defined);
- (k) any unpaid share of Common Expenses extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure;
- (l) costs of fire, windstorm, flood, liability and all other types of insurance including, without limitation, and specifically, insurance for officers and directors of the Association and costs and contingent expenses incurred if the Association elects

to participate in a self-insurance fund authorized and approved pursuant to Section 624.462, Florida Statutes;

- (m) costs resulting from damage to the Condominium Property which are necessary to satisfy any deductible and/or to effect necessary repairs which are in excess of insurance proceeds received as a result of such damage;
- (n) costs of water and sewer, electricity, gas and other utilities which are not consumed by and metered to individual Units;
- (o) costs and expenses of maintaining, repairing and/or replacing as necessary any public improvements (such as, without limitation, sidewalks, medians, landscaping, etc.) or dunes located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property, if any), and/or any art, mural, green wall, and/or other decorative feature of the Condominium, to the extent required, mandated or imposed by any agreement, permit, approval or other instrument recorded against the Land or in connection with, or as a condition of obtaining, the permits and/or approvals for development and operation of the Condominium, the Existing Encumbrances;
- (p) costs of water and sewer, electricity, gas and other utilities which are not consumed by and metered to individual Units;
- (q) costs resulting from damage to the Condominium Property which are necessary to satisfy any deductible and/or to effect necessary repairs which are in excess of insurance proceeds received as a result of such damage; and
- (r) any payments required under lease agreements for artwork, sculptures, and/or art installations, if same are leased by the Condominium Association rather than being owned by it;
- (s) any costs and expenses of installing, maintaining, repairing, restoring, renourishing and/or replacing of the beach/dune systems, crosswalk or crossover structures and access easements to and from the beach located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property;
- (t) the costs of designing, maintaining and updating the Association's, website, if any;
- (u) any and all costs, expenses, obligations (financial or otherwise) and/or liabilities of the Association and/or running with the Land pursuant to any restriction,

covenant, condition, limitation, agreement, reservation and easement now or hereafter recorded in the public records, including, without limitation, water and sewer easements, public improvements, etc., all of which are expressly assumed by the Association; and

- (v) the cost of the Association's social events, parties and holiday decorations for the Condominium Property.

Common Expenses shall not include any separate obligations of individual Unit Owners. References herein to Common Expenses also shall include Residential Limited Common Expenses, unless the context would prohibit or it is otherwise expressly provided.

- 2.19 "Common Surplus" means the amount of all receipts or revenues, including Assessments, rents or profits, collected by the Association which exceeds Common Expenses.
- 2.20 "Communication Services" shall have the meaning set forth in Section 2.18 above.
- 2.21 "Condominium" shall have the meaning given to it in Subsection 1.3 above. Nothing in this declaration shall alter the statutory definition of "condominium" contained in Section 718.103(11) of the Act.
- 2.22 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit.
- 2.23 "Condominium Property" means, subject to the provisions of, and limitations and exclusions set forth in, Subsection 1.2 hereof), the Land, leaseholds and improvements, any personal property, and all easements and rights appurtenant thereto, regardless of whether contiguous, which are subjected to condominium ownership.
- 2.24 "County" means the County of Broward, State of Florida.
- 2.25 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as same may be amended from time to time.
- 2.26 "Developer" means **KT Seabreeze Atlantic LLC, a Florida limited liability company**, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not assume any obligations of the Developer (unless expressly assumed in writing), but may exercise such rights of

Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. Additionally, the Developer's rights hereunder may be assigned and/or exercised by a Bulk Buyer (as defined in the Act) or Bulk Assignee (as defined in the Act) without otherwise making them a developer for purposes of the Act. Notwithstanding any assignment of the Developer's rights hereunder (whether partially or in full), the assignee or any subsequent developer shall not be deemed to have assumed any of the obligations of the Developer unless, and only to the extent that, it expressly agrees to do so in writing. Further: (i) if Developer is the trustee of a trust, any and all references to property or Units owned by Developer, shall, be deemed to refer to property and/or Units owned either directly by the trustee or by any beneficiary of the trust, (ii) if there is one or more Developers, any and all references to property and/or Units owned by Developer, shall, be deemed to refer to property and/or Units owned by any Developer, (iii) any and all releases, waivers and/or indemnifications of Developer set forth in, or arising from, this Declaration, shall be deemed to be releases, waivers and/or indemnifications, as applicable, of any and all parties holding Developer rights, and if any Developer is the trustee of a trust, the beneficial owners of the trust, and any direct or indirect beneficial owners, partners, shareholders, members, managers, of any Developer or beneficial owners and its or their successors and assigns. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association. Notwithstanding the foregoing, other parties may be considered a "developer" for purposes of the Act, and any such parties shall be bound by the provisions of the Act governing developers.

- 2.27 "Developer's Affiliates" shall mean and refer to Developer, its parent companies and its and their members, managers and officers, and its and their, as applicable, partners, officers, managers, members, directors, shareholders, employees and/or other person who may be liable by, through or under Developer.
- 2.28 "Developer's Mortgagee" shall mean and refer to any lender and/or mortgagee having a mortgage upon any portion of the Condominium Property at the time of the recordation of this Declaration, for so long as they hold a mortgage or mortgages on any portion of the Condominium Property owned by the Developer, and thereafter such mortgagee as Developer shall designate by notice to the Association as being "Developer's Mortgagee".
- 2.29 "District" shall have the meaning given to it in Subsection 6.4 below.

- 2.30 "Division" means the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.31 "Existing Encumbrances" shall mean and refer to the terms, conditions, provisions, easements and restrictions set forth in the following:
- (a) That certain Development Agreement entered into by KT Seabreeze Atlantic GP, LLC and the Neighboring Association (the "Neighboring Association Development Agreement").
 - (b) That certain Declaration of Restrictive Covenants Respecting the Sebastian Site dated December 20, 2016 and entered into by the City of Fort Lauderdale, a Florida municipal corporation and Barefoot Contessa, LLC, a Delaware limited liability company (the "Sebastian Site Covenant"). The Sebastian Site Covenant is recorded as Instrument # 114601921 of the Public Records of the County. Any amendments or ancillary documents now or hereafter required by the City which are related to the Sebastian Site Covenant (whether recorded or unrecorded) shall be deemed part of the Sebastian Site Covenant.
- 2.32 "Extraordinary Financial Event" shall mean Common Expenses resulting from a natural disaster or Act of God, which are not covered by insurance proceeds from the insurance maintained by the Association.
- 2.33 "First Mortgagee" shall have the meaning given to it in Subsection 13.6 below.
- 2.34 "Hurricane Protection" means hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the Condominium Property or Association Property.
- 2.35 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located or to be located on the Condominium Property, including, but not limited to, the Building.
- 2.36 "Individual AFS" shall have the meaning given to it in Section 9.3 below.
- 2.37 "Individual AFS Owner" shall have the meaning given to it in Section 17.10 below.
- 2.38 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, mortgage company, real estate or mortgage investment trust, pension fund, an

agency of the United States Government, mortgage banker, a government sponsored entity, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), any lender advancing funds to Developer (or any subsequent Bulk Buyer or Bulk Assignee, as each is defined in the Act) secured by an interest in all or any portion of the Condominium Property or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.

- 2.39 "Insured Property" shall have the meaning given to it in Subsection 14.2(a) below.
- 2.40 "Kickback" means any thing or service of value, for which consideration has not been provided, for an Officer's, a Director's, or a manager's own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the Association.
- 2.41 "Land" shall have the meaning given to it in Subsection 1.1 above.
- 2.42 "Life Safety Systems" mean and refer to any and all emergency lighting, emergency generators (including, without limitation, any connection to any emergency generators) audio and visual signals, safety systems, monitoring systems, sprinklers and noise, leak, water, humidity or smoke detection systems, internet or other interconnected information, WiFi or other communications systems, including, without limitation, intercom, closed circuit television, access-control systems, distributed antenna systems (DAS), serving more than one Unit, any lighting required in connection with the operation of the Building's elevator systems and/or ingress and egress systems, whether or not included within a Unit, which are now or hereafter installed in the Building, whether or not within the Units. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, regardless of where located, shall be deemed Common Elements hereunder. Without limiting the generality of the foregoing, when the context shall so allow, the Life Safety Systems shall also be deemed to include all means of emergency ingress and egress, which shall include all stairways and stair landings. Notwithstanding the breadth of the foregoing definition, nothing herein shall be deemed to suggest or imply that the Building or the Condominium contains all such Life Safety Systems.

- 2.43 “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, including, without limitation, as may be designated as such on Exhibit “2” attached hereto. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided. See Section 3.3 below for additional details.
- 2.44 “Material Amendment” shall have the meaning given to it in Subsection 6.2 below.
- 2.45 “Optional Property” shall have the meaning given to it in Subsection 14.5(b) below.
- 2.46 “Primary Institutional First Mortgagee” means the Developer’s Mortgagee for as long as it holds a mortgage on any Unit and thereafter, 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.
- 2.47 “Residential Limited Common Elements” means and refers to: (a) certain elevators of the Building, as identified on Exhibit “2”, (b) certain enclosed hallways within the Building, as identified on Exhibit “2”, (c) any mechanical rooms not benefitting a Commercial Unit, (d) the recreational facilities and other Improvements located on Level 4, and (e) any other portions of the Condominium Property identified as such on Exhibit “2” attached hereto.
- 2.48 “Residential Limited Common Expenses” shall have the meaning given to it in Subsection 3.3(a) below, and shall include, without limitation, (a) all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Residential Limited Common Elements, (b) all reserves required by the Act (to the extent not properly waived) or otherwise established by the Association with respect to any Residential Limited Common Elements, (c) the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract, to the extent that same serves the Residential Units only, (d) the cost of any bulk contract for broadband, telecommunications, satellite and/or internet services, if any, to the extent that same serves the Residential Units only, (e) any costs and expenses of providing beach concession services to Owners (and their guests, tenants and invitees) on the beach located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property (without imposing any obligation on the Developer and/or Association to provide such services), (f) to the extent that the Association (acting through the Board) decides to subsidize operations from any catering or food and/or beverage operation and/or lifestyle, spa and/or fitness facility located within the Common Elements, if any, the amount of any such subsidy, and (g) to the extent that the Association elects (without

creating any obligation) to pursue a liquor license to supplement operations from the Common Elements, all costs to obtain and maintain the liquor license.

- 2.49 "Residential Unit" means and refers to each of the Units other than the Commercial Units.
- 2.50 "Substantial Completion Certificate" shall have the meaning given to it in Subsection 13.1 below.
- 2.51 "Unit" means a part of the Condominium Property which is subject to exclusive ownership, and except where specifically excluded, or the context otherwise requires, shall be deemed to include the Residential Units and the Commercial Units. References herein to "Parcels" shall include Units unless the context prohibits or it is otherwise expressly provided.
- 2.52 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel. References herein to "Units" or "Parcels" shall include the Residential Units and the Commercial Units unless the context would prohibit or it is otherwise expressly provided. Subject to the provisions of this Declaration, the Commercial Units may be used for any lawful purpose.

3. **Description of Condominium.**

- 3.1 **Identification of Units.** The Land has constructed thereon two (2) Buildings containing a total of one hundred ninety-six (196) Units consisting of one hundred ninety-four (194) Residential Units and two (2) Commercial Units. Each Unit is identified by a separate numerical and/or alpha-numerical 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: (i) an undivided share in the Common Elements and Common Surplus; (ii) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration, including, without limitation, the right to transfer such right to other Units or Unit Owners; (iii) 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; (iv) membership in the Association with the

full voting rights appurtenant thereto; and (v) 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 upper story if the Unit is a multi-story Unit, provided that in multi-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 multi-story Unit, provided that in multi-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 3.2(a)(i) and 3.2(a)(ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, in all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be as applicable; (i) as to the boundary between horizontally adjoining Units that are not separated by a wall, the vertical plane lying on the survey line defining the Unit perpendicular to the upper and lower boundaries as shown on Exhibit "2" hereof, as amended or supplemented, extended to their planar intersections with each other and with the upper and lower boundaries; and (ii) as to all other perimetrical boundaries of the Unit, 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 (and to the extent that the walls are drywall and/or gypsum board, the Unit boundaries shall be deemed to be the area immediately behind the drywall and/or gypsum board, so that for all purposes hereunder the drywall and/or gypsum board (and furring strips/space when attached to CBS and concrete surfaces), so that for all purposes hereunder the drywall and/or gypsum board and furring areas shall be deemed part of the Unit and not part of the Common Elements).

- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, operable (as initially constructed) windows, doors, bay windows and skylights, such boundaries shall be extended to include the operable (as initially constructed) windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials; provided, however, that the exteriors of doors facing interior Common Element hallways, if any, shall not be included in the boundaries of the Unit and shall therefore be Common Elements. Notwithstanding anything herein contained to the contrary, any elevators (including all mechanical equipment serving, and housing for the elevators) wholly contained within and solely serving a Unit (to the exclusion of all other Units), if any, shall be deemed part of the Unit. Further, notwithstanding anything to the contrary, the structural components of the Building, and the Life Safety Systems, regardless of where located, are expressly excluded from the Units and are instead deemed Common Elements. For purposes hereof, to the extent that the Building includes a curtain wall and/or window walls (i.e., non-operable windows, doors, bay windows and skylights), then any non-operable glass and/or transparent surfaces incorporated into such portion of the curtain wall and/or window wall system (and any installations or other portions of the curtain wall and/or window wall system) shall be deemed excluded from the Unit, considered part of the structural components of the Building and be deemed Common Elements hereunder. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, NO POST TENSION CABLES AND/ OR REINFORCEMENT BARS CONTAINED IN THE BUILDING SHALL BE CONSIDERED A PART OF A UNIT. AS SUCH POST TENSIONED CABLES AND/OR REINFORCEMENT BARS ARE ESSENTIAL TO THE STRUCTURE AND SUPPORT OF THE BUILDING, ALL POST TENSIONED CABLES AND/OR REINFORCEMENT BARS SHALL BE DEEMED COMMON ELEMENTS OF THE CONDOMINIUM AND MAY NOT BE DISTURBED OR ALTERED WITHOUT THE PRIOR WRITTEN CONSENT OF THE BOARD.

- (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 Subsection 3.2(c) above shall control unless specifically depicted and labeled otherwise on such survey. Without limiting the foregoing, a Unit may consist of two or more non-contiguous spaces so that its Unit boundaries are the aggregate of the individual spaces.

As to a multi-story unit (e.g., a duplex), the square footage of the Unit shall be calculated in a manner to maximize the potential square footage of the Unit, regardless of the actual build-out of the Unit. As such, the fact that the build-out of the Unit included some portion of the lower level having excess height to create a lofted effect for the upper level(s) shall be disregarded and the area of the Unit shall be deemed to be the potential maximum floor area of the lower level and the potential maximum floor area of the upper level(s).

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) Residential Limited Common Elements. The Residential Limited Common Elements shall be deemed Limited Common Elements appurtenant to each and every of the Residential Units. Except only as provided below, all of the costs of operating, maintaining, insuring, repairing, replacing and altering the Residential Limited Common Elements (the "Residential Limited Common Expenses") shall be borne solely by the Residential Unit Owners. Without limiting the generality of the foregoing, the Residential Limited Common Expenses shall include, without limitation, all sums described in Subsection 2.48 above, any and all utility charges associated with the Residential Limited Common Elements (and if same are not separately metered, the Association shall make a reasonable allocation for such purposes), costs for landscaping maintenance and replacements in, on and around the Residential Limited Common Elements, any and all pool and/or spa related expenses (including, without limitation, resurfacing, chemical treatments and monitoring, etc.) and the costs of all personnel assisting in the operation and/or maintenance of the Residential Limited Common Elements. The Residential Limited Common Expenses shall not, however, include, any necessary repairs, maintenance, replacements or alterations to the structural components of the Building or any roofing or waterproofing membranes of the Building (same being part of the general Common Expenses). The Residential Limited Common Expenses shall be assessed against each of the Residential Units, with each

bearing a portion thereof, with the numerator thereof being the percentage allocable to the applicable Residential Unit on Exhibit "3-1" to this Declaration and the denominator being the aggregate of all percentages allocated to the Residential Units on said Exhibit "3-1", all as set forth on Exhibit "3-2" attached hereto. The Residential Limited Common Elements shall be maintained by the Association.

- (b) Patios, Balconies, Terraces, Roof Decks and/or Lanais appurtenant to Residential Units. Any patio, balcony, terrace, roof deck and/or lanai (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Residential Unit or Units to the exclusion of others shall be a Limited Common Element of such Residential Unit(s). Except only as set forth elsewhere to the contrary, the Association shall be responsible for the maintenance, repair and replacement of the structural and mechanical elements of any such Limited Common Elements, and any roofing systems and/or waterproofing systems of the Building, with the costs of same being a part of the Common Expenses (in the absence of damage caused as a result of improving or otherwise altering the the patio, roof deck, balcony, lanai or terrace, in which case the cost shall be the responsibility of the Owner of the applicable Residential Unit). Except only as set forth elsewhere to the contrary, each Residential Unit Owner shall, however, be responsible for the maintenance of any other portions of such areas, for the general cleaning, landscaping, plant care and upkeep of the appearance of the area(s) and for the repair and replacement of any floor coverings placed or installed on any patio, balcony, terrace, roof deck and/or lanai and/or any planters placed or installed on any patio, balcony, terrace, roof deck and/or lanai (as well as any resultant damage to Common Elements or other Units resulting from the use of any patio, balcony, terrace, roof deck and/or lanai and/or the installation of flooring, planters or other improvements on same). A Residential Unit Owner using a patio, balcony, terrace, roof deck and/or lanai or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and such Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom. Notwithstanding anything to the contrary, there shall be no change to the exterior face of any patio, balcony, terrace, roof deck or lanai without the prior written approval of the Board. Additionally, any and all floor coverings and/or other improvements installed upon any Limited Common Element patio, balcony,

terrace, roof deck and/or lanai shall be consistent with the general appearance of the Condominium as initially constructed (unless the prior written consent of the Association is first obtained). A Unit Owner using a patio, balcony, terrace, roof deck and/or lanai or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and such Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom.

- (c) Parking Spaces. Except as provided herein or in the Existing Encumbrances, each parking space shown on Exhibit "2" attached hereto or otherwise located within the Common Elements of the Condominium shall be a Limited Common Element only upon it being assigned as such to a particular Unit in the manner described herein or otherwise designated as a Limited Common Element to a Unit on Exhibit "2" attached hereto. Developer hereby reserves and shall have the right to assign, with or without consideration, the exclusive right to use any parking space located within the Common Elements of the Condominium to one or more Units, whereupon the parking space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. Additionally, Developer hereby reserves and shall have the right to assign, with or without consideration, valet parking rights or privileges to have a vehicle or vehicles valet parked within the Common Elements of the Condominium, to one or more Units, whereupon the parking rights and/or privileges so assigned and/or granted shall be deemed a Limited Common Element of the Unit(s) to which it is assigned (a "Valet Parking Right"). To the extent that a Unit is assigned a Limited Common Element parking space and/or Valet Parking Right pursuant to this Subsection, then there shall be no additional charge or daily use fee for such Limited Common Element parking space and/or Valet Parking Right other than the valet and/or parking related expenses included as part of the Assessments charged by the Association; it being understood that the Association may hire a valet parking operator in order to provide parking services to the Condominium and any costs incurred by the Association in connection with hiring such valet parking operator without limitation, shall be included as part of the Assessments charged by the Association. Without creating any obligation, nothing herein shall limit the Association's ability to charge use fees for the use of any unassigned parking spaces and/or guest parking, whether such parking is made available by valet and/or self-parking. All valet parking in the Common Elements shall be subject to

availability from time to time and the rules and regulations of the Association. Such assignments 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). The Developer reserves the right to retain any and all revenue and fees from any and all such assignments for its sole use and benefit. A Unit Owner may assign, convey or otherwise transfer the Limited Common Element parking space assigned to his or her Unit to another Unit by written instrument delivered to (and to be held by) the Association. Further, a Limited Common Element parking space may be relocated at any time, and from time to time, by the Board to comply with applicable Federal, State and local laws and regulations regarding or affecting handicap accessibility, but in no event shall the City Spaces (as defined below) be reassigned or relocated without the consent of the City. Accordingly, a specific assigned Limited Common Element parking space is subject to change. Notwithstanding the assignment of the exclusive use a parking space to a Unit Owner, except as otherwise provided in the form of assignment instrument, the assigned parking space may be used by the Association for valet guest parking when the Unit Owner or its tenant is not residing in the Unit. Except as provided below, the maintenance, repair and replacement of any parking space so assigned shall be the responsibility of the Association (provided however, that the contents placed in any such parking space, including, without limitation, any vehicle maintained therein, and the insurance thereof, shall be the sole responsibility of the Unit Owner). Certain parking spaces may be tandem parking spaces which accommodate two (2) cars, parked one in front of the other (the "Tandem Spaces").

Additionally, certain parking spaces and/or valet parking privileges may contain or require the use of a mechanical device ("Car Lift") which enables a parking space to accommodate two (2) cars stacked one on top of the other (the "Car Lift Spaces"). Each Owner, for itself and/or its successors and/or assigns, understands and agrees that certain vehicle model types of certain sizes, heights, weights, and dimensions (including, without limitation, certain SUVs) may not be suitable for use with Car Lifts or within a Car Lift Space. The Condominium Association may establish regulations and guidelines governing the Car Lift use which may identify approved manufacturers and specifications for Car Lifts and restrict the size and type of vehicles approved for using such Car Lifts within Car Lift Spaces. Neither the Developer, Developer's Affiliates nor the Condominium Association shall be responsible or liable for damages or injury resulting from improper use of a Car Lift, or a Car Lift Space by a Unit Owner. A Unit Owner holding an assignment of a parking space and/or valet parking privilege that contains or requires the use of

a Car Lift shall be financially responsible for any personal injury, property damages, or other losses that may result from the use of a Car Lift, Car Lift Space by the Unit Owner and each Unit Owner holds harmless the Developer, Developer's Affiliates and the Association, and it's and their respective officers, directors, managers, employees and agents, successors and assigns, in the event of any damage or personal injury arising from the use of a Car Lift Space by the Unit Owner or any mechanism which is a part of such Car Lift. Depending on the type of parking space or parking right, there may be certain size and/or length restrictions on vehicles that may be parked.

Car Lifts are part of the Common Elements and/or Association Property and not the personal property of an Owner having exclusive use of same. Notwithstanding the foregoing, a Unit Owner holding a valet parking right for parking within a Car Lift is solely responsible at its cost and expense, for any maintenance, repair or replacement, and/or liability arising from the use of the Car Lift by the Unit Owner, and shall hold harmless and indemnify the Developer and the Association for any and all liability and/or expenses resulting from the repair, operation and/or replacement of the Car Lift. In the event that the Car Lift needs to be moved to allow the Association to maintain, repair, replace and/or alter any of the Common Elements, the applicable Unit Owner shall, at its sole cost and expense, cause same to be removed within ten (10) business days following demand therefor (and thereafter to be replaced after the Association has completed its work).

Notwithstanding anything contained herein to the contrary parking may be by self-parking or by valet, in accordance with the rules and regulations adopted by the Board from time to time. EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT A PORTION OF THE PARKING FACILITIES MAY BE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY AUTOMOBILES AND/OR PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE PREMIUMS, BOTH FOR THE ASSOCIATION IN INSURING THE PARKING FACILITIES, AND FOR OWNERS, MAY BE HIGHER THAN IF THE PARKING STRUCTURE WAS ABOVE THE FEDERAL FLOOD PLAIN. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, A UNIT, OR ACCEPTING THE ASSIGNMENT OF A PARKING SPACE AND/OR VALET PARKING RIGHT, EACH OWNER, FOR SUCH OWNER AND THE OWNER'S TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

- (d) Storage Spaces. To the extent constructed, without creating any obligation to do so, each storage space, if any, as shown on Exhibit "2" attached hereto or otherwise located within the Common Elements of the Condominium, shall be a Limited Common Element only upon it being assigned as such to a particular Unit in the manner described herein or otherwise designated as a Limited Common Element to a Unit on Exhibit "2" attached hereto. Developer hereby reserves and shall have the right to assign, with or without consideration, the exclusive right to use any storage space, if any, now or hereafter located within the Common Elements of the Condominium, 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). The Developer reserves the right to retain any and all revenue and fees from any and all such assignments for its sole use and benefit. After assignment to a Unit by the Developer, a Unit Owner may assign, convey or otherwise transfer the Limited Common Element storage space assigned to his or her Unit to another Unit by written instrument delivered to (and to be held by) the Association. The maintenance of any storage space so assigned shall be the responsibility of the Association (provided however, that the contents placed in any such storage space, including, the insurance thereof, shall be the sole responsibility of the Unit Owner of the Unit(s) to which it is assigned). The Owner of the Unit to which the storage space is appurtenant shall be liable for any loss, damage or liability which may result from the existence and use of such storage space, be it loss or damage to property and/or injury or death to persons, and shall indemnify and hold the Condominium Association, Developer and Developer's Affiliates, and its and their respective directors, officers, employees, contractors, agents or affiliates harmless from and against any and all actions, claims, judgments, and other liabilities in any way whatsoever connected with the use of the storage space as contemplated herein. EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT CERTAIN OF THE STORAGE AREAS MAY BE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE PREMIUMS, BOTH FOR THE ASSOCIATION IN INSURING THE STORAGE AREAS, AND FOR OWNERS, MAY BE HIGHER THAN IF THE AREAS WERE ABOVE THE FEDERAL FLOOD PLAIN. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, A UNIT, OR ACCEPTING THE ASSIGNMENT OF A STORAGE SPACE, EACH OWNER, FOR SUCH OWNER AND THE OWNER'S TENANTS, GUESTS

AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

- (e) Wine Storage. Developer hereby reserves the exclusive right to assign, to one or more Units, with or without consideration, the exclusive right to use any wine locker ("Wine Locker"), if any, located within the Dining Room, if any, located within the Common Elements of the Condominium (the "Dining Room"), which is a part of the Common Elements of the Condominium. Any Wine Locker 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). The Developer reserves the right to retain any and all revenue and fees from any and all such assignments for its sole use and benefit. After assignment to a Unit by the Developer, a Unit Owner may reassign the Limited Common Element Wine Locker appurtenant to his or her Unit to another Unit by written instrument delivered to (and to be held by) the Association. The maintenance of the Wine Locker 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. **Each Unit Owner acknowledges and agrees that the Developer does not, in any manner warrant or guaranty the Dining Room or the Wine Lockers or the equipment regulating the temperature and humidity therein. By accepting the assignment of a Wine Locker, each Owner hereby expressly assumes any responsibility for loss, damage or liability resulting therefrom and expressly waives and releases Developer, Developer's Affiliates, the Association, and its and their officers and directors, from any and all liabilities, costs, damages (including, without limitation, consequential damages) and expenses suffered and/or incurred by the Owner (or any other user of the Wine Locker) as a result of any failure of the Dining Room or Wine Locker. Use of the Dining Room and/or Wine Locker(s) shall be at the sole risk of the owner and/or other users of the bin(s). Without limiting the generality of the other provisions of this Declaration, smoking shall not be permitted in the Dining Room. Violation of this provision may compromise and adversely affect any wine maintained therein. Further, any person under the legal age for alcohol consumption shall not be permitted to utilize any Wine Locker.**
- (f) Patios, Balconies, Terraces, Lanais and/or Sidewalks appurtenant to the Commercial Units. Developer hereby reserves and shall have the right to assign, with or without consideration, the exclusive right to use any patio, terrace, deck, lanai or sidewalk within the Common Elements on the ground level (or any level

containing a Commercial Unit) to the Commercial Units, whereupon the area so assigned (the "Assigned Area") shall be deemed a Limited Common Element of the Commercial Unit 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 Bylaws). The Developer reserves the right to retain any and all revenue and fees from any and all such assignments for its sole use and benefit. Any patios, balconies, terraces, lanais and/or sidewalks designated for exclusive use of a Commercial Unit and labeled as a Limited Common Element or "LCE" for such Commercial Unit on Exhibit "2" to the Declaration shall be an Assigned Area and shall not require a separate assignment executed by the Developer.

Any Assigned Areas shall, subject to the provisions hereof, be a Limited Common Element of the Commercial Unit to which assigned, so that the applicable Commercial Unit Owner from time to time may, to the extent permitted by law, incorporate and use such Assigned Areas in connection with, or relating to, the operations from such Commercial Unit. Notwithstanding the foregoing, the designation of such Assigned Areas as Limited Common Elements shall not entitle the applicable Commercial Unit Owner to preclude passage over such areas as may be required by the Existing Encumbrances and/or applicable law (and an easement for such passage is hereby reserved).

It is further understood and agreed that, anything herein contained to the contrary notwithstanding, the external surfaces of a Commercial Unit shall be deemed a Limited Common Element thereof. Further, the Owner of the Commercial Unit as to which an Assigned Area was assigned may place within the Assigned Area such signage, mechanical equipment and/or other items thereon as they may desire, without requiring approval from the Association, the Board or any Unit Owner, other than applicable governmental authorities to the extent that prior approval from them is required, and may further make any alterations or improvements, in such Commercial Unit Owner's sole discretion, to the Owner's Commercial Unit and/or Limited Common Elements appurtenant thereto or to the Common Elements adjacent to such Commercial Unit. Any such installations, and any additions, alterations and improvements thereto shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction.

The Association shall be responsible for the maintenance, repair and replacement of any Assigned Areas, with the costs of same being a part of the Common

Expenses. Each Commercial Unit Owner shall, however, be responsible for the maintenance of any other portions of such areas, for the general cleaning, plant care (to the extent of any plants added on those areas by the Commercial Unit Owner), and upkeep of the appearance of the area(s), and for the repair and replacement of any furniture or furnishings and/or any floor coverings and/or any other improvement placed or installed on any Assigned Areas. A Commercial Unit Owner using an Assigned Area or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Commercial Unit Owner, and such Commercial Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom.

- (g) Grease Trap. Any Grease Trap located upon the Common Elements (the "Grease Trap"), shall be a Limited Common Element appurtenant to Commercial Unit CU-1. The maintenance, repair and/or replacement of the Grease Trap, if any, as well as any and all costs associated with same, shall be the sole responsibility of the Owner from time to time of such Commercial Unit. Each Owner of a Commercial Unit shall use commercially reasonable efforts to vent any food and beverage operations from the applicable Commercial Unit in such a manner as to disperse cooking and food odors away from the Residential Units to the extent the location of the Commercial Unit within the Buildings and the construction of the Condominium will reasonably allow and to use such reasonable, governmentally-approved means and methods chosen from time to time by the Commercial Unit Owner to control cooking and food odors, which means and methods would achieve a result customarily achieved by a scrubber system.
- (h) Miscellaneous Areas, Equipment; Utility Consumption. Except to the extent that same are located within the boundaries of a Unit, any fixtures or equipment (e.g., an air conditioning compressor, other portions of any air conditioning systems, and/or heater, if any, or hot water heater) serving a Unit or Units exclusively and any area (e.g., a closet, roof space or ground slab) upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s). Without limiting the foregoing, each air conditioning unit (and all equipment and fixtures constituting an individual air conditioning system) located on the roof of the Building which serves only one Unit shall be deemed a Limited Common Element of the Unit it serves. The maintenance (and cost) of any such fixtures and/or equipment and/or areas so assigned shall be the sole responsibility of the

Owner of the Unit(s) to which the fixtures and/or equipment are appurtenant. Additionally, notwithstanding anything to the contrary, to the extent that utility service (e.g., electric, water, sewer, gas etc.) to a Unit (to the exclusion of other Units and/or the Common Elements) and/or any Individual AFS is separately submetered or otherwise measureable to identify consumption by said Unit, same shall be deemed a Limited Common Element of the Unit with the Association to assess each Unit Owner for the costs of such utility service measured and paid for in direct relation to the consumption identified by the applicable submeter or other method of measurement. Such charges may be enforced and shall be collectible by the Association in the same manner as "Assessments" hereunder.

- (i) Other. If applicable, any other portion of the Common Elements identified as a Limited Common Element appurtenant to a Unit or group of Units herein and/or on Exhibit "2" attached hereto and/or which, by its nature, cannot serve all Units but serves one Unit or more than one Unit (i.e., any hallway and/or elevator landing serving a single Unit or more than one (1) Unit owned by the same Owner) shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by said Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors of the Association and shall be binding and conclusive when so made. To the extent of any area deemed a Limited Common Element under this Subsection 3.3(i), the Owner of the Unit (s) to which the Limited Common Element is appurtenant shall have the right to alter same as if the Limited Common Element were part of the Owner's Unit, rather than as required for alteration of Common Elements. Notwithstanding the foregoing, the designation of any portion of the Common Elements as a Limited Common Element under this Subsection 3.3(i) shall not allow the Owner of the Unit to which the Limited Common Element is appurtenant to preclude, or in any way interfere with the passage through such areas as may be needed from time to time for emergency ingress and egress, and for the maintenance, repair, replacement, alteration and/or operation of the elevators, Life Safety Systems, mechanical equipment and/or other Common Elements which are most conveniently serviced (in the sole determination of the Board) by accessing such areas (and an easement is hereby reserved for such purposes).

Except for those portions of the Common Elements designed and intended to be used by all Unit Owners, a portion of the Common Elements serving only one (1)

Unit or a group of Units (but not all Units) may be reclassified as a Limited Common Element upon the vote required to amend the Declaration under either Section 6.1 or 6.5 hereof (and any such amendment shall not be deemed a Material Amendment governed by Section 6.2).

- 3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act and any easements affecting the Condominium Property and recorded in the Public Records of the County, which include, among others, the benefits and burdens imposed created, referenced and/or reserved in the Existing Encumbrances):
- (a) Support. Each Unit, the Buildings, and any structure and/or Improvement now or hereafter constructed adjacent thereto shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements (including, without limitation, the Residential Limited Common Elements) and/or the Association Property and any other structure or improvement which abuts any Unit, the Building or any 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 monitoring systems, Life Safety Systems, digital and/or other satellite systems, broadband communications and other services and drainage in order to serve the Condominium and/or members of the Association. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications, monitoring systems, Life Safety Systems, digital and/or other satellite systems, broadband communications or other service or drainage facilities or the use of these easements. The Association shall have an irrevocable right of access to each Unit to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications, monitoring systems, Life Safety Systems, digital and/or other satellite systems, broadband communications and similar systems, hot water heaters, service and drainage facilities, and Common Elements (including, without limitation, the Residential Limited 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).

- (c) Encroachments. If (i) any portion of the Common Elements (including, without limitation, the Residential Limited Common Elements) and/or the Association Property encroaches upon any Unit (or Limited Common Element appurtenant thereto); (ii) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements (including, without limitation, the Residential Limited Common Elements) and/or the Association Property; or (iii) any encroachment shall hereafter occur as a result of (1) construction of the Improvements; (2) settling or shifting of the Improvements; (3) any alteration or repair to the Common Elements (including, without limitation, the Residential Limited Common Elements) and/or the Association Property made by or with the consent of the Association or Developer, as appropriate; or (4) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements (including, without limitation, the Residential Limited Common Elements) and/or the Association Property, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests, tenants and invitees, and for each member of the Association and their guests, tenants and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements (including, without limitation, Limited Common Elements and Residential Limited Common Elements) and Association Property as from time to time may be intended and designated for such purpose and use by the Board; and for vehicular and pedestrian traffic over, through and across, and parking on, such portions of the Common Elements and Association Property as from time to time may be paved and intended for such purposes. None of the easements specified in this Subsection 3.4(d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements. The easements hereby reserved and granted in this subparagraph 3.4(d) are subject to the use rights granted to the Commercial Unit Owners in Subsection 3.3(d) above.

- (e) Construction; Maintenance. The Developer (including Developer's Affiliates and its or their designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property, including without limitation, any portion of a Unit and take all other action necessary or convenient for the purpose of undertaking and completing the construction, or any part thereof, (including, without limitation, completing any of Developer or Developer's Affiliates contractual construction obligations, if any) or any Improvements, structures, facilities or Units located or to be located thereon, and/or any improvements located or to be located adjacent thereto and for repair, replacement and maintenance or warranty purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so. The Association (and its designees, contractors, subcontractors, employees) shall have the right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to close exterior storm shutters in the event of the issuance of a storm watch or storm warning.
- (f) Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors), to stage exterior maintenance, to perform roof repairs and/or replacements, repair, replace, maintain and/or alter rooftop mechanical equipment, to stage window washing equipment and to perform window washing and/or any other exterior maintenance and/or painting of the Building. In exercising any of the rights reserved herein, the Association shall take reasonable steps to minimize interference with any uses being made of the Commercial Units (and/or its or their Limited Common Elements) and shall indemnify and hold harmless the Commercial Unit Owners from any damage and/or liability which may be incurred by the Commercial Unit Owners as a result of the Association's exercise of the rights reserved hereunder.
- (g) Sales and Leasing Activity. Developer, for itself and its designees, successors and assigns, hereby reserves and shall have the right to use any Units owned by Developer (or Developer's Affiliates) and all of the Common Elements or Association Property for guest accommodations, model apartments and sales,

leasing, management, resales, administration and construction offices, to provide financial services, to show model Units and/or apartments and the Common Elements and/or any other portions of the Condominium Property or neighboring properties owned or developed by the Developer, or Developer's Affiliates, to prospective purchasers and tenants of Units and/or "units" or "improvements" intended to be constructed on any neighboring properties, and/or to erect on the Condominium Property and Association Property signs, displays and other promotional material to advertise Units or other properties for sale or lease either in the Condominium or such neighboring properties (and an easement is hereby reserved for all such purposes and without the requirement that any consideration be paid by the Developer to the Association or to any Unit Owner).

- (h) Public Easements. Fire, police, health and sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Elements in the performance of their respective duties. Any access control systems shall be operated in a manner to allow the fire and police personnel to perform their duties.
- (i) Commercial Unit Easements.
 - (i) Commercial Unit HVAC Equipment. To the extent that a Commercial Unit has HVAC and/or other mechanical equipment serving only that Commercial Unit ("Commercial Mechanical Equipment") located on the Condominium and/or Association Property rooftop and/or on any other portion of the Common Elements and/or Association Property, then an easement is hereby reserved for the applicable Commercial Unit Owner (or its tenant, or its or their contractors, agents, designees and assignees) to take such actions as are necessary or desired to install, maintain, operate repair and/or replace such Commercial Mechanical Equipment from time to time. Without limiting the generality of the foregoing, easements in favor of each Commercial Unit Owner (and its tenants, or its or their contractors, agents, designees and assignees) shall exist: (i) for pedestrian traffic over, through and across the Common Elements and/or Association Property as may be necessary to access the Condominium and/or Association Property rooftop and/or on such other portions of the Common Elements and/or Association Property, and, (ii) to install and/or connect to the utility systems within the Condominium and/or Association Property and over and across such other portions of the Condominium Property and/or Association Property as may be

reasonably necessary to permit the installation and/or hook-up of any Commercial Mechanical Equipment, and (iii) over, in, under and upon such portions of the Condominium Property and/or Association Property as may be reasonably necessary or appropriate for the installation, maintenance, repair, replacement and/or alteration of the Commercial Mechanical Equipment from time to time. Notwithstanding anything to the contrary contained in this Subsection 3.4(i), in exercising any of the easements granted herein, a Commercial Unit Owner may not impair service to any Units and/or the Common Elements and must comply with all applicable laws, rules, ordinances and regulations of all governmental authorities having jurisdiction.

- (ii) Utility Room Easements. To the extent that a Commercial Unit is connected to, or derives service (utility or otherwise) from, any meter room, transformer room or other room (and/or from the equipment contained in such rooms) located within the Condominium Property and/or Association Property (including, without limitation, all pipes, lines, ducts, wires and other items which connect from the Commercial Unit to such rooms, the "Utility Equipment"), then an easement is hereby reserved for the applicable Commercial Unit Owner (or its tenant, or its or their contractors, agents, designees and assignees) to take such actions as are necessary or desired to install, maintain, operate repair and/or replace such Utility Equipment from time to time. Without limiting the generality of the foregoing, easements in favor of each Commercial Unit Owner (and its or their tenants, or its or their contractors, agents, designees and assignees) shall exist: (iv) for pedestrian traffic over, through and across the Common Elements and/or Association Property as may be necessary to access any such Utility Equipment, and, (v) to install and/or connect to the utility systems within the Condominium and/or Association Property and over and across such other portions of the Condominium Property and/or Association Property as may be reasonably necessary to permit the installation and/or hook-up of or to any Utility Equipment, and (vi) over, in, under and upon such portions of the Condominium Property and/or Association Property as may be reasonably necessary or appropriate for the installation, maintenance, repair, replacement and/or alteration of the Utility Equipment from time to time. Notwithstanding anything to the contrary contained in this Subsection 3.4(ii) in exercising any of the easements granted herein, a Commercial Unit Owner may not impair

service to any Units and/or the Common Elements and must comply with all applicable laws, rules, ordinances and regulations of all governmental authorities having jurisdiction

- (iii) Easements over Residential Limited Common Elements. Non-exclusive easements for ingress, egress and access are hereby reserved over, on and across the Residential Limited Common Elements, in favor of the Commercial Unit Owners as may be reasonably necessary for the maintenance of, and/or operations from, the Commercial Units.
- (j) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for acts or omissions of Developer in the development, construction, sale, resale, leasing, financing and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time and without requiring prior approval of the Association and/or any Unit Owner and without requiring any consideration to be paid by the Developer to the Unit Owners and/or Condominium Association (provided, however, that absent an emergency situation, Developer shall provide reasonable advance notice), to enter the Condominium Property, including the Units, Common Elements and Limited Common Elements without restriction, for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. The failure of the Association or any Unit Owner to grant such access or if the Association or any Unit Owner interferes with such access, same shall alleviate the Developer from having to fulfill its warranty obligations and the costs, expenses, liabilities or damages arising out of any unfulfilled Developer warranty will be the sole obligation and liability of the person or entity who or which impedes the Developer in any way in Developer's activities described in this Subsection 3.4(j). The easements reserved in this Section shall expressly survive the transfer of control of the Association to Unit Owners other than the Developer and the issuance of any certificates of occupancy for the Condominium Property (or portions thereof). **Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be or are expressly set forth herein) as set forth in Section 22 below.**
- (k) Easements for Convenience and/or Emergency. Easements are hereby reserved over, through and across such portions of the Condominium Property (including,

without limitation, all foyers, elevator lobbies, limited common element parking areas or entry areas, regardless of where located, including, without limitation, any portion of same contained within a Unit) as may be necessary or convenient to afford access by the Association (and its designees, contractors, subcontractors, employees or other parties designated by the Association) to allow a safe and convenient means of access for the maintenance, repair, replacement, alteration and/or operation of elevator machine rooms, control panels, Life Safety Systems, mechanical equipment and/or other portions of the Common Elements which are most conveniently serviced (in the sole determination of the Board) by accessing such areas. In furtherance of the foregoing, no Unit Owner, tenant or other occupant shall take any action to impede, affect, impact and/or impair the Association's access to any level of the Condominium or any elevator machine rooms, control panels, Life Safety Systems, mechanical equipment and/or other portions of the Common Elements. None of the easements specified in this subparagraph shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements. Additionally, the Association (and its designees, contractors, subcontractors, employees or other parties designated by the Association) and each Unit Owner (and their guests, tenants and invitees) shall have an easement over, through and across the such portions of the Condominium Property (including, without limitation, all foyers, elevator lobbies or entry areas, regardless of where located, including, without limitation, any portion of same contained within a Unit) as may be reasonably necessary for purposes of emergency ingress and egress. In furtherance of the foregoing, no Unit Owner, tenant or other occupant shall take any action to impede the access rights reserved herein. Notwithstanding the foregoing, all easements reserved in the foregoing sentence shall be exercised only in such manner and with such frequency to minimize any disruption to the appurtenant Unit Owner.

- (I) Existing Encumbrances Easements. The Condominium Property (including all Units and Common Elements therein) is governed and burdened by, and subject to, and each Unit Owner is governed and burdened by, and subject to, all of the terms and conditions of the Existing Encumbrances. Each Owner (for itself, its tenants, guests, successors and assigns) understands and agrees, by acceptance of a deed or otherwise acquiring title to a Unit, that the rights in and to the Condominium Property are junior and subordinate to the rights therein granted under the Existing Encumbrances. Pursuant to the Sebastian Site Covenant,

among other things, the City has and/or shall have an exclusive easement and/or right to use or lease up to one hundred twenty (120) parking spaces located within the Common Elements of the Condominium Property (the "City Spaces") to provide public parking and/or parking for the staff and patrons of the *Casa Blanca* restaurant or such other restaurant located at 3049 Alhambra Street, Fort Lauderdale, Florida. Without limiting the right to relocate the City Spaces (to the extent relocatable under the Sebastian Site Covenant), a portion of the parking garage located within the Common Elements has been designed to accommodate the City Spaces in an area which is separate and apart from the spaces designed to serve the Unit Owners of the Condominium, but each Unit Owner, by acceptance of a deed, acknowledges and agrees that the parking garage for the Condominium will be made available to members of the public. Pursuant to the Sebastian Site Covenant, the City shall be entitled to keep all revenue from the use of the City Spaces and shall have the right to establish the parking rates for the use of the City Spaces. Pursuant to the Sebastian Site Covenant, the City is solely responsible and shall assume all responsibility for the parking meter system for the City Spaces, but the Association shall be responsible for the general maintenance of the garage containing the City Spaces as well as electric and other utilities and operational features serving the garage containing the City Spaces. The Association shall periodically send an invoice to the City to reimburse the Association for the operation and maintenance expenses for the garage at a rate of \$75.00 per space for utilities, including electricity and \$25.00 per space for maintenance, such costs to be adjusted periodically by mutual agreement of the parties based on the City's costs of operation for other City parking facilities. Accordingly, easements are reserved over and across the Common Elements to accommodate and comply with the Sebastian Site Covenant. Except as provided to the contrary in the Sebastian Site Covenant, the Association shall be responsible for maintaining the City Spaces and the costs of such maintenance shall be Common Expenses. Additionally, pursuant to the Sebastian Site Covenant, the triangular portion of the property bounded on the East by State Road A-1-A and bounded on the West by Sea Breeze Boulevard having a Broward County Property Appraiser's ID Number 5042-12-10-0440 shall remain an open-space landscaped pedestrian area to be maintained by the Association (the "Pedestrian Area"). An easement is reserved in favor of the public for pedestrian ingress, egress and enjoyment of the Pedestrian Area. The Association shall be responsible for all maintenance obligations with respect to the Pedestrian Area and for all expenses of maintaining the Pedestrian Area. For more details, please see the Sebastian Site Covenant. To the extent that, pursuant to the Sebastian Site Covenant, the Condominium Property becomes obligated for the payment of

certain costs, then, any and all costs shall be part of the Common Expenses and paid for through Assessments. EACH UNIT OWNER SHOULD THOROUGHLY REVIEW THE EXISTING ENCUMBRANCES AND THE SEBASTIAN SITE COVENANT TO DETERMINE THE EFFECT SAME WILL HAVE ON THE CONDOMINIUM PROPERTY.

- (m) Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific 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 modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for their intended purposes.

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 shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described, subject, however, to the rights of Owners to transfer Limited Common Elements as provided elsewhere in this Declaration. The appurtenant share in the Common Elements and Common Surplus, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. Notwithstanding the foregoing, nothing herein shall preclude an Owner from assigning, conveying or otherwise transferring a Limited Common Element to another Unit as provided elsewhere in this Declaration. 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 in Common Elements. The percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit, is as set forth on **Exhibit "3-1"** attached hereto, same having been determined based upon the total square footage of the applicable Unit in uniform relationship to the total square footage of each other Unit. Notwithstanding the percentage share of Common Expenses set forth on Exhibit "3-1" attached hereto, the Association may assess the costs for Communication Services equally among all Units.
- 5.2 Percentage Ownership and Shares in Residential Limited Common Elements. The percentage share in the Residential Limited Common Expenses, appurtenant to each Residential Unit, is as set forth on **Exhibit "3-2"** attached hereto
- 5.3 Voting. Each Residential Unit shall be entitled to one (1) vote and Commercial Unit CU-1 shall be entitled to fifty (50) votes and Commercial Unit CU-2 shall be entitled to one (1) vote, all 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 may be made 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 Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing in excess of a majority of the voting interests of all Unit Owners. Unit Owners not present in person at the meeting considering the amendment may express their approval or disapproval in writing, provided that such approval or disapproval is delivered to the secretary at or prior to the 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 purpose of creating a quorum.
- 6.2 Material Amendments. Unless 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 (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment and the amendment

is otherwise approved by an affirmative vote representing a majority of all of the voting interests of all Unit Owners. The acquisition of property by the Association, the designation of a portion of Common Elements to be Limited Common Elements (as contemplated in Section 3.3(i) above), material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement, operation, repair and maintenance of approved exterior storm 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.

Further, the installation, maintenance, repair, replacement, and operation of Hurricane Protection in accordance with this Declaration or the Act is not considered a material alteration or substantial addition to the Common Elements or Association Property and 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.

- 6.3 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 any Institutional First Mortgagees or the Primary Institutional First Mortgagee without the consent of the aforesaid Institutional First 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.
- 6.4 Water Management District. No amendment may be adopted which would affect the surface water management and/or drainage systems, including environmental conservation areas, without the consent of the applicable water management district (the "District"). The District shall determine whether the amendment necessitates a modification of the current surface water management permit. If a modification is necessary, the District will advise the Association. The District has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the surface water management system facilities or in mitigation or conservation areas under the responsibility or control of the Association.

- 6.5 By or Affecting the Developer. Notwithstanding anything herein contained to the contrary, to the maximum extent permitted by applicable law, the Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment: (i) to permit time-share estates (which must be approved, if at all, by all Unit Owners and mortgagees on Units); or (ii) to effect a Material Amendment which must be approved, if at all, in the manner set forth in Subsection 6.2 above. The unilateral amendment right set forth herein shall include, without limitation, the right to correct scrivener's errors. No amendment may be adopted (whether to this Declaration or any of the exhibits hereto) which would impose any restriction or obligation and/or eliminate, modify, prejudice, abridge or otherwise adversely affect the Developer and/or any rights, benefits, privileges or priorities granted or reserved to the Developer, without the prior written consent of the Developer in each instance. Without limiting the generality of the foregoing, in accordance with the provisions of Section 718.301(3), Florida Statutes, if the Developer holds at least one (1) Unit for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer: (a) Assessment of the Developer as a Unit Owner for capital improvements or (b) any action by the Association that would be detrimental to the sales of Units by the Developer.
- 6.6 Amendments affecting the Commercial Units. Notwithstanding anything herein contained to the contrary, no amendment may be adopted to this Declaration, the Articles, the By-Laws or any rules and regulations governing the Condominium Property (other than an amendment adopted by the Developer alone pursuant to any reserved rights it may have under this or any other documents) which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Owners from time to time of the Commercial Units, without the consent of four fifths of all voting interests in the Condominium.
- 6.7 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, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable amendment is properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted

shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

7. Maintenance and Repairs.

7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance, repair and replacement of windows, window coverings, wall-coverings, built-ins, interior nonstructural walls, the interior side of any 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. The foregoing obligation of a Unit Owner for maintenance, repairs and replacements shall not be excused under any circumstances, including, without limitation, in instances where the Unit is leased or rented, and the obligations of the Unit Owner shall extend to any maintenance, repairs and/or replacements necessitated by any of such Owners guests, tenants and invitees. Notwithstanding that certain exterior surfaces made of glass or other transparent materials are part of the Units as set forth in Section 3.2(c) above, the Association shall be responsible for exterior window washing of any windows or glass surfaces surrounding a Unit which are not safely and readily accessible to the Unit Owner, with the costs thereof being a Common Expense.

7.2 Common Elements, Life Safety Systems, and Association Property. 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 (other than those Limited Common Elements or portions thereof to be maintained by the Unit Owners as provided above), the Residential Limited Common Elements, and/or required under the Existing Encumbrances and/or Association Property shall be performed by the Association and the cost and expense thereof shall be Assessed

to all Unit Owners as a Common Expense, except: (i) 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 as a Charge, or (ii) with respect to the Residential Limited Common Elements, as to which, anything herein to the contrary notwithstanding, all costs and expenses shall be paid solely by the Residential Unit Owners as an Assessment.

Lastly, if, in order to effect repairs to the Common Elements, the Association removes, destroys and/or otherwise alters any floor, wall or ceiling coverings, or other items of personal property, then, in such instance, the Association shall only be obligated for the restoration of the Common Elements, without any obligation to restore the disrupted and/or altered floor, wall or ceiling coverings, or other items of personal property. Replacement of said items shall be the responsibility and obligation of the Unit Owner or tenant, as applicable.

- 7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any drywall or gypsum board within or surrounding a Unit, any air conditioning and heating equipment, plumbing or electrical feeds, water heaters, appliances, fixtures, sliding glass doors (including all tracks and hardware), screens (whether on windows or doors), screened enclosures and screen doors serving the Unit, or other items of property which service a particular Unit or Units (to the exclusion of other Units), including, without limitation, any exterior storm shutters protecting doors or windows for a particular Unit, 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. Additionally, all work performed on any portion of the Condominium Property shall be in compliance with all applicable governmental building and zoning requirements. All plumbing and electrical maintenance, repairs, and replacements shall be made only by plumbers or electricians duly licensed and qualified to perform such services in the State of Florida and, if applicable, in the County.
- 7.4 Hurricane Protection. Except as otherwise provided in Section 3.2 or Section 7.3 and subject to the provisions below, the Association shall be responsible for the installation, maintenance, repair, or replacement of Hurricane Protection that is for the preservation and protection of the condominium property and association property. As to Hurricane Protection, in addition to the other provisions of this Declaration, the following shall be applicable with respect to the installation, maintenance, repair, or replacement of Hurricane Protection:

- (a) The Board of Directors must, from time to time, adopt Hurricane Protection shutter specifications which may include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board must comply with the applicable building code. Subject to the provisions of Subsection 9.1, the Association may not refuse to approve the installation or replacement of Hurricane Protection by a Unit Owner which conforms to the specifications adopted by the Board. However, a Board may require the Unit Owner to adhere to an existing unified building scheme regarding the external appearance of the Condominium.
- (b) The Board may, subject to the approval of a majority of Voting Interests, install or require that Unit Owners install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant Hurricane Protection that complies with or exceeds the applicable building code. A vote of the Unit Owners to require the installation of Hurricane Protection must be set forth in a certificate attesting to such vote and include the date that the Hurricane Protection must be installed. The Board must record the certificate in the public records of the County. Once the certificate is recorded, the Board must mail or hand deliver a copy of the recorded certificate to the Unit Owners at the Owners' addresses, as reflected in the records of the Association. The Board may provide to Unit Owners who previously consented to receive notice by electronic transmission a copy of the recorded certificate by electronic transmission. A vote of the Unit Owners is not required if the installation, maintenance, repair, and replacement of the Hurricane Protection, or any exterior windows, doors, or other apertures protected by the Hurricane Protection, is the responsibility of the Association pursuant to the Declaration, or if the Unit Owners are required to install Hurricane Protection pursuant to the Declaration as originally recorded or as amended. If Hurricane Protection that complies with or exceeds the current applicable building code has been previously installed, the Board may not install the same type of Hurricane Protection or require that Unit Owners install the same type of Hurricane Protection unless the installed Hurricane Protection has reached the end of its useful life or unless it is necessary to prevent damage to the Common Elements or to a Unit.
- (c) To the extent that any Hurricane Protection consists of exterior storm shutters, the shutters shall remain open unless and until a storm watch or storm warning is announced by the National Weather Center or other recognized weather forecaster. A Unit Owner or occupant who plans to be absent during all or any portion of the hurricane season must prepare his or her Unit prior to departure by

designating a responsible firm or individual to care for the Unit should a hurricane threaten the Unit or should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual.

- (d) To the extent that Developer provides exterior storm shutters for any portions of the Building (which it is not obligated to do) or if the Association obtains exterior storm shutters for any portion of the Condominium Property, the Association (as to shutters for the Common Elements) and the Unit Owners (as to shutters covering doors or windows to a Unit) shall be solely responsible for the opening and closing of such exterior storm shutters from time to time and the costs incurred by the Association (as to installation of shutters for the Common Elements) shall be deemed a part of the Common Expenses of the Condominium that are included in the Assessments payable by Unit Owners. The obligations of the Association assumed hereby shall include, without limitation, development of appropriate plans to allow for the timely installation of the shutters for the Common Elements, and all obligations with respect to the repair, replacement and/or upgrade of the shutters for the Common Elements. Developer shall have no obligations with respect to the installation of the shutters, and/or for the repair, replacement and/or upgrade of the shutters. Nothing herein shall obligate the Association to install shutters protecting individual units, nor to open or close same as a storm is approaching, or after it passes.

7.5 Existing Encumbrances Maintenance. All maintenance obligations established by the Existing Encumbrances are hereby assumed by the Association, with the costs associated with same to be part of the Common Expenses. All maintenance shall be performed to the standards required by the Existing Encumbrances.

- 8. Additions, Improvements or Alterations by the Association. Except only as provided below to the contrary, whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from maintenance, repairs and replacements, which may be undertaken without requiring a vote of, or approval from, Unit Owners regardless of the costs of such maintenance, repairs and replacements) costing in excess of ten percent (10%) of the then applicable budget of the Association in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by an affirmative vote representing a majority of the voting interests represented at a meeting at which a quorum is attained (unless the addition, alteration or improvement is otherwise exempt or excused from the approval requirements hereof pursuant to the other provisions of this Declaration or the Act). Any such

additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing in the aggregate ten percent (10%) of the then applicable budget of the Association or less 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 or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. In addition, whenever in the judgment of the Board of Directors, the Residential Limited Common Elements shall require capital additions, alterations or improvements (as distinguished from maintenance, repairs and replacements, which may be undertaken without requiring a vote of, or approval from, Unit Owners regardless of the costs of such maintenance, repairs and replacements) costing in excess of ten percent (10%) of the then applicable budget of the Association in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by an affirmative vote representing a majority of the Residential Units' voting interests represented at a meeting at which a quorum is attained (unless the addition, alteration or improvement is otherwise exempt or excused from the approval requirements hereof pursuant to the other provisions of this Declaration or the Act). Any such additions, alterations or improvements to such Residential Limited Common Elements costing in the aggregate ten percent (10%) of the then applicable budget of the Association or less in a calendar year may be made by the Association without approval of the Residential Unit Owners. The cost and expense of any such additions, alterations or improvements to the Residential Limited Common Elements shall constitute a part of the Residential Limited Common Expenses and shall be assessed to the Residential Unit Owners, as Residential Limited 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. Notwithstanding anything herein contained to the contrary., to the extent that any additions, alterations or improvements are necessitated by, or result from, an Extraordinary Financial Event, then such additions, alterations or improvements may be made upon decision of the Board alone (without requiring any vote by Unit Owners and without regard to whether the additions, alterations or improvements will exceed the threshold amount set forth above.

Notwithstanding anything to the contrary, except as provided below with respect to the installation of AFS, material alterations or substantial additions to the Common Elements, Limited Common Elements, Residential Limited Common Elements or to real property which is Association Property may be undertaken, without a vote of Unit Owners, provided that Board approval is first obtained. The foregoing, however, shall not negate the need for Unit Owner approval if Unit Owner approval is required in accordance with the initial paragraph of this Section 8. Notwithstanding the foregoing, the Condominium Association, by majority vote of the Board

(and without requiring the consent of any Unit Owners and regardless of whether the cost exceeds the threshold set forth in the previous paragraph) may enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the Residential Unit Owners, the costs of which shall be a Residential Limited Common Expense. Any rental, membership fees, operations, replacements, and other expenses incurred pursuant to any such agreements shall be Common Expenses and the Board may impose covenants and restrictions concerning their use. Additionally, the installation of one or more AFS shall not be deemed to be a material alteration to the Common Elements and may be undertaken by the Board alone (as to Common AFS), without a vote of Unit Owners, and whether or not the costs for installation and operation of same exceed the monetary threshold set forth in the first paragraph of this Section 8. The installation of Individual AFS shall similarly not be deemed to be a material alteration of the Common Elements, and may be approved in the manner set forth in Section 9.3 below.

9. Additions, Alterations or Improvements by Unit Owners.

9.1 Consent of the Board of Directors. No Residential Unit Owner (other than the Developer) shall make any addition, alteration or improvement in or to the Common Elements (including, without limitation, the Residential Limited Common Elements), the Association Property, any structural addition, alteration or improvement in or to his or her Residential Unit, the Common Elements or any Limited Common Element or any change to his or her Residential Unit which is visible from any other Unit, the Common Elements and/or the Association Property, without, in each instance, the prior written consent of the Board of Directors of the Association. Without limiting the generality of this Subsection 9.1, no Unit Owner shall cause or allow improvements or changes to his or her Unit, or to any Limited Common Elements, Common Elements or any property of the Condominium Association which does or could in any way affect, directly or indirectly, the structural, electrical, plumbing, Life Safety Systems, or mechanical systems or any landscaping or drainage, of any portion of the Condominium Property without first obtaining the written consent of the Board of the Association. The Board shall have the obligation to answer, in writing, any written request by a Residential Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, imposition of fees (which may be refundable and/or nonrefundable) to offset the costs incurred with review, monitoring construction, move-ins, trash disposal and removal and/or use of loading areas (which

must be paid by the party submitting the request at the time of the submission), retaining approval rights of the contractor, or others, to perform the work, imposing conduct standards on all such workers, establishing permitted work hours and requiring the Residential Unit Owner to obtain insurance naming the Developer and the Association as additional named insureds. The proposed additions, alterations and improvements by the Residential 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, unless such approval was obtained through false or misleading information or in the event of manifest error. Notwithstanding anything to the contrary, no addition, alteration or improvement shall be permitted to the extent same is not permitted pursuant to, or shall cause the Condominium Property to fail to comply with the requirements or, the Existing Encumbrances.

A Residential Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them against any liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, Developer's Affiliates, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer, Developer's Affiliates and/or the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and

assigns) agrees to indemnify and hold the Developer, Developer's Affiliates and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder. Without limiting the generality of the foregoing, to the extent that the Condominium has been constructed with either a precast concrete system or post tensioned cables and/or reinforcing rods/bars, then absolutely no penetration shall be made to any floor, roof or ceiling slabs without the prior written consent of the Board of Directors and review of the as-built plans and specifications for the Building by the applicable licensed professionals. The plans and specifications for the Building shall be maintained by the Association as part of its official records. To the extent that the Condominium has been constructed with a precast concrete system or post tensioned cables and/or reinforcing rods/bars, each Unit Owner, by accepting a deed or otherwise acquiring title to a Unit shall be deemed to: (i) have assumed the risks associated with post tension construction, (ii) agree that the penetration of any post tensioned cables and/or reinforcement rods/bars may threaten the structural integrity of the Building, and (iii) agree to be responsible for any damages (including future consequential damage) caused to any and all post tensioned cables and/or reinforcement, even if the work causing such damage was previously approved by the Association. Each Owner hereby releases Developer, Developer's Affiliates, its and their members, contractors, architects, engineers, and its and their officers, directors, shareholders, employees and agents from and against any and all liability that may result from penetration of any of the surfaces even if such parties originally approved such plans.

Notwithstanding anything to the contrary, any addition, alteration or improvement to be undertaken by, or on behalf of, a Unit Owner, which is approved by the Board in accordance with the provisions of this Section 9.1 (or is otherwise deemed approved or exempt from approval as provided elsewhere herein), whether to the Owner's Unit, Limited Common Elements appurtenant thereto and/or Common Elements, may be undertaken upon the approval of the Board (without requiring the consent or approval of Unit Owners) regardless of whether or not same shall constitute a material alteration to the Common Elements.

The provisions of this Section 9.1 shall not be applicable to the Commercial Units and/or the Commercial Unit Owners.

- 9.2 Life Safety Systems. No Unit Owner shall make any additions, alterations or improvements to the Life Safety Systems, and/or to any other portion of the

Condominium Property which may alter or impair the Life Safety Systems or access to the Life Safety Systems, without first receiving the prior written approval of the Board. In that regard, no lock, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency signage shall not be altered or removed by any Unit Owner whatsoever. No barrier including, but not limited to personalty, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

9.3 Individual Alternative Fueling Station. Without limiting the generality of Section 9.1 above, any Unit Owner that wishes to install an AFS within their Limited Common Element parking space, or on any wall immediately adjacent to their Limited Common Element parking space so that they may charge their personal vehicle when parked within the Limited Common Element parking space (an "Individual AFS"), must seek and receive prior written approval from the Board, as provided in Section 9.1 above, and shall be subject to the following additional provisions:

- (a) Any Individual AFS shall only be approved to the extent that same meets all applicable health and safety standards and requirements imposed by Federal, State and local authorities and all other applicable zoning, land use or other ordinances, or land use permits or approvals;
- (b) Approval of an Individual AFS shall be conditioned upon the requesting Unit Owner's installation of a meter or submeter or other method to separately isolate the electricity or natural gas fuel consumed by the Individual AFS and/or the use of same (with all such electricity and/or natural gas fuel costs to be the sole responsibility and burden of the Individual AFS Owner;
- (c) No Individual AFS will be approved if it includes multiple charging points; and
- (d) Approval of an Individual AFS may be subject to any other conditions imposed by the Board from time to time, including, without limitation, minimum insurance requirements on Unit Owners installing and using Individual AFS and/or identification of approved manufacturers and specifications for Individual AFS.

9.4 Combining Units. Subject to the provisions of Section 9.1 above, an Owner owning two immediately adjacent Units (whether horizontally or vertically) may, at such Owner's own expense, combine the two Units to form a single residence by removing all or a part of the wall or walls (or floors or ceilings) separating the Units, with such removed wall or

walls (or floors or ceilings) being deemed a Limited Common Element appurtenant to the combined Units. Any such combination of Units shall not be deemed to be a material alteration of the Common Elements. Such Owner shall give notice of such combination prior to undertaking any work, and in no event may any such work, (i) , in any material way interfere with any other Owner's use and enjoyment of such Owner's Unit, (ii) impair the structural integrity of the Building or impair the functioning of Life Safety Systems, (iii) impair utility services to any Unit, (iv) change the Building's exterior appearance, or (v) violate any applicable law or ordinance. An Owner combining two or more Units shall otherwise comply with Section 9 of this Declaration. Any Units so combined shall continue to be treated as separate Units for purposes of this Declaration and no amendment to this Declaration shall be required for any such changes. An Owner who combines two or more Units may, subject to the provisions of Section 9.1, at any time restore the original wall or walls (or floors or ceilings) in their original location and shall be required to do so before conveying one of the Units without the other or before conveying the Units to different parties.

- 9.5 Improvements, Additions or Alterations by Developer or the Commercial Unit Owners. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 9 shall not apply to Developer-owned Units and/or improvements made thereto, nor shall any rules, regulations or other conditions imposed upon improvements, additions or alterations be applicable to the Developer or the Commercial Units. The Developer, and the Commercial Unit Owners, shall have the additional right, without the consent or approval of the Association, the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it or them and Limited Common Elements appurtenant thereto (including, without limitation, the combining and/or subdividing of Units and the removal of walls, windows, doors, sliding glass doors, floors, ceilings and other structural portions of the Improvements and/or the installation of divider walls and/or signs). Any such improvements, additions or alterations by the Developer, shall not be deemed to be a material alteration of Common Elements. Further, Developer reserves the right, without the consent or approval of the Board of Directors or other Unit Owners, to expand, alter or add to all or any part of the recreational facilities. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.4 shall be adopted in accordance with Section 6 and Section 10 of this Declaration.

Additionally, provided that any alterations made by a Commercial Unit Owner do not unreasonably interfere with the view from a Residential Unit, a Commercial Unit Owner shall have the right, without the consent or approval of the Association, the Board of

Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon the Commercial Unit owned by it or them and any Limited Common Elements appurtenant or adjacent thereto (including, without limitation, the removal of walls, floors, decorative ceilings and other structural portions of the Improvements, the installation of signage on or in their Unit and/or on the exterior walls bounding same and/or the underside of any facades or balconies in proximity to the Unit (or its Limited Common Elements), to place furniture, tables, chairs and other furnishings and equipment on any sidewalks, patios and/or terraces appurtenant to the Unit and to generally take such other steps as the applicable Commercial Unit Owner reasonably believes necessary to maximize the use of the Commercial Unit), provided that any such improvements do not compromise the structural integrity or any Life Safety Systems, mechanical and other systems of the Building. The Commercial 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 or her heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof.

Notwithstanding anything to the contrary, any addition, alteration or improvement to be undertaken pursuant to this Section 9.4, may be undertaken without the approval of the Board (and without requiring the consent or approval of Unit Owners) regardless of whether or not same shall constitute a material alteration to the Common Elements.

10. Changes in Developer-Owned Units. Without limiting the generality of the provisions of Subsection 9.4 above, and anything to the contrary notwithstanding, 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; (ii) change the layout or number of rooms in any Developer-owned Units; (iii) change the size of Developer-owned Units by combining separate Developer-owned Units into a single apartment (although being kept as two separate legal Units), or otherwise; and (iv) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that

Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units, or portions thereof, into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Subsection 6.5, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Subsection 6.2 above. Without limiting the generality of Subsection 6.5 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 and the Association Property. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association (respectively, **Exhibits "4" and "5"** annexed hereto), as amended from time to time. The qualifications for serving as a Director shall be as set forth in the By-Laws and Articles of Incorporation.

The affairs of the Association shall be governed by a Board, initially consisting of three (3) directors. The size of the Board may be expanded in accordance with the terms of the By-Laws. 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 any Limited Common Elements appurtenant thereto from time to time during reasonable hours as may be necessary for pest control or other purposes and for the maintenance, repair or replacement of any Common Elements, Life Safety Systems (including, without limitation, any portions thereof wholly contained within a Unit), or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements or to a Unit or Units, including, without limitation, (but without obligation or duty) to operate Hurricane Protection and/or to maintain, repair, replace and/or operate Life Safety Systems. Unless the Association expressly assumes the obligation to

operate Hurricane Protection, the obligation to operate Hurricane Protection (including, without limitation, putting shutters on, and then removing shutters) intended to protect individual Units shall be the sole obligation of the Unit Owner. Notwithstanding the foregoing, the Board may operate Hurricane Protection without permission of the Unit Owners only if such operation is necessary to preserve and protect the Condominium Property or Association Property.

- (b) The right to enter an abandoned Unit to inspect the Unit and adjoining Common Elements; to make repairs to the abandoned Unit or to the Common Elements serving the Unit, as needed; to repair the Unit if mold or deterioration is present; to turn on the utilities for the Unit; or to otherwise maintain, preserve or protect the Unit and adjoining Common Elements. Any expense incurred by the Association pursuant to this subparagraph is chargeable to the Unit Owner and enforceable as an Assessment.
- (c) The power to make and collect Assessments and other Charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property.
- (d) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior written request.
- (e) To the extent that there has been assignment of Valet Parking Rights, the Association shall have the duty to maintain or otherwise make available valet parking services with the cost thereof being a Common Expense (and not charged directly to the holder of the Valet Parking Right, unless otherwise provided in the assignment of the Valet Parking Right).
- (f) The Association shall assume all of Developer's and/or its affiliates' responsibilities under the Existing Encumbrances and to the City and/or County, and its or their governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Condominium Property (including, without limitation, any and all obligations imposed by any permits or approvals issued by the City and/or County, as same may be amended, modified or interpreted from time to time) and, in either such instance, the Association shall indemnify and hold Developer and its affiliates harmless with respect thereto in the event of the Association's failure to fulfill those responsibilities.

- (g) The duty and obligation to comply with each and every of the requirements and obligations of the Existing Encumbrances.
- (h) 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 reviewing and evaluating the submission of proposals, collection of Assessments and Charges, 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 directors and 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.
- (i) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the voting interests 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. The foregoing restriction shall not apply if such indebtedness is entered into for the purpose of financing insurance premiums, which action may be undertaken solely by the Board of Directors, without requiring a vote of the Unit Owners.
- (j) Without creating any obligation to do so, the power and authority of the Board (by a majority vote, without requiring any vote of Unit Owners) to negotiate and enter into an agreement or agreements to obtain use rights for spa/fitness memberships and/or other recreational activities and/or services from any facility located outside of the Common Elements for the benefit of the Residential Unit Owners. Said power shall include, without limitation, the right to negotiate the specific terms and conditions of such agreement (or agreements), including, without limitation, the services to be provided, the location of facilities and/or use and/or the amount of membership fees. The costs of any such agreement shall be a Residential Limited Common Expense.
- (k) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Common Elements and Association Property.

Without limiting the generality of the foregoing, the Association shall have the authority to establish rules, regulations, conditions and procedures: (i) with respect to the reservation of use of building amenities, maximum reserved usage rights, the costs for usage, and the maintenance responsibilities attributable to usage, (ii) to address move-ins, including, without limitation, requiring pre-approval of move-in dates and times, limitations on permitted move-in times, and imposition of move-in fees, additional dumpster and/or trash removal fees, etc., as and to the extent permitted by law and (iii) regarding the installation and/or placement of furniture, fixtures and/or other object on balconies, terraces, patios and/or lanais. In no event shall any rules, regulations, conditions and procedures established by the Board unreasonably interfere with the use and operation of a Commercial Unit or any Common Elements serving a Commercial Unit.

- (l) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, subject to Section 8 hereof. Real property (including, without limitation, any of the Units) shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors alone; provided that the requirements of Section 8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the proviso regarding the debt incurred) shall also apply to the acquisition of real property; provided, further, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- (m) The obligation to (i) operate and maintain the surface water management system including, without limitation, all stormwater vaults and drainage systems, in accordance with the permits and approvals issued by the District, (ii) carry out, maintain, and monitor any required wetland mitigation tasks, if any, and (iii) maintain copies of all permitting actions with regard to the District.
- (n) The duties and obligations imposed upon the Developer and/or its affiliates and/or any predecessor to the Developer and/or its affiliates and/or binding upon

the Condominium Property pursuant to the Existing Encumbrances (all of which are expressly assumed by the Association by its joinder in this Declaration).

- (o) The power and authority (acting through the Board) to elect to subsidize operations from any food and/or beverage operation located within the Common Elements, if any. Without limiting the generality of the foregoing, the Board shall have the power and duty (acting alone) to contract with an outside vendor to provide food and beverage services to portions of the Common Elements. The costs of any such subsidy shall be a Residential Limited Common Expense.
- (p) From and after the time that Developer and/or Developer's Affiliates: (i) have no direct or indirect interest in any portion of Condominium Property and (ii) have no remaining obligations and/or liabilities under this Declaration, the Act and/or regarding the development of the Condominium and/or the offering of Units therein, the power to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents. To the extent that Developer and/or Developer's Affiliates have any direct or indirect interest in any portion of the Condominium Property, and/or remaining obligations and/or liabilities under this Declaration, the Act and/or regarding the development of the Condominium and/or the offering of Units therein, the authority and power of attorney shall be vested in Developer (subject to its right of substitution, which may be granted to the Association or any other party, all as set forth in Section 24.10 below). By exercising any right under this Section (without an express grant of rights by the Developer), the Association shall be deemed to have recognized and agreed that neither Developer, nor Developer's Affiliates, have any remaining obligations and/or liabilities under this Declaration, the Act and/or regarding the development of the Condominium and/or the offering of Units therein.
- (q) The duty and obligation to comply with any requirements of any Federal, State or local rule, regulation, ordinance, code, project or agreement, relating to the installation, maintenance, repair, restoration, renourishing and/or replacing of

the beach/dune system and pathway to and from the beach located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property.

- (r) The power and authority to contract for the provision of services to Owners (and their guests, tenants and invitees) on the beach located upon or adjacent to (even if beyond the legal boundaries of) the Condominium Property (without imposing any obligation on the Association to provide such services). The costs of any such services shall be Residential Limited Common Expenses.
- (s) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the Bylaws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.
- (t) Those certain emergency powers granted pursuant to Section 718.1265, Florida Statutes (as same may be amended from time to time).

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration and 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 or other activities 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 hereof. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance

at reasonable costs or upon reasonable terms. Notwithstanding the foregoing, nothing contained herein shall relieve the Association of its duty of ordinary care, as established by the Act, in carrying out the powers and duties set forth herein, nor deprive Unit Owners of their right to sue the Association if it negligently or willfully causes damage to the Unit Owner's property during the performance of its duties hereunder. The limitations upon liability of the Association described in this Subsection 11.2 are subject to the provisions of Section 718.111(3) F.S.

- 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 or her 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 is authorized to 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 of the Association, 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, AND OTHER THAN WITH RESPECT TO THE COLLECTION OR ENFORCEMENT OF AN ASSOCIATION ASSESSMENT LIEN, THE ASSOCIATION SHALL NOT COMMENCE, ANY ACTION, PROCEEDING, LAWSUIT OR OTHER ADVERSARY PROCESS, WITHOUT FIRST OBTAINING EITHER: (1) THE AFFIRMATIVE APPROVAL OF IN EXCESS OF 66 2/3% OF THE TOTAL VOTING INTERESTS OF UNIT OWNERS AT A MEETING OF THE MEMBERSHIP AT WHICH A QUORUM HAS BEEN ATTAINED OR (2) THE AFFIRMATIVE APPROVAL OF THE DEVELOPER IN WRITING. AN AFFIDAVIT SIGNED BY THE PRESIDENT OF THE ASSOCIATION, TOGETHER WITH REASONABLE EVIDENCE OF COMPLIANCE WITH THE FOREGOING REQUIREMENT, SHALL BE ATTACHED TO ANY COMPLAINT FILED BY THE ASSOCIATION (OR OTHER INSTRUMENT COMMENCING SUCH

ACTION, PROCEEDING, LAWSUIT OR OTHER ADVERSARIAL PROCEEDING) IN ORDER TO CONFIRM COMPLIANCE WITH THE FOREGOING REQUIREMENT.

11.6 Common Alternatative Fueiling Stations. To the extent that the Condominium now or hereafter contains Alternatative Fueiling Stations within the Common Elements for the benefit of undesignated Unit Owners (e.g., not an AFS within, or solely for, an exclusively assigned Limited Common Element parking space)("Common AFS"), then the following provisions shall be applicable:

- (a) The Board may adopt, from time to time, rules and regulations regarding the use of the Common AFS, including, without limitation, rules and regulations regarding the reservation of access to the AFS, the frequency of use, minimum and/or maximum usage rights, the costs for usage, permitted hours of use and the maintenance responsibilities attributable to usage.
- (b) Each Unit Owner using the Common AFS shall be deemed to have agreed, for such Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them against any liability or damage to the Condominium and/or Association Property, and/or from damages to any persons or personal property resulting from, connected with, or relating to, directly or indirectly, the Unit Owner's use of the Common AFS, or the use of the Common AFS by such Unit Owner's tenant, guest, invitee or other person utilizing same by, through or under the Unit Owner.
- (c) All costs of operation, maintenance, repair and replacement of the Common AFS, other than utility or fuel consumption charges, shall be deemed to be Common Expenses.
- (d) The Board shall have sole discretion whether to implement a pay per use method with regard to utility or fuel consumption costs incurred in connection with use of the Common AFS. In the absence of such a pay per use policy, the utility or fuel consumption charges shall be Common Expenses. To the extent that utility or fuel consumption charges can be monitored on a per use basis, said charges shall be deemed a Limited Common Element and assessed to the Unit Owner utilizing same (whether such use is by the Unit Owner, or his or her guest, tenant or invitee) for the costs of such utility or fuel consumption measured and paid for in direct relation to the consumption identified. Such charges may be enforced and

shall be collectible by the Association in the same manner as "Assessments" hereunder.

- 11.7 Ownership. At any time, including after the time that Developer turns over control of the Association to Unit Owners other than the Developer, a Commercial Unit Owner may, at its option, convey, by quit claim deed, the Commercial Unit then owned by the Commercial Unit Owner, to the Association. The Association shall hereby be deemed to have automatically accepted any such conveyance. From and after the conveyance of a Commercial Unit to the Association, the Association shall be responsible for any and all taxes and/or assessments attributable to such Commercial Unit and for the maintenance, insurance and administration of such Commercial Unit, and all expenses relating thereto shall be Common Expenses hereunder.
- 11.8 Effect on Developer. So long as Developer holds at least one (1) Unit for sale in the ordinary course of business, none of the following actions may be taken by the Association (subsequent to control thereof being assumed by Unit Owners other than the Developer) without the prior written approval of the Developer:
- (a) Assessment of the Developer as a Unit Owner for capital improvements; or
 - (b) Any action by the Association that would be detrimental to the sales of Units by the Developer or the assignment of Limited Common Elements by the Developer for consideration; 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 of estimated revenues and expenses for the Condominium and the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses and Residential Limited 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. Each Unit Owner, by acceptance of a deed or otherwise acquiring title to a Unit, agrees that any successful food and beverage operation and/or catering service operating from the Common Elements (if any, without creating any obligation) may require a subsidy or other financial concession to the food service provider. The Board, acting alone and without requiring the vote of any Unit Owners, may, as part of its budgeting process for the Residential Limited Common Expenses, determine, in its sole discretion whether to implement and/or adopt a subsidy or other concession, and that such determination shall, without limiting the generality of other provisions of this Declaration, be

within the reasonable scope of authority of the Board and such subsidy or other concession shall be part of the Residential Limited Common Expenses. Notwithstanding anything herein contained to the contrary, the cost for the services under a bulk rate contract for Communications Services may be allocated on a per-Unit basis rather than a percentage basis, if so determined by the Board (provided, however, that the Board shall not change the method of allocation of costs relating to bulk Communications Services more frequently than annually). 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 the budget, on which such Assessments 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, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common Elements (excluding the Residential Limited Common Expenses) and Association Property, 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, applicable rules and regulations or by the Association. The Residential Limited Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Residential Limited Common Elements. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration, the By-Laws and applicable Florida law.

13. Collection of Assessments.

13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments coming due while he or she is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the grantee Owner. The liability for Assessments 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. Notwithstanding the foregoing, all Unit Owners shall be excused from the payment of Common Expenses, no Unit Owner shall be obligated for payment of Assessments, and no Assessment obligations shall accrue against any of the Units, until the date that the certificate of substantial completion required by Section 718.104(4)(e) F.S. is recorded in the Public Records of the County, either as part of the original recording

of this Declaration, or as an amendment to this Declaration (the "Substantial Completion Certificate"). From and after the date of such recording the Unit Owners shall no longer be excused from the payment of Common Expenses.

13.2 Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association and those levied by the Association against the Residential Units to meet the Residential Limited Common Expenses, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

- (a) "Special Assessments" shall mean and refer to an Assessment against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements, or for any other purpose where funds are not available from the regular periodic assessments.
- (b) "Capital Improvement Assessments" shall mean and refer to either: (i) an Assessment against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements (excluding the Residential Limited Common Elements) or Association Property; or (ii) an Assessment against each Residential Unit Owner and his or her Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Residential Limited Common Elements.

Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed ten percent (10%) of the then estimated operating budget of the Association, the Board must obtain approval of a majority of the voting interests represented at a meeting at which a quorum is attained. Notwithstanding anything to the contrary, any special assessment (i) resulting from an Extraordinary Financial Event or (ii) in the opinion of the Board, necessary for the Association to undertake required maintenance or repairs or replacements to the Condominium Property, may be adopted by the Board alone without requiring the vote or approval of Unit Owners and regardless of the amount.

- 13.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel to secure the payment of Assessments. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to a first mortgage of record, the lien is effective from and after 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 and the name and address of the Association. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County. To be valid, the claim of lien must state the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates, and the claim of lien must be executed and acknowledged by an officer or authorized agent 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 lien is not effective one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced. The one (1) year period is extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner or any other person claiming an interest in the Unit. The claim of lien secures (whether or not stated therein) all unpaid Assessments, that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

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

obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

If a Unit Owner is delinquent in paying a monetary obligation due to the Association, the Association may have the right to suspend the right of a Unit Owner or a Unit's occupant, licensee, or invitee to use certain Common Elements and/or deny the Unit Owner's voting rights, all as more particularly provided in Section 18.4 below.

If the Unit is occupied by a tenant and the Unit Owner is delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the tenant pay to the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the Unit Owner related to the Unit have been paid in full to the Association. The tenant must pay the monetary obligations to the Association until the Association releases the tenant or the tenant discontinues tenancy in the unit. The Association must provide the tenant a notice, by hand delivery or United States mail, in the form prescribed by the Act, if any. The Association must also mail written notice to the Unit Owner of the Association's demand that the tenant make payments to the Association. The Association shall, upon request, provide the tenant with written receipts for payments made. A tenant is immune from any claim by the landlord or Unit Owner related to the rent timely paid to the Association after the Association has made written demand. If the tenant paid rent to the landlord or Unit Owner for a given rental period before receiving the demand from the Association and provides written evidence to the Association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the Association for the following rental period and shall continue making rental payments to the Association to be credited against the monetary obligations of the Unit Owner until the Association releases the tenant or the tenant discontinues tenancy in the Unit. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the landlord in the amount of monies paid to the Association. The Association may issue notice under Section 83.56, F.S. and sue for eviction under SS. 83.59-83.625, F.S. as if the Association were a landlord under part II of Chapter 83 of the Florida Statutes if the tenant fails to pay a required payment to the Association after written demand has been made to the tenant. However, the Association is not otherwise considered a landlord under Chapter 83, F.S. and specifically has no obligations under S. 83.51, F.S. The tenant does not, by virtue of payment of monetary obligations to the Association, have any of the rights of a Unit Owner to vote in any election or to examine the books and records of the Association.

- 13.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least forty five (45) 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 forty five (45) 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.

- 13.5 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action. The receiver may not exercise voting rights of any Unit Owner whose Unit is placed in receivership for the benefit of the Association.
- 13.6 First Mortgagee. The liability of the holder of a first mortgage on a Unit (each, a "First Mortgagee"), or its successors or assigns, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due before the First Mortgagee's acquisition of title is limited to the lesser of:
- (a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
 - (b) One percent (1%) of the original mortgage debt.

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

service of process at a location which was known to or reasonably discoverable by the mortgagee.

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

- 13.7 Developer's Liability for Assessments. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws to the contrary, at the time of the recording of the Substantial Completion Certificate, Developer has the option (to be exercised by Developer in its sole and absolute discretion) to determine whether the provisions of this Section 13.7 shall be applicable by indicating as much in Section 25 below, if the Substantial Completion Certificate is attached hereto, or in the amendment to this Declaration recording the Substantial Completion Certificate. In the absence of any indication, the Developer shall be deemed to have selected not to have the provisions of this Section 13.7 shall be applicable. If not made applicable, then, like every other Unit Owner, Developer shall be obligated for the payment of Assessments on the Units owned by Developer at the applicable time. If indicated to be applicable, then, the following provisions shall apply:

During the period from the date of the recording of the Substantial Completion Certificate until the earlier of the following dates (the "Guarantee Expiration Date"): (a) the last day of the sixth (6th) full calendar month following the recording of the Substantial Completion Certificate, or (b) the date of the meeting of the Association's members at which majority control of the Board is to be transferred to Unit Owners other than the Developer ("Turnover") as provided in the By-Laws and the Act, the Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to the Units owned by the Developer, provided: (i) that the regular Assessments for Common Expenses imposed on each Unit Owner other than the Developer prior to the Guarantee Expiration Date shall not increase during such period over the amounts set forth on **Exhibit "6"** attached hereto; and (ii) that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed levels receivable from other Unit Owners. After the Guarantee Expiration Date, the Developer shall have the option, in its sole discretion, of extending the guarantee for any number of additional one (1) month periods (but in no event shall the Guarantee Expiration Date ever be extended beyond the date of Turnover, and if a one month extension would go beyond the date of Turnover, same shall be extended only for the period of the one month period prior to the date of Turnover), or

paying the share of Common Expenses and Assessments attributable to Units it then owns. Notwithstanding the above and as provided in Section 718.116(9)(a)(2) of the Act, in the event of an Extraordinary Financial Event (as hereinafter defined), the costs necessary to effect restoration shall be assessed against all Unit Owners owning Units on the date of such Extraordinary Financial Event, and their successors and assigns, including the Developer (with respect to Units owned by the Developer). As used in this Section, an "Extraordinary Financial Event" shall mean Common Expenses incurred prior to the Guarantee Expiration Date (as same may be extended) resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a) of the Act.

- 13.8 Estoppel Statement. Within ten (10) business days after receiving a written or electronic request therefor from a purchaser, Unit Owner, Unit Owner's designee or mortgagee of a Unit, the Association shall issue the estoppel certificate. The Association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate. The estoppel certificate must be provided by hand delivery, regular mail or e-mail to the requestor on the date of issuance of the estoppel certificate. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The form, contents and costs of providing the estoppel certificate are governed by Section 718.116(8) of the Act (as such Section is amended from time to time).
- 13.9 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, assessments will be collected monthly, and be due on the first day of each calendar month.
- 13.10 Application of Payments. Any payments received by the Association from a delinquent Unit Owner must be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing is 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. Except as otherwise provided herein or required by the Act, all insurance policies described herein covering portions of the Condominium and

Association Property shall be purchased by the Association and shall be issued either by an insurance company authorized to do business in Florida, or by a surplus lines carrier, reasonably acceptable to the Board, offering policies for Florida properties.

- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.
- (c) 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 named insureds.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Association or to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Association or the Insurance Trustee (if appointed).
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) 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, moving and relocation expenses, lost rent expenses and living expenses and for any other risks not otherwise insured in accordance herewith. To the extent that a Unit Owner or other occupant of a Unit desires coverage for such excluded items, it shall be the sole responsibility of the Unit Owner and/or occupant to obtain, although every such policy obtained must comply with the provisions of Section 627.714, Florida Statutes (as it exists on the date of recordation of this Declaration).

14.2 Coverage. The Association shall use its best efforts to obtain and maintain insurance covering the following:

- (a) Property. The Insured Property (as hereinafter defined) shall be insured in an amount not less than the replacement cost thereof as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months. The policy shall provide primary coverage for the following (the "Insured Property"): (i) all portions of the Condominium Property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications, and (ii) all alterations or additions made to the Condominium Property or Association Property pursuant to Section 718.113(2), Florida Statutes. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude, all personal property within the Unit or Limited Common Elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the Unit and serve only such Unit. Such property and any insurance thereupon is the responsibility of the Unit Owner. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. When available at reasonable premiums (in the determination of the Board), extended coverages may also be obtained, including, without limitation, coverages against loss or damage by fire and other hazards covered by an "all-risks" endorsement or policy, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (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, subject to this Declaration, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the 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, in such amounts and under such terms and conditions as the Association deems appropriate in its sole and absolute discretion. As required by the Neighboring Association Development Agreement, the Neighboring Association shall be named as an additional insured on all liability insurance policies.

- (c) Umbrella/Excess Insurance coverage as shall be required by the Board of Directors, but with combined single limit of not less than \$15,000,000 per occurrence.
- (d) Worker's Compensation and other mandatory insurance, when applicable.
- (e) Flood Insurance covering the Common Elements, Association Property and Units, but only if required by the Primary Institutional First Mortgagee, or if the Board so elects.
- (f) Errors and Omissions. The Association shall obtain and maintain adequate liability, errors and omission coverage on behalf of each of the officers and directors of the Association.
- (g) Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.
- (h) 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.
- (i) Offsite Improvements. To the extent that the Association has responsibilities for the maintenance, operation, repair and/or replacement of offsite improvements, whether pursuant to development approvals and/or the Existing Encumbrances, the Association may secure such coverages as are required and/or appropriate with respect to any such offsite approvals.

- (j) Other Insurance. Such other insurance as the Board of Directors shall determine from time to time to be desirable or as may be required by any other approvals and/or agreements made in connection with the development of the Condominium or as may be required by the Existing Encumbrances.

When appropriate and obtainable (at a reasonable cost in the determination of the Board), 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) 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 property insurance policy obtained by the Association, if required to obtain FNMA/FHLMC approval of the Condominium (if such approval is sought), and if generally available, shall have the following endorsements: (a) agreed amount and inflation guard and (b) 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 insureds, including all mortgagees of Units. Prior to obtaining any policy of property insurance or any renewal thereof, but in no event later than every thirty-six (36) months, the Board of Directors shall obtain an independent insurance appraisal from a fire insurance company, or other competent appraiser, of the replacement cost 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 and except that the portion of such premiums attributable to the Residential Limited Common Elements shall be deemed part of the Residential Limited

Common Expenses. Premiums may be financed in such manner as the Board of Directors deems appropriate (without regard for any limitations on borrowing contained in the Declaration, or any of its exhibits). Such policies may contain reasonable deductible provisions which shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the Condominium Property is situated. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained. The Board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the Board. Each Owner, by acceptance of a deed or other conveyance of a Unit, hereby ratifies and confirms any decisions made by the Association in this regard and recognizes and agrees that funds to cover the deductible must be provided from the general operating funds of the Association before the Association will be entitled to insurance proceeds. The Association may, but shall not be obligated to, establish a reserve to cover any applicable deductible.

- 14.5 Share of Proceeds. The Association is hereby irrevocably appointed as an agent and attorney-in-fact for each and every Unit Owner, for each Institutional First Mortgagee and/or each owner of any other interest in the Condominium Property to adjust and settle any and all claims arising under any insurance policy purchased by the Association and to execute and deliver releases upon the payment of claims, if any. Nothing herein shall preclude the Board from designating an Insurance Trustee to assume the obligations of the Association for disbursement of insurance proceeds. The decision to engage or appoint an Insurance Trustee, or not to do so, lies solely with the Board. 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 Association. The duty of the Association 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:

- (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 Subsection 14.5(b) below and further provided that if the Insured Property so damaged includes property lying within the

Residential Limited Common Elements, that portion of the proceeds allocable to the Residential Limited Common Elements shall be held in undivided shared for each Residential Unit Owner, such shared being the same as the undivided shares in the Residential Limited Common Elements (as set forth on Exhibit "3-2" attached hereto).

- (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 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 Association shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

- (a) Expenses of the Insurance Trustee. All expenses of the Insurance Trustee (if any) 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, 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 Subsection 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.

- 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, to the extent required under the Act, 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 are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.10 Appointment of Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Insurance Trustee, the Association pursuant to Subsection 14.5 above, will perform directly all obligations imposed upon such Insurance Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses. Notwithstanding anything contained herein to the contrary, if required by the Primary Institutional First Mortgagee providing financing to the Developer for construction and/or development of the Condominium, such Primary Institutional First Mortgagee shall be appointed as the Insurance Trustee until the Developer is no longer indebted to the Primary Institutional First Mortgagee for construction and/or Development of the Condominium.
- 14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
15. Reconstruction or Repair After Fire or Other Casualty.

- 15.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraphs, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors of the Association 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 Association and/or Insurance Trustee (if appointed), as applicable, 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 a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any 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 the Owner's share of such fund all mortgages and liens on his or her Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words "promptly repair" or words of similar import are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Association holds, or 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 Association determines that, or 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) the plans for which are to be altered.
- 15.3 Responsibility for Repair. Any portion of the Condominium Property that must be insured by the Association against property loss which is damaged shall be reconstructed, repaired, or replaced as necessary by the Association as a Common Expense. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the Association are a Common Expense of the Condominium, except that:
- (a) A Unit Owner is responsible for the costs of repair or replacement of any portion of the Condominium Property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the Declaration or the rules and regulations of the Association by a Unit Owner, the members of his or her family, Unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.
 - (b) The provisions of subparagraph 15.3(a) also apply to the costs of repair or replacement of personal property of other Unit Owners or the Association, as well as other property, whether real or personal, which the Unit Owners are required to insure.
 - (c) To the extent the cost of repair or reconstruction for which the Unit Owner is responsible under this Section is reimbursed to the Association by insurance proceeds, and the Association has collected the cost of such repair or reconstruction from the Unit Owner, the Association shall reimburse the Unit Owner without the waiver of any rights of subrogation.
 - (d) The Association is not obligated to pay for reconstruction or repairs of property losses as a Common Expense if the property losses were known or should have been known to a Unit Owner and were not reported to the Association until after

the insurance claim of the Association for that property was settled or resolved with finality, or denied because it was untimely filed.

- (e) A Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board, however, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A Unit Owner must obtain all required governmental permits and approvals before commencing reconstruction. Unit Owners are responsible for the cost of reconstruction of any portions of the Condominium Property for which the Unit Owner is required to carry property insurance, and any such reconstruction work undertaken by the Association is chargeable to the Unit Owner and enforceable as an Assessment.

15.4 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.

- (a) 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 \$500,000, 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 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 \$500,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Subsection 15.3(a)(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 under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected 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 or her portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (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 beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

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, the Association shall make a Charge against the Owner (but shall not levy an Assessment) in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

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 or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to 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 Charge shall be made against a defaulting Unit Owner in the amount of his or her 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 Board), 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 charged to and paid by 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 Board), 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 the 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. Similar adjustments shall also be made to each Owner's share in the Residential Limited Common Elements.

- (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) Alternative Dispute Resolution. 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 Unit 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. Notwithstanding the foregoing, nothing contained herein shall limit or abridge the remedies of Unit Owners provided in Sections 718.303 and 718.506, F.S.

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.

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

17.1 **Occupancy.** Each Residential Unit shall be used as a residence and/or home office only, except as otherwise herein expressly provided, all in accordance with, and only to the extent permitted by, applicable County, State and Federal codes, ordinances and regulations. Home office use of a Residential Unit shall only be permitted to the extent permitted by law and to the extent that the office is not staffed by employees, is not used to receive clients and/or customers and does not generate additional visitors or traffic into the Unit or on any part of the Condominium Property. The provisions of this Subsection 17.1 shall not be applicable to the Commercial Units or Units used by the Developer, which it has the authority to do without Unit Owner consent or approval, and without payment of consideration, for model apartments, guest suites, sales, re-sales and/or leasing offices and/or for the provision of management, construction, development, maintenance, repair and/or financial services. The Commercial Units may be used for any lawful purpose, and nothing in this Declaration shall preclude multiple uses from being made from the Commercial Units. Notwithstanding anything to the contrary, the Condominium Property shall be subject to, and bound by the Existing Encumbrances and no use shall be made from the Condominium Property in violation of the Existing Encumbrances.

17.2 **Children.** Children shall be permitted to be occupants of Units.

17.3 **Pet Restrictions.** A maximum of two (2) domesticated pets may be maintained in a Unit provided that such pets are: (a) permitted to be so kept by applicable laws and regulations, (b) not left unattended on balconies, terraces, patios and/or in lanai areas, (c) generally, not a nuisance to residents of other Units in the Condominium and (d) not a breed prohibited by applicable law; provided that neither the Developer, Developer's Affiliates, 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 fully indemnify and hold harmless the Developer, Developer's Affiliates, the Board of Directors, each Unit Owner and the Association in such regard. Each Owner, or other person with a pet on the Condominium Property shall be

responsible for picking up and properly disposing of all excrements. Any landscaping damage or other damage to the Common Elements caused by a Unit Owner's pet must be promptly repaired by the Unit Owner. The Association retains the right to effect said repairs and charge the Unit Owner therefor. All dogs must be kept on a leash of a length that affords reasonable control over the pet at all times when outside the Unit or enclosed patio. No pets may be kept on patio areas or on balconies of any Units when the Owner is not in the Unit. The Board may require that pets shall not be taken in any elevators other than the service elevator of the Condominium, when available. Without limiting the generality of Section 18 hereof, a 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 the By-Laws and any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property.

No pets shall be maintained in the Commercial Units, provided however, that nothing herein shall prohibit the guests, patrons or invitees of the Commercial Units from bringing their pets with them when patronizing the Commercial Units, any tenant of any portion of a Commercial Unit, or any operation from the Commercial Units (to the extent permitted by the Commercial Unit Owners, or its tenant).

- 17.4 Alterations. Without limiting the generality of Subsection 9.1 hereof, but subject to Section 11 hereof, no Residential Unit Owner shall cause or allow improvements or physical or structural changes to any Residential Unit, Limited Common Elements appurtenant thereto, Common Elements, Residential Limited Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing or altering any electrical wiring or plumbing systems, installing television antennae, satellite dishes, electronic devices, transmitting and/or receiving equipment, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of said Unit, without obtaining the prior written consent of the Association (in the manner specified in Subsection 9.1 hereof) and otherwise complying with all requirements of applicable law. Notwithstanding the provisions of Subsection 9.1 above, any Unit Owner may display one portable, removable United States flag in a respectful way, and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, Patriot Day and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4¹/₂ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard. Unit Owners may also attach a religious object on the mantel or frame of the Unit Owner's door not to exceed 3 inches wide, 6 inches high and 1.5 inches deep.

Curtains, blinds, shutters, levelors, or draperies (or linings thereof) which face (or are otherwise exposed to) the exterior windows or glass doors of Residential Units shall be white or off-white in color and otherwise consistent with the overall appearance and aesthetic of the Building and shall be subject to disapproval by the Association, in which case they shall be removed and replaced by the Residential Unit Owner, at such Owner's sole cost, with items acceptable to the Association.

The foregoing shall specifically not apply to the Owner from time to time of the Commercial Units. Specifically, the Owners of the Commercial Units are expressly permitted (without requiring consent from the Association or any Unit Owner or any other party, other than applicable governmental authorities to the extent that prior approval from them is required), to install on the exterior walls of their Commercial Unit and any Limited Common Element or Common Element balconies, terraces, patios, lanais, decks or other areas appurtenant thereto such signage, mechanical equipment, furniture, antennas, dishes, receiving, transmitting, monitoring and/or other equipment thereon as it may desire and may further make any alterations or improvements, in the applicable Commercial Unit Owner's sole discretion, to their Commercial Unit, Limited Common Elements or Common Elements adjacent to their Commercial Unit. Any improvements and/or alterations made by a Commercial Unit Owner, must however comply with all applicable governmental codes, ordinances and/or regulations.

- 17.5 Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. In that regard, each Unit Owner, by acceptance of a deed for a Unit, thereby covenants and agrees that it is the intention of the Developer that the stairwells of the Building are intended primarily for ingress and egress, and as such may be constructed and left unfinished solely as to be functional for said purpose, without regard to the aesthetic appearance of said stairwells. Similarly, the garage and utility pipes serving the Condominium are intended primarily for functional purposes, and as such may be left unfinished without regard to the aesthetic appearance of same. The foregoing is not intended to prohibit the use of the stairwells, garage and utility pipes for any other proper purpose. Additionally, no Unit Owner shall be permitted to store any items whatsoever on balconies, patios, or terraces, including, without limitation, bicycles and/or motor bikes. Further, no grilling shall be permitted on any balcony, patio or terrace. The foregoing grilling restriction shall not apply to the balconies, patios or terraces appurtenant to penthouse level Units which may contain outdoor grills, provided that such grilling is permitted by applicable law.

- 17.6 Trash Removal. The Condominium includes a trash holding and storage area within the Residential Limited Common Elements and a separate trash holding and storage area within the general Common Elements. No Commercial Unit Owner, nor tenant, guest or invitee of a Commercial Unit Owner (or operator of a retail space within a Commercial Unit) may utilize the trash holding and storage area within the Residential Limited Common Elements. Commercial Unit Owners, and their tenants, guests and invitees are only permitted to utilize the trash holding and storage area within the general Common Elements (or any trash holding areas within the applicable Commercial Unit). Given the varied trash disposal needs of different types of operators of commercial space, the Association shall budget and arrange for trash removal from the trash holding and storage area within the general Common Elements two (2) times per week. It is recognized and agreed that depending on the particular operations from a Commercial Unit, the actual trash holding and/or removal needs may exceed two (2) times per week. To the extent that a Commercial Unit Owner (or operator) requires trash removal more frequently than two (2) times per week, the Association shall arrange for same, but only if the requesting Commercial Unit Owner (or operator) agrees to pay (and pays) all incremental costs associated with the increased trash removals. The Association shall have the authority to monitor the trash produced by the Condominium and determine whether any Commercial Unit Owner or group of Commercial Unit Owners require additional trash removal in excess of the two (2) standard trash removals and may Charge those Owners who, in the Association's reasonable discretion, cause the Association to schedule such additional removals.
- 17.7 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium and/or Association Property by its residents, occupants or members. No activity specifically permitted by this Declaration, including without limitation, any activities permitted under the Existing Encumbrances or any activities conducted from a Commercial Unit, shall be deemed a nuisance, regardless of any noises and/or odors emanating therefrom (except, however, to the extent that such odors and/or noises exceed limits permitted by applicable law, including without limitation, activities or businesses conducted from the Common Elements. Each Unit Owner, by acceptance of a deed or otherwise acquiring title to a Unit shall be deemed to understand and agree that if (without creating any obligation) catering and/or other food and beverage service operations are operated from a Commercial Unit or the Common Elements, such operations may result in the creation of noises, odors and/or other disturbances which may affect portions of the Condominium Property. **Each Unit Owner, by acceptance of a deed or otherwise acquiring title to a Unit shall be deemed to**

understand and agree that if (without creating any obligation) restaurants, cafes, bakeries and/or other food service operations are operated from a Commercial Unit, such operations may result in the creation of noises and odors which may affect all portions of the condominium property. Accordingly, each Owner agrees (1) that such noises and/or odors shall not be deemed a nuisance hereunder, (2) that neither the Developer, the Commercial Unit Owners, nor any tenant and/or operator from the Commercial Units shall be liable for the emanation of such noises, odors and/or any damages resulting therefrom, and (3) to have released Developer, Developer's Affiliates, the Commercial Unit Owners, and any tenant and/or operator from the Commercial Units from any and all liability resulting from same.

Similarly, inasmuch as the Commercial Units may attract customers, patrons and/or guests who are not members of the Association, such additional traffic over and upon the Common Elements shall not be deemed a nuisance hereunder. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

- 17.8 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Subsection 17.8. No activity specifically permitted by this Declaration, including, without limitation, activities or businesses conducted from a Commercial Unit, shall be deemed to be a violation of this Subsection 17.8. Similarly, inasmuch as the Existing Encumbrances grant certain use, parking and access rights to the public such use and/or access shall not be deemed a nuisance hereunder. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.
- 17.9 Leases. No portion of a Residential Unit (other than an entire Residential Unit) may be rented. Leasing of Residential Units shall be subject to the prior written approval of the

Association (and the Association may (but shall not be obligated to) require background checks and credit reports for all prospective tenants). Each lease shall be in writing and shall specifically provide 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 or By-Laws of the Association or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. An Owner shall have no right to lease his/her/its Unit if, at the commencement of the lease, the Owner is delinquent in the payment of Assessments to the Association or has an outstanding fine. No lease of a Unit shall be for a period of less than three (3) months and there shall be no more than two (2) leases commenced during any calendar year. Additionally, all leasing of Residential Units shall be subject to the City's Code of Ordinances with respect to the leasing of Residential Units.

For purposes hereof, a Unit shall be deemed to be rented or leased (and must comply with the provisions hereof, including, without limitation, the minimum lease term and maximum number of leases provisions) if: (i) the occupant of the Unit pays any compensation to the Unit Owner (or his/her/its agent or designee) for the use of the Unit or if the Unit Owner (or his/her/its agent or designee) receives any compensation for allowing the occupancy; or (ii) the occupant is procured, directly or indirectly, through any type of general solicitation, broker, agent, internet service or application and/or home share service (e.g., VRBO, HomeAway, airbnb, etc.). The Association shall have the right to establish rules and regulations to best implement the provisions hereof. There shall be a rebuttable presumption that a person occupying a Unit without the Unit Owner (or designated primary occupant of a Unit owned by an entity) and who is not a family member and/or domestic partner of the Unit Owner (or designated primary occupant) shall be deemed to be renting the Unit.

Every lease of a Residential Unit shall specifically provide (or, if it does not, shall be automatically deemed to provide) that (a) a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto) and with any and all rules and regulations adopted by the Association from time to time (before or after the execution of the lease and/or any modifications, renewals or extensions of same), and (b) the Association shall have the right to terminate the lease or restrict the tenant's use of Common Elements upon default by the tenant in observing any of the provisions of this Declaration (and all Exhibits hereto), the Articles of Incorporation or By-Laws of the Association, or other applicable provisions of any agreement, document or instrument governing the Condominium Property or administered by the Association. The Residential Unit Owner will be jointly and severally liable with the tenant in its Residential Unit to the Association for any

amount which is required by the Association to repair any damage to the Common Elements resulting from acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant and special Assessments may be levied against the Residential Unit therefor. All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease. The Association may charge a fee in connection with the approval of any lease, sublease, or other transfer of a Unit requiring approval, provided, however that such fee may not exceed \$100.00 per applicant other than husband/wife or parent/dependent child, which are considered one applicant, and provided further, that if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. If so required by the Association, a tenant wishing to lease a Residential Unit shall be required to place in escrow with the Association a reasonable sum, not to exceed the equivalent of one month's rental, which may be used by the Association to repair any damage to the Common Elements and/or Association Property resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). Payment of interest, claims against the deposit, refunds and disputes regarding the disposition of the deposit shall be handled in the same fashion as provided in Part II of Chapter 83, Florida Statutes.

When a Unit is leased, a tenant shall have all use rights in Association Property and those Common Elements otherwise readily available for use generally by the Unit Owner, and the Owner of the leased Unit shall not have such rights, except as a guest, unless such rights are waived in writing by the tenant. Nothing herein shall interfere with the access rights of the Unit Owner as a 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.

The lease of a Unit for a term of six (6) months or less is subject to a tourist development tax assessed pursuant to Section 125.0104, Florida Statutes. A Unit Owner leasing his or her Unit for a term of six (6) months or less agrees, and shall be deemed to have agreed, for such Owner, and his or her heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them for any and all costs, claims, damages, expenses or liabilities whatsoever, arising out of the failure of such Unit Owner to pay the tourist development tax and/or any other tax or surcharge imposed by the State of Florida, the County or the City with respect to rental payments or other charges under the lease, and such Unit Owner shall be solely responsible for and shall pay to the applicable taxing authority, prior to delinquency, the tourist development tax and/or any

other tax or surcharge due with respect to rental payments or other charges under the lease.

The foregoing leasing restrictions shall not apply to the Commercial Units and the Commercial Units may be leased on any terms that may be desired by the Commercial Unit Owners.

17.10 Individual AFS. To the extent that a Limited Common Element parking space now or hereafter has an Individual AFS installed therein, or adjacent thereto to serve a specific Limited Common Element parking space, the following provisions shall be applicable:

- (a) The Owner of the Unit to which the Limited Common Element parking space benefitted by the Individual AFS is appurtenant (the "Individual AFS Owner") shall, at its sole cost and expense, be responsible for any and all maintenance, repair and replacement of the charging station until it has been removed and for the restoration of the common area after removal;
- (b) The Individual AFS Owner shall, at its sole cost and expense, be responsible for any and all costs for damage to the Individual AFS, Common Elements and/or, Limited Common Elements resulting from, connected with, or relating to, directly or indirectly, the installation, maintenance, repair, removal or replacement of the Individual AFS;
- (c) The Individual AFS Owner shall be deemed to have agreed, for such Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, Developer's Affiliates and all other Unit Owners harmless from and to indemnify them against any liability or damage to the Condominium and/or Association Property, and/or from damages to any persons or personal property resulting from, connected with, or relating to, directly or indirectly, the Unit Owner's use of the Individual AFS, or the use of the Individual AFS by such Unit Owner's tenant, guest, invitee or other person utilizing same by, through or under the Unit Owner; and
- (d) Without limiting any other provision of this Declaration, the Individual AFS Owner shall be responsible for all costs of electricity and/or natural gas fuel associated with, or consumed from, the Individual AFS.

17.11 Weight, Sound and other Restrictions. Unless installed by the Developer or Developer's Affiliates or meeting the sound insulation specifications and color requirements (with

respect to floor coverings on any balconies, terraces, roof decks, patios and/or lanais) established from time to time by the Board (as confirmed by the Board's required approval of the specific installation, if any), hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will not be permitted in Units. Even once approved by the Board, the installation of insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the building structure, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and same must be installed prior to the Unit being occupied. Without limiting the generality of the foregoing, without first obtaining the prior written approval of the Board (which may be withheld in its sole and absolute discretion), no floor coverings may be installed on any balcony, terrace, roof deck, patio and/or lanai. Chipping, grinding and/or bushing of the concrete slab is expressly prohibited, unless otherwise first approved in writing by the Board. Prior to the installation of any floor coverings (and insulation and adhesive material therefor) on any roof deck. Additionally, the floor coverings (and insulation and adhesive material therefor) installed on any roof deck, patio and/or lanai (i) shall not exceed a thickness that will result in the finish level of the balconies, terraces, roof decks, patios and/or lanais being above the bottom of the scuppers or would result in the rails being below the required height (as established by the applicable building code) and/or otherwise diminish the performance of the scuppers, and (ii) must be installed so as to eliminate the possibility of effervescence. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building. All areas within a Unit, unless containing floor coverings installed by the Developer or to receive floor covering meeting the sound insulation specifications established from time to time by the Board, are to receive sound absorbent, less dense floor coverings, such as carpeting. The Board will have the right to specify the exact material to be used on balconies, terraces, roof decks, patios and/or lanais, and no floor coverings may be installed on a balcony, terrace or roof deck which would interfere with or block weep holes or exceed the height of sliding glass door tracks or otherwise compromise the waterproofing systems of the Building, including without limitation, any caulks and/or coatings. The Board shall have the right to specify the exact material to be used on balconies, terraces, roof decks, patios and/or lanais. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. In that regard, no Unit Owner shall install floor covering on any balcony, patio, terrace, roof deck and/or lanai in a manner that would compromise the roofing materials and/or waterproofing membranes of the Building or void any existing vendor warranties. Unit Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. **Applicable**

warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements. Each Unit Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a multi-story building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and or mechanical equipment can often be heard in another Unit. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Unit Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from sound transmission.

Notwithstanding anything contained herein to the contrary, any and all floor coverings (and insulation and adhesive material therefor) installed by the Developer on any balcony, terrace, patio and/or lanai shall not be removed, altered or changed in any manner whatsoever by or on behalf of a Unit Owner without prior written consent from the Board.

- 17.12 Mitigation of Dampness and Humidity. No Unit Owner shall install, within his or her Unit, or upon the Common Elements or Association Property, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in cabinetry, furniture and/or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board, masonry block or concrete wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall regularly run the Unit's air conditioning system to maintain the Unit's temperature, whether or not occupied, at 78°F or less, to minimize humidity in the Unit. Leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that neither Developer, Developer's Affiliates, nor any of Developer's third party consultants, including without limitation, Developer's architect, shall be responsible, and hereby disclaims any responsibility for any illness, personal injury, death or allergic reactions which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees and/or the pets of all of the aforementioned persons, as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility, at the Unit Owner's expense, to keep the Unit clean, dry, well-ventilated and free of contamination. While the foregoing are intended to minimize dampness and the potential development of mold, fungi, mildew and other mycotoxins, each Unit Owner understands and agrees that there is no method for completely eliminating the development of mold or mycotoxins. The Developer does not make any representations or warranties regarding

the existence or development of mold or mycotoxins and each Unit Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. In furtherance of the rights of the Association as set forth in Subsection 11.1(a) above, in the event that the Association reasonably believes that the provisions of this Subsection 17.12 are not being complied with, then, the Association shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Unit Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Unit Owner or any other party) to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Unit Owner to the Association, with all such costs to be deemed Charges hereunder). Each Unit Owner, by acceptance of a deed or other conveyance of a Unit, holds the Developer, Developer's Affiliates, Developer's third party consultants, including without limitation, Developer's architect, harmless and agrees to indemnify the Developer and Developer's Affiliates from and against any and all claims made by the Unit Owner and/or the Unit Owner's guests, tenants and invitees on account of any illness, allergic reactions, personal injury and death to such persons and to any pets of such persons, including all expenses and costs associated with such claims including, without limitation, inconvenience, relocation and moving expenses, lost time, lost earning power, hotel and other accommodation expenses for room and board, and all attorneys' fees and other legal and associated expenses through and including all appellate proceedings, with respect to all matters mentioned in this Subsection 17.12.

- 17.13 Exterior Improvements. Without limiting the generality of Subsections 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, lanais or windows of the Building (including, but not limited to, awnings, signs, storm shutters, satellite dishes, screens, window tinting, lighting fixtures, furniture, fixtures and equipment), change the appearance, whether by paint or otherwise, of any exterior wall or exterior balcony face, change and/or modify the exterior wall system and/or any handrails or balcony walls or railings, without the prior written consent of the Association. Unit Owners may also attach a religious object on the mantel or frame of the Unit Owner's door not to exceed 3 inches wide, 6 inches high and 1.5 inches deep.

- 17.14 Signs. Notwithstanding anything to the contrary in this Declaration, the Owner of a Commercial Unit may, subject to the limitations of applicable law, affix or attach lighted or unlighted signs on the exterior walls, doors, adjacent balconies, terraces, patios and/or lanais and/or windows of the Building, (whether same are a part of the Commercial Unit, the Limited Common Elements, or the Common Elements) adjacent to the Owner's Commercial Unit, or to the windows of a Commercial Unit, without receiving the consent of the Association, the Board or any other party (other than any applicable governmental authority to the extent that prior approval from them is required by applicable governmental codes, ordinances and/or regulations). Notwithstanding anything herein contained to the contrary, the provisions of this Subsection 17.14 shall not be amended without the affirmative vote of Unit Owners holding not less than 4/5ths of all voting interests in the Condominium.
- 17.15 Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in Subsection 11.1(a) hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys to their respective Units (or to otherwise make access available) to the Association for use in the performance of its functions. No Unit Owner shall change the locks to his or her Unit (or otherwise preclude access by the Association) without so notifying the Association and delivering to the Association a new set of keys (or otherwise affording access) to such Unit.
- 17.16 Hurricane Evacuation Procedures. Upon notice of approaching hurricanes, all furniture, plants, objects, and plants must be removed from any balconies or terraces. IN THE EVENT THAT AN EVACUATION ORDER IS ISSUED BY ANY APPLICABLE GOVERNMENTAL AGENCY, ALL OWNERS MUST PROMPTLY COMPLY WITH SAID ORDER. The Association shall have the right from time to time to establish hurricane preparedness and evacuation policies, and each Owner shall fully comply with same (and shall cause its Tenants and other Permitted Users to do so as well).
- 17.17 Turtle Mitigation. The use of the Condominium Property and the Association Property shall at all times comply with all conditions restrictions and/or limitations imposed by any governmental agency regarding the preservation of turtles on or near the Condominium Property.
- 17.18 Recorded Agreements; Development Approvals. The use of the Units, the Condominium Property and the Association Property shall at all times comply with all conditions and/or limitations imposed in connection with the approvals and permits issued by the City for the development of the Improvements, and all restrictions, covenants, conditions,

limitations, agreements, reservations and easement now or hereafter recorded in the public records, including, without limitation, the Existing Encumbrances.

- 17.19 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, as determined by the Association in its sole discretion.
- 17.20 Effect on Developer and Commercial Unit Owners. Subject to the following exceptions, the restrictions and limitations set forth in this Section 17 shall not apply to the Developer nor to Units owned by the Developer or to the Commercial Units. The Developer shall not be exempt from the restrictions, if any, relating to requirements that leases or lessees be approved by the Association, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to the Developer's construction, maintenance, sales, re-sales, leasing and other marketing and financing activities, which activities the Developer can perform without the prior consent of the Unit Owners. Further, notwithstanding anything herein contained to the contrary, the provisions of this Section 17 shall not be amended, altered or modified in any manner affecting the Commercial Units, without the prior consent of four fifths of all voting interests.
18. Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner is governed by and must comply with the terms of this Declaration and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 18.1 Alternative Dispute Resolution. Before the institution of court litigation, the parties to a Dispute, other than an election or recall Dispute, shall either petition the Division for nonbinding arbitration or initiate presuit mediation as provided in Section 718.1255(5), Florida Statutes. Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in arbitration. A petition for arbitration must be accompanied by the arbitration fee required by Section 718.1255(4)(a), Florida Statutes. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in

writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and reasonable attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be charged the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award. "Dispute", for purposes of this Section means any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (1) require any Owner to take any action, or not to take any action, involving that Owner's Unit or the appurtenances thereto; or (2) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (1) properly conduct elections; (2) give adequate notice of meetings or other actions; (3) properly conduct meetings; or (4) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; the levy of a fee or Assessment or the collection of an Assessment levied against a party; the eviction or other removal of a tenant from a Unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a Unit based upon the alleged failure of the Association to maintain the Common Elements or Condominium Property.

- 18.2 **Negligence and Compliance.** A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by the Owner's negligence or by that of any member of the Owner's family or the Owner's guests, employees, agents, invitees 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. In the event a Unit Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions

of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines (in accordance with and as and to the extent permitted by, the provisions of Subsection 18.3 below), to sue at 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, provided, however, that nothing contained in this Subsection 18.2 shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant 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 or her 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.

18.3 Fines. In addition to any and all other remedies available to 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 the By-Laws or Rules and Regulations of the Association, provided the following procedures are adhered to:

- (a) Notice: The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable written notice of not less than fourteen (14) days and said notice shall include: (i) a statement of the date, time and place of the hearing; (ii) a statement of the provisions of the Declaration, By-Laws or rules which have allegedly been violated; and (iii) a short and plain statement of the matters asserted by the Association and the proposed fine and/or suspension.
- (b) Hearing: If the applicable party(ies) requests a hearing within the notice period, the non-compliance shall be presented to a committee of at least three members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director or employee, who shall hear reasons why penalties should not be imposed. The party against whom the fine may be levied shall have an opportunity to respond,

to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the committee. A written decision of the committee shall be submitted to the Owner or occupant by not later than twenty-one (21) days after the hearing. If the committee does not agree with the fine proposed by the Board, the fine may not be levied.

- (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. At the time of the recordation of this Declaration, the Act provides that no fine may exceed \$100.00 per violation, or \$1,000.00 in the aggregate.
- (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 within five (5) days of the committee upholding the decision to fine, however no fine may become a lien against the Unit.
- (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.
- (h) Proviso. Notwithstanding the foregoing, the notice and hearing requirements of this subsection do not apply to the imposition of fines against a Unit Owner or a Unit's occupant, licensee, or invitee because of failing to pay any amounts due the Association. If such a fine is imposed, the Association must levy the fine or impose a reasonable suspension at a properly noticed Board meeting, and after the imposition of such fine or suspension, the Association must notify the Unit Owner and, if applicable, the Unit's occupant, licensee, or invitee by mail or hand delivery. A fine may not become a lien against a Unit.

- 18.4 Suspension. An Association may suspend, for a reasonable period of time, the right of a Unit Owner, or a Unit Owner's tenant, guest or invitee, to use the Common Elements, common facilities, or any other Association Property for failure to comply with any provision of the Declaration, the By-Laws or reasonable rules of the Association. A suspension may not be imposed unless the Association first provides at least 14 days' written notice and an opportunity for a hearing to the Unit Owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other Unit Owners who are neither Board members nor persons residing in a Board member's household. If the committee does not agree, the suspension may not be imposed. If a Unit Owner is more than 90 days delinquent in paying a monetary obligation due to the Association, the Association may suspend the right of a Unit Owner or a Unit's occupant, licensee, or invitee to use Common Elements, common facilities, or any other Association Property until the monetary obligation is paid. This subsection does not apply to Limited Common Elements intended to be used only by that Unit, Common Elements needed to access the Unit, or utility services provided to the Unit, parking spaces, or elevators. The notice and hearing requirements set forth above do not apply to suspensions imposed in connection with monetary delinquencies under this subsection. Any suspension imposed pursuant to this subsection must be approved at a properly noticed Board meeting. Upon approval, the Association must notify the Unit Owner and, if applicable, the Unit's occupant, licensee or invitee by mail or hand delivery.

The Association may suspend the voting rights of a Member due to nonpayment of any monetary obligation due to the Association which is more than \$1,000.00 and more than 90 days delinquent. Proof of such obligations must be provided to the allegedly delinquent Unit Owner thirty (30) days before such suspension takes effect. At least 90 days before an election, the Association must notify a Unit Owner or member that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation. A voting interest or consent right allocated to a Unit Owner or member which has been suspended by the Association shall be subtracted from the total number of Voting Interests in the Association, which shall be reduced by the number of suspended Voting Interests when calculating the total percentage or number of all Voting Interests available to take or approve any action, and the suspended Voting Interests shall not be considered for any purpose, including, but not limited to, the percentage or number of Voting Interests necessary to constitute a quorum, the percentage or number of Voting Interests required to conduct an election, or the percentage or number of Voting Interests required to approve an action under the Act or pursuant to the Declaration, Articles or Bylaws. The suspension ends upon full payment of all obligations currently due or overdue the Association. The notice and hearing requirements set forth in the initial paragraph of this Section do not apply to suspensions imposed under this paragraph. Any suspension

imposed pursuant to this paragraph must be approved at a properly noticed Board meeting. Upon approval, the Association must notify the Unit Owner and, if applicable, the Unit's occupant, licensee or invitee by mail or hand delivery.

- 18.5 Waiver of Jury Trial. TO THE MAXIMUM EXTENT LAWFUL, THE ASSOCIATION AND EACH UNIT OWNER AGREE THAT NEITHER A UNIT OWNER, THE ASSOCIATION NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF A UNIT OWNER OR THE ASSOCIATION (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDINGS, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THE DECLARATION, ANY EXHIBITS ATTACHED HERETO, THE ACT OR ANY ACTIONS, DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES, OR ANY OF THEM. NONE OF THE PARTIES WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED.
- 18.6 Proviso. Notwithstanding anything to the contrary, this Declaration shall be construed and interpreted to preserve to the Developer and Developer's Affiliates all rights, claims, powers, protections and defenses. Accordingly, (i) no waiver, release or disclaimer made or deemed made by a Unit Owner under this Declaration shall be deemed to be made by Developer (even if Developer is or was a Unit Owner) (ii) no agreement to indemnify, defend and/or hold any party harmless made or deemed made by a Unit Owner under this Declaration shall be deemed to be made by Developer (even if Developer is or was a Unit Owner) and (iii) no waiver, release, disclaimer and/or agreement to indemnify, defend and/or hold any party harmless contained in this Declaration shall be deemed to limit, impair, mitigate, preclude or otherwise affect the rights of Developer and/or Developer's Affiliates to pursue, to the maximum extent lawful, any and all rights, claims, powers, protections and defenses, including, without limitation, claims, actions or other proceedings against other Unit Owners, contractors, sub-contractors, suppliers, architects, engineers and/or other design professionals. No provision of this Declaration shall be construed and/or interpreted and/or relied upon as a means to: (i) defend, preclude and/or affect the right of Developer and/or Developer's Affiliates from pursuing such claims and/or (ii) mitigate claims brought or sought by Developer and/or Developer's Affiliates.

18.7 Mandatory Binding Arbitration of Disputes Between Association and Developer.

- (a) All disputes, actions, claims, or controversies between Association and Developer arising out of or relating to: (i) the design and construction of all or any portion of the Condominium Property, the Common Elements, the Units, the Association Property, the Improvements, or the Building; or (ii) the management of the Association prior to the date of the meeting of the Association's members at which majority control of the Board was transferred to Unit Owners other than the Developer as provided in the By-Laws and the Act, shall be submitted for resolution by binding arbitration to the American Arbitration Association (www.adr.org) ("AAA") in accordance with this Subsection 18.7.

NOTWITHSTANDING THE FOREGOING, ASSOCIATION AND DEVELOPER AGREE THAT DISPUTES RELATING TO THE SCOPE, VALIDITY, OR ENFORCEABILITY OF SUBSECTION 18.7 WILL NOT BE SUBJECT TO ARBITRATION.

- (b) Arbitration. Unless the AAA requests otherwise due to the unavailability of a neutral, the arbitration will take place in the county where the Condominium is located. The arbitration will be conducted under the Commercial Arbitration Rules of the AAA. A single arbitrator will be used. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect the parties' information and other confidential or proprietary information. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party.

If there is a conflict between this Subsection 18.7 and the Commercial Arbitration Rules of the AAA, this Subsection 18.7 shall govern. If the AAA will not administer a proceeding under this Subsection 18.7 as written, it cannot serve as an arbitration organization. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under Subsection 18.7 as written. If there is a conflict between Subsection 18.7 and this Declaration, or any document contemplated to be executed in conjunction herewith, Subsection 18.7 shall govern.

- (c) Choice of Law and Scope of Arbitrator's Authority. The Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") shall govern Subsection 18.7. Interpretation and application of these procedures shall conform to federal court rulings interpreting

and applying the FAA. References to state law shall not be construed as a waiver of any rights of the parties under the FAA or the right of the parties to have the procedures set forth in Subsection 18.7 interpreted and enforced under the FAA. However, to the extent necessary, and whenever such laws are not in conflict with other provisions of Subsection 18.7, the arbitrator shall apply the laws of the state in which the Condominium is located. The arbitrator's award may be enforced in any court of competent jurisdiction.

- (d) WAIVER OF JURY TRIAL. WHETHER IN COURT OR IN ARBITRATION, THE ASSOCIATION AND DEVELOPER AGREE TO WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS TO A JURY TRIAL. THE ASSOCIATION AND DEVELOPER MAKE THESE WAIVERS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY.
- (e) DISPUTES TO BE RESOLVED INDIVIDUALLY. TO THE FULLEST EXTENT ALLOWED BY LAW, THE ASSOCIATION AND DEVELOPER KNOWINGLY WAIVE ANY RIGHT: (A) TO PARTICIPATE IN ANY LITIGATION OR ARBITRATION OF ANY DISPUTE ON A CLASS, CONSOLIDATED, OR JOINT BASIS; OR (B) TO BRING ANY CLAIM IN ANY LITIGATION OR ARBITRATION ON BEHALF OF ANY PERSON OR ENTITY OTHER THAN ITSELF (INCLUDING THE BRINGING OF ANY CLAIM IN ANY PRIVATE ATTORNEY GENERAL CAPACITY). THE ARBITRATOR'S AUTHORITY TO RESOLVE ANY DISPUTE AND TO MAKE WRITTEN AWARDS WILL BE LIMITED TO THE PARTIES' INDIVIDUAL CLAIMS.
- (f) Severability. If any provision in Subsection 18.7 is found to be illegal or unenforceable, in whole or in part, then the unenforceable portion shall be severable from Subsection 18.7 and any claims covered by any deemed unenforceable provision of Subsection 18.7 will be decided by a court, but any remaining terms of Subsection 18.7 that are valid shall be binding and enforced in arbitration. If any other clause within Subsection 18.7 is found to be illegal or unenforceable, that clause will be severed from it, and the remainder of Subsection 18.7 will be given full force and effect.
- (g) Amendment. Without limiting the generality of this Subsection 18.7 hereof, this Subsection 18.7 shall not be added to, amended, or deleted without the prior written consent of the Developer.
- (h) Interpretation. For purposes of Subsection 18.7 the term "**Developer**", in addition to the definition found in Subsection 2.26 above shall include the following: any director, officer, partner, member, manager, employee, agent, authorized

signatory, or representative of the Developer, any parent, subsidiary, or affiliate of the Developer (other than an affiliated mortgage lender), and any contractor, subcontractor, consultant, design professional, engineer, or supplier who provided labor, services, or materials.

- 18.8 **Proviso.** Notwithstanding anything to the contrary, this Declaration shall be construed and interpreted to preserve the Developer and Developer's Affiliates all rights, claims, powers, protections and defenses. Accordingly, (i) no waiver, release or disclaimer made or deemed made by a Unit Owner under this Declaration shall be deemed to be made by Developer (even if Developer is or was a Unit Owner), (ii) no agreement to indemnify, defend and/or hold any party harmless made or deemed made by a Unit Owner under this Declaration shall be deemed to be made by Developer (even if Developer is or was a Unit Owner) and (iii) no waiver, release, disclaimer and/or agreement to indemnify, defend and/or hold any party harmless contained in this Declaration shall be deemed to limit, impair, mitigate, preclude or otherwise affect the rights of Developer and/or Developer's Affiliates to pursue, to the maximum extent lawful, any and all rights, claims, powers, protections and defenses, including, without limitation, claims, actions or other proceedings against other Unit Owners, contractors, sub-contractors, suppliers, architects, engineers and/or other design professionals. No provision of this Declaration shall be construed and/or interpreted and/or relied upon as a means to: (i) defend, preclude and/or affect the right of Developer and/or Developer's Affiliates from pursuing such claims and/or (ii) mitigate claims brought or sought by Developer and/or Developer's Affiliates.
19. **Termination of Condominium.** The Condominium shall continue until (a) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (b) terminated pursuant to a Plan of Termination (as defined in the Act) in accordance with Section 718.117, Florida Statutes. Institutional mortgage holders are not included in the voting interests of the Condominium with respect to voting on a Plan of Termination. In the event such withdrawal is authorized as aforesaid, and provided that the Board first notifies the Division of an intended withdrawal (and any required approvals from the Division are obtained), the Condominium regime shall be terminated in accordance with the terms of a Plan of Termination complying with the provisions of Section 718.117, Florida Statutes. This Section may not be amended without the consent of the Developer as long as it owns any Unit and is offering same for sale in the ordinary course of business.

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

- 20.1 **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.
- 20.2 **Amendments.** Subject to the other provisions of this Declaration and except as provided elsewhere to the contrary, an amendment directly affecting any of the following shall require the approval of a Majority of Institutional First Mortgagees: (a) voting rights; (b) increases in assessments by more than 25% over the previous assessment amount, assessment liens or the priority of assessment liens; (c) reductions in reserves for maintenance, repair and replacement of Common Elements and/or Association Property; (d) responsibility for maintenance and repairs; (e) reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; (f) redefinition of Unit boundaries; (g) conversion of Units into Common Elements or Common Elements into Units; (h) expansion or contraction of the Condominium; (i) hazard or fidelity insurance requirements; (j) imposition of restrictions on leasing of units; (k) imposition of restrictions on the selling or transferring of title to Units; (l) restoration or repair of the Condominium after a casualty or partial condemnation; (m) any action to terminate the Condominium after casualty or condemnation; and (n) any provision that expressly benefits mortgage holders, insurers or guarantors as a class. In accordance with Section 718.110(11), Florida Statutes, any consent required of a mortgagee may not be unreasonably withheld.
- 20.3 **Notices.** Any holder, insurer or guarantor of a mortgage on a Unit shall have 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 or fidelity bond maintained by the Association; and

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

20.4 **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.

21. **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 the Articles, By-Laws and applicable rules and regulations, all as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

22. **Disclaimer of Warranties.** Except only for those warranties provided in Section 718.203, Florida Statutes (and then only to the extent applicable and not yet expired), to the maximum extent lawful Developer hereby disclaims any and all and each and every express or implied warranties, whether established by statutory, common, case law or otherwise, as to the design, construction, sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Condominium Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute (other than those imposed by Section 718.203, Florida Statutes, and then only to the extent applicable and not yet expired) and all other express and implied warranties of any kind or character. Developer has not given and the Unit Owner has not relied on or bargained for any such warranties. Each Unit Owner, by accepting a deed to a Unit, or other conveyance thereof, shall be deemed to represent and warrant to Developer that in deciding to acquire the Unit, the Unit Owner relied solely on such Unit Owner's independent inspection of the Unit and the Condominium. The

Unit Owner has not received nor relied on any warranties and/or representations from Developer of any kind, other than as expressly provided herein.

As to any implied warranty which cannot be disclaimed entirely, all secondary, incidental and consequential damages are specifically excluded and disclaimed (claims for such secondary, incidental and consequential damages being clearly unavailable in the case of implied warranties which are disclaimed entirely above).

All Unit 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 and incidental and consequential damages. The foregoing shall also apply to any party claiming by, through or under a Unit Owner, including a tenant thereof.

Additionally, properties in South Florida are subject to tropical conditions, which may include quick, heavy rain storms, high blustery winds, hurricanes and/or flooding. These conditions may be extreme, creating sometimes unpleasant or uncomfortable conditions or even unsafe conditions, and can be expected to be more extreme at properties like the Condominium. At certain times, the conditions may be such where use and enjoyment of outdoor amenities such as the pool or pool deck, and/or other temporary structures may be unsafe and/or not comfortable or recommended. These conditions are to be expected at properties near the water. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks, conditions and liabilities associated with these conditions and to have released and indemnified Developer, Developer's Affiliates and the Developer's third party consultants, including without limitation, the Developer's architect, from and against any and all liability or claims resulting from same, including, without limitation, any liability for incidental or consequential damages (which may result from, without limitation, inconvenience and/or personal injury and death to or suffered by a Unit Owner, its family members and/or its or their guests, tenants and invitees and to any pets of persons aforementioned in this sentence (and any other person or any pets). Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that neither Developer, Developer's Affiliates nor the Developer's third party consultants, including without limitation, the Developer's architect, shall be responsible for any of the conditions described above, and Developer hereby disclaims any responsibility for same which may be experienced by any Owner, its pets, its family members and/or its or their guests, tenants and invitees.

Further, given the climate and humid conditions in South Florida, molds, mildew, toxins and fungi may exist and/or develop within the Unit and/or the Condominium Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring

title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released the Developer, Developer's Affiliates and the Developer's third party consultants, including without limitation, the Developer's architect, from any and all liability resulting from same, including, without limitation, any liability for incidental or consequential damages (which may result from, without limitation, the inability to possess the Unit, inconvenience, moving costs, hotel costs, storage costs, loss of time, lost wages, lost opportunities and/or personal injury). Without limiting the generality of the foregoing, leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that neither Developer, Developer's Affiliates nor any of Developer's third party consultants, including without limitation, Developer's architect, shall be responsible, and the Developer hereby disclaims any responsibility for any illness or allergic reactions, personal injury or death which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees and to any pets of persons aforementioned in this sentence, as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free of contamination.

Each Owner understands and agrees that for some time in the future, it, and its guests, tenants and invitees may be disturbed by the noise, commotion and other unpleasant effects of nearby construction activity and as a result Owner and its guests, tenants and invitees may be impeded in using portions of the Condominium Property by that activity. Demolition or construction of buildings and other structures within the immediate area or within the view lines of any particular Unit or of any part of the Condominium (the "Views") may block, obstruct, shadow or otherwise affect Views, which may currently be visible from the Unit or from the Condominium. Therefore, each Owner, for itself, its successors and assigns, agrees to release Developer and Developer's Affiliates from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind, including attorney's fees and costs, including those incurred through all arbitration and appellate proceedings, related to or arising out of any claim against the Developer or Developer's Affiliates related to Views or the disruption, noise, commotion, and other unpleasant effects of nearby development or construction. As a result of the foregoing, there is no guarantee of view, security, privacy, location, design, density or any other matter.

Additionally, inasmuch as the Commercial Units may be open to, or may attract customers, patrons and/or guests who are not members of the Condominium Association, such additional traffic over and upon the Common Elements and/or in or around the Condominium Property, shall not be deemed a nuisance. Additionally, use of the City Spaces located within the parking

garage and/or use of the Pedestrian Area by members of the public in accordance with the terms of the Existing Encumbrances and this Declaration shall not be deemed a nuisance.

Lastly, each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage of the Unit may vary. Additionally, as a result of in the field construction, other permitted changes to the Unit, and settling and shifting of improvements, actual square footage of a Unit may also be affected. By accepting title to a Unit, the applicable Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Developer's promotional materials or otherwise. Without limiting the generality of this Section 22, Developer does not make any representation or warranty as to the actual size, dimensions (including ceiling heights) or square footage of any Unit, and each Owner shall be deemed to have fully waived and released any such warranty. Notwithstanding the foregoing, the Developer shall not be excused from any liability under, or compliance with, the provisions of Section 718.503(1)(a)(1) or Section 718.506, Florida Statutes.

23. **Water Management District Issues.** The following provisions are set forth in satisfaction of the requirements of the District:

- 23.1 Except only as limited in this Declaration, the Articles, By-Laws or the Act, the Association shall have all of the powers set forth in Chapters 617 and 718, Florida Statutes, and shall expressly, have the following powers: (a) to own and convey property; (b) to operate and maintain Common Elements, including the surface water management system as permitted by the District including all lakes, retention areas, culverts and related appurtenances; (c) to establish rules and regulations; (d) to assess members and enforce said Assessments; (e) to sue and be sued; and (f) to contract for services (if the Association contemplates employing a maintenance company) to provide services for operation and maintenance.
- 23.2 As and to the extent set forth herein and in the Articles, each Owner shall be a member of the Association.
- 23.3 Notwithstanding anything to the contrary set forth in this Declaration, the Articles, or By-Laws, if the Association is dissolved, the property consisting of the surface water management system will be conveyed to an appropriate agency of local government, provided, however, that if such conveyance is not accepted, the surface water management system will be conveyed to a similar non-profit corporation.

- 23.4 The surface water management system serving the Condominium (to the extent contained within the Condominium Property) shall be deemed part of the Common Elements, and as such, the Association is responsible for the operation and maintenance of the surface water management system, including, without limitation, any and all stormwater vaults, serving the Condominium (to the extent contained within the Condominium Property).
- 23.5 The Common Expenses shall include any and all costs for the operation, maintenance and, if necessary, replacement of the surface water management system, including, without limitation, any and all stormwater vaults, and the costs for same shall be Assessed against all Unit Owners.
- 23.6 Any amendment to this Declaration, the Articles or By-Laws which would affect the surface water management system, conservation areas or water management portions of the Common Elements will be submitted to the District for a determination of whether the amendment necessitates a modification of the existing permit for the surface water management system (the "Permit"),
- 23.7 As set forth in Section 21, 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.
- 23.8 If wetland mitigation or monitoring is required, the Association shall be responsible to carry out such obligations successfully, including, without limitation, meeting all Permit conditions associated with wetland mitigation, maintenance and monitoring.
- 23.9 Copies of the Permit and any future permit actions shall be maintained by the Association's registered agent for the Association's benefit.
- 23.10 The District has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the surface water management system facilities or in mitigation or conservation areas, if any, under the responsibility or control of the Association.

24. **Additional Provisions.**

- 24.1 **Notices.** All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by either hand delivery, recognized overnight courier service or 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 either hand delivery, recognized overnight courier service or first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him or her from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by either hand delivery, recognized overnight courier service or 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.
- 24.2 **Interpretation.** Except where otherwise provided herein, 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.
- 24.3 **Mortgagees.** Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 24.4 **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.
- 24.5 **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.

- 24.6 Governing Law. Except as otherwise provided in Section 18.6, 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.

TO THE MAXIMUM EXTENT LAWFUL, THE CONDOMINIUM ASSOCIATION AND EACH UNIT OWNER AGREE THAT NEITHER A UNIT OWNER, THE CONDOMINIUM ASSOCIATION NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF A UNIT OWNER OR THE CONDOMINIUM ASSOCIATION (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDINGS, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THE DECLARATION, ANY EXHIBITS ATTACHED HERETO, THE ACT OR ANY ACTIONS, DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES, OR ANY OF THEM. NONE OF THE PARTIES WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED.

- 24.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, Subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 24.8 Waiver. 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.
- 24.9 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 or her occupancy, shall be deemed to have acknowledged and agreed that 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.

- 24.10 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 Developer's Affiliates to complete the plan of development of the Condominium as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, and their mortgagees, any and all of such documents or consents, including, without limitation, all documents or consents, on behalf of all Unit Owners and their mortgagees, required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.). In that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit by acceptance of a lien on said Unit, appoints and designates the Developer, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents. This Power of Attorney is irrevocable and coupled with an interest, however, Developer shall have a power and right of substitution in full or in part. Any such substitution may be limited to a particular matter and may be made on an exclusive or non-exclusive basis. This Power of Attorney is irrevocable and coupled with an interest. The provisions of this Subsection may not be amended without the consent of the Developer.
- 24.11 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.
- 24.12 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.
- 24.13 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, By-laws, any rules or regulations of the Association or any other document governing or binding the Association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium and/or Association Property including, without limitation, Owners and their guests, invitees,

agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;
- (b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, County and/or any other jurisdiction or the prevention of tortious activities; and
- (c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of such Owner's acceptance of title to a Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed hereby. Notwithstanding the foregoing, nothing contained herein shall relieve the Association of its duty of ordinary care, as established by the Act, in carrying out the powers and duties set forth herein. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors, nominees

and assigns. The provisions hereof shall also inure to the benefit of Developer, which shall be fully protected hereby.

25. **Election Whether to Guarantee Assessments.** ONLY THE CHECKED PROVISION SHALL BE APPLICABLE:

- ☐ - The Substantial Completion Certificate is not attached to this Declaration and Developer will make a determination of whether to guarantee assessments as and to the extent provided in Section 13.7 above in the amendment to the Declaration incorporating the Substantial Completion Certificate
- ☐ - The Substantial Completion Certificate is attached to this Declaration and Developer has elected to guarantee assessments as and to the extent provided in Section 13.7 above.
- ☐ - The Substantial Completion Certificate is attached to this Declaration and Developer has elected not to guarantee assessments and the provisions of Section 13.7 shall not be applicable or effective.

(Reserved for Clerk of Court)

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the ____ day of _____, 202__.

Signed in the presence of:

KT Seabreeze Atlantic LLC, a Florida limited liability company

Name: _____
Address: _____

By: _____
Name: _____
Title: _____

[CORPORATE SEAL]

Name: _____
Address: _____

Address: _____

STATE OF FLORIDA)
) SS:
COUNTY OF _____)

The foregoing Declaration was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this _____ day of _____, 202__, by _____, as _____ of **KT Seabreeze Atlantic LLC, a Florida limited liability company**, on behalf of said entity. He/She is personally known to me or has produced _____ as identification.

Name: _____

My Commission Expires:

Notary Public, State of Florida
Commission No.: _____

(Notarial Seal)