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HILLSBOROUGH COUNTY

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**DECLARATION OF CONDOMINIUM
FOR
VILLA SERENA,
a condominium**

THIS DECLARATION OF CONDOMINIUM is made and executed as of the 15th day of May, 2006, by **Pulte Home Corporation**, a Michigan corporation (the "Developer"), for itself and its successors, grantees and assigns.

WITNESSETH:

WHEREAS, Developer owns certain real property in Hillsborough County, Florida, and desires to establish thereon a residential condominium in phases, pursuant to the Condominium Act; and

WHEREAS, Developer accordingly wishes to make and establish this Declaration, and submit Phase 1 of the Condominium;

NOW, THEREFORE, Developer hereby makes and declares the creation of **Villa Serena, a condominium**, pursuant to the Condominium Act and subject to the terms, conditions, easements, liens, reservations and other provisions hereinafter set forth.

**ARTICLE 1
DEFINITIONS**

Capitalized terms used in the Condominium Documents, and all amendments and supplements thereof, shall have the meanings set forth below, or where otherwise defined herein, unless the context otherwise requires.

1.1. "Articles" means the Articles of Incorporation of the Association, a copy of which is attached hereto as Exhibit "B," and made a part hereof, as they may be amended from time to time.

1.2. "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against each Owner and his Unit.

1.3. "Association" means Villa Serena Owners Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of the Condominium.

1.4. "Association Property" means all property, if any, real and personal, owned or leased by the Association for the use and benefit of the Owners, and such other persons to whom the Association or Developer may grant use rights.

1.5. "Board of Director" or "the Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration".

1.6. "Bylaws" means the Bylaws of the Association, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference, as they may lawfully be amended from time to time.

1.7. "Common Elements" means all portions of the Condominium Property, including improvements thereto and located thereon, not included in the Units, including those easements created or established over, across, under, or through one or more of the Units for the benefit of the Association and/or any one or more of the other Units.

1.8. "Common Expenses" means all expenses and assessments properly incurred by the Association for the Condominium including, but not necessarily limited to, expenses for maintenance, repair, replacement, restoration, improvement, operation, and administration of the Condominium and the operation and administration of the Association, and any expense designated as a Common Expense in the Condominium Documents or the Condominium Act. Common Expenses may include, but not necessarily be limited to, the following:

- All reserves required by the Condominium Act or otherwise established by the Association, regardless of when reserve funds are expended.
- The cost of a master antenna television system or duly franchised cable television service or other telecommunication service obtained pursuant to a bulk contract.
- If applicable, cost relating to reasonable transportation services.
- Road maintenance and operation expenses.
- In-house communications and security services, which are reasonably related to the general benefit of the Owners, even if such expenses do not attach to the Common Elements or Property of the Condominium.
- Real property taxes, Assessments, and other maintenance expenses attributable to any Unit(s) acquired by the Association, or any Association Property.
- Any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure.
- The cost of carrying out the powers and duties of the Association.
- Insurance premiums described in this Declaration.
- Legal and accounting fees, management fees and compensation.
- Operating expenses of the Common Elements, except as otherwise expressly provided.
- Charges for Utilities used in common for the benefit of the Condominium, if not separately metered for each Unit, and any bulk metered or bulk calculated Utility services rendered to the Condominium Property or the Units for their benefit.
- Expenses in maintaining the Surface Water Management System Facilities pursuant to the ERP issued by SWFWMD.
- Principal and interest payments on any borrowed indebtedness of the Association, as well as any fees and costs incurred with respect to any such borrowing.
- Cleaning and janitorial services for the Common Elements.
- Any and all other sums due from the Association under any agreement, lease, contract or undertaking.
- Any other expenses designated from time to time by the Board to be Common Expenses, which expenses are consistent with the Condominium Act.
- Cost of inspection, maintenance, repair and replacement of sprinkler systems or other fire retardant systems installed by Developer or the Association, both in Units and in Common Elements.
- Assessments, fees and other charges levied by the Property Association, or otherwise payable, pursuant to the Property Declaration.
- Any other expense required to be in the Budget pursuant to Section 718.504(21)(c), of the Condominium Act.

1.9. "Common Surplus" means the excess of all receipts of the Association, collected on behalf of the Condominium (including but not limited to Assessments, rents, profits, and revenues on account of the Common Elements) over the amount of the Common Expenses.

1.10. **"Condominium"** means Villa Serena, a condominium, as created by the Condominium Documents.

1.11. **"Condominium Act"** means Chapter 718, Florida Statutes, as it exists on the date this Declaration is recorded in the Public Records, unless otherwise expressly provided herein. The Condominium Act is hereby adopted by express reference, except where permissive variances therefrom appear in the Condominium Documents.

1.12. **"Condominium Documents"** means this Declaration and all recorded exhibits hereto, as amended from time to time.

1.13. **"Condominium Parcel"** means a Unit, together with the undivided share in the Common Elements which is appurtenant to the Unit, and all other appurtenances to such Unit as provided herein.

1.14. **"Condominium Property"** means the land subjected to condominium ownership pursuant hereto and all improvements thereto, together with all easements and other rights appurtenant thereto and intended for use in connection with the Condominium.

1.15. **"County"** means Hillsborough County, Florida.

1.16. **"Covered Entry"** means a Limited Common Element covered area affording ingress to, and egress from, a Stairwell.

1.17. **"Developer"** means Pulte Home Corporation, a Michigan corporation, its successors and assigns.

1.18. **"Director"** means a member of the Board of Directors.

1.19. **"Eligible Holder"** means an Institutional Mortgagee which has provided the Association with a written request for notices, such request to state the name and address of such Institutional Mortgagee, together with the street address or unit number of the Unit to which its Institutional Mortgage relates. An Institutional Mortgagee shall be deemed an Eligible Holder only with respect to those Institutional Mortgages for which it has provided the Association a written request pursuant hereto.

1.20. **"ERP"** means an environmental resource permit issued with respect to the Condominium by SWFWMD, or any similar permit or approval issued by the Florida Department of Environmental Protection ("FDEP"), or other agency having jurisdiction.

1.21. **"Family" or "Single Family"** means any one of the following:

(a) One natural person.

(b) Two or more natural persons who commonly reside together as a single housekeeping unit, no more than three (3) of them who are not related by blood, marriage, or adoption to at least one (1) of the others.

1.22. **"Fixtures"** means items of tangible personal property which, by being physically annexed or constructively affixed to a Unit, have become accessory to it and part and parcel of it, including but not limited to, interior partition walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

1.23. **"Guest"** means any person (other than the Owner and his Family, or if the Unit is subject to a Lease, the Tenant and his Family) who is physically present in, or occupies a Unit on a temporary

basis at the invitation of the Owner, Tenant, or other permitted Occupant, without the payment of consideration.

1.24. "Institutional Mortgagee" means:

- (a) a lending institution having a first mortgage lien upon a Unit including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or
- (b) a governmental, quasi-governmental or private agency that is engaged in the business of buying, selling, holding, guaranteeing or insuring residential mortgage loans (including without limitation the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration) and which holds, guarantees or insures a first mortgage upon a Unit; or

An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Unit.

1.25. "Lanai" means a Limited Common Element screened Lanai, serving and accessed from a particular Unit.

1.26. "Lease" means the grant by an Owner to a Tenant of a temporary right of use and possession of the Owner's Unit for valuable consideration.

1.27. "Limited Common Elements" means those Common Elements which are reserved for the use of a certain Unit or Units, to the exclusion of other Units.

1.28. "Member" means, at any given time, a person or entity then qualified for membership in the Association.

1.29. "Occupant" means, when used in connection with a Unit, a person who is physically present in a Unit on two or more consecutive days, including staying overnight. "Occupy" means the act of staying overnight in a Unit.

1.30. "Owner" means a record owner of the legal title to a Condominium Parcel.

1.31. "Owner Charges" or "Charges" means any charge, other than an Assessment, against a particular Owner or his Unit, made by the Association pursuant to this Declaration. Without limiting the items to which the term Owner Charges may apply, the following meanings shall be given to the following types of Owner Charges, each of which shall be a Owner Charge. Owner Charges are not Assessments, and are not secured by a lien pursuant to the Condominium Act.

- (a) **"Compliance Charge"** means an Owner Charge against an Owner or his Unit, directly attributable to the Owner or such Unit, to reimburse the Association for costs of bringing the Owner or his Unit into compliance with the provisions of the Condominium Documents, the Rules and Regulations, or any other charge designated as a Compliance Charge in the Condominium Documents.
- (b) **"Service Charge"** means a Owner Charge against a particular Owner or his Unit for any service, material or combination thereof, which may obtained by the Association for the use and benefit of such Owner or his Unit on behalf of such Owner who has accepted or subscribed to such material or service.

1.32. "Phase" means any designated phase of the Condominium. References to specific Phases shall be indicated by reference to the number or letter thereof, as reflected on the Plat.

1.33. **"Plat"** means the survey, plat and plot plan for the Condominium Property, attached hereto as Exhibit "A" and incorporated herein by reference, as same may be amended and/or supplemented from time to time.

1.34. **"Property Association"** means Eastshore Association, Inc., a Florida corporation not for profit, and its successors or assigns as the entity responsible for the administration of the Property Declaration.

1.35. **"Property Declaration"** means that certain Declaration of Covenants, Restrictions and Easements for Eastshore Association, Inc., recorded in Official Records Book 13718, Page 0842 of the Public Records, as amended.

1.36. **"Public Records"** means the Public Records of Hillsborough County, Florida.

1.37. **"Regular Assessment"** means the Assessment levied against an Owner pursuant to an adopted budget.

1.38. **"Regulated Device"** means (a) a "dish" antenna that is one meter (39.37") or less in diameter, and which is designed to receive direct television broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, or (b) an antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable) or to receive or transmit fixed wireless signals other than via satellite, or (c) an antenna that is designed to receive local television broadcast signals.

1.39. **"Rules and Regulations"** means the rules and regulations promulgated, from time to time, by the Board of Directors concerning the use of the Common Elements and the Units, and the operation of the Association.

1.40. **"SWFWMD"** means Southwest Florida Water Management District.

1.41. **"Special Assessment"** means any Assessment other than a Regular Assessment, typically for unusual, non-recurring, or unbudgeted Common Expenses.

1.42. **"Stairwell"** means a Limited Common Element entrance foyer and stairwell, which contains stairs providing access to a second floor Unit. Each Stairwell has a door connecting with the Limited Common Element garage appurtenant to such Unit, and an entrance door leading to a Stoop or a Covered Entry.

1.43. **"Stoop"** means a Limited Common Element landing and steps, leading to a Stairwell.

1.44. **"Subsequent Phase Land"** means, at any given time, such of those lands described on the Plat as a Phase and which have not, as of such time, been submitted to the Condominium.

1.45. **"Surface Water Management System"** means those water management areas defined by Chapter 40D, Florida Administrative Code, and that system designed, constructed, or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system within the Condominium, and any Subsequent Phase Land not added, as reflected in or contemplated by any ERP.

1.46. **"Surface Water Management System Facilities"** means those facilities that form a part of the Surface Water Management System, and shall include, but not necessarily be limited to, all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, flood plain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas.

1.47. **"Tenant"** means one having a temporary right of use and possession of a Unit pursuant to a Lease.

1.48. **"Understair Area"** means that Limited Common Element area beneath the stairs in a Stairwell, which stairs provide access to second floor Units from such Stairwell.

1.49. **"Unit"** means a part of the Condominium Property which is subject to exclusive ownership. Typically, the term Unit refers to that volume of residential living space enclosed by the boundaries of the Unit, as more fully set forth in this Declaration. Where the context may be appropriate, the term Unit shall refer to a Condominium Parcel of which such Unit is a part.

1.50. **"Utilities"** means electrical power, water (both potable and for irrigation purposes), sanitary sewers, garbage and trash collection and disposal, gas, cable television and other telecommunications services, drainage, security systems, telephone and other communication systems, sprinkler or other fire retardant systems, and all other public service and convenience facilities. The Board shall have the authority to classify any service or facility not so specified herein as a Utility.

1.51. **"Voting Interests"** means the voting rights established in the Condominium Documents by which the Owners of each Unit, collectively, are entitled to one vote in Association matters.

ARTICLE 2 SUBMISSION STATEMENT

2.1. **Submission of Phase 1.** The Developer, for itself, its successors, grantees and assigns, hereby submits to the condominium form of ownership pursuant to the Condominium Act and this Declaration, (a) that property described on the Plat and designated thereon as Phase 1, (b) together with all improvements erected or to be erected thereon, and (c) all easements, rights and appurtenances belonging thereto, including the Submitted Easements (hereinafter defined) over the Subsequent Phase Lands described in Section 7.2, excluding from such submitted property, however, any and all installations, facilities, and devices for Utilities which may be owned by the utility furnishing services to the Condominium.

2.2. **Covenants and Acceptance.** All of the restrictions, reservations, covenants, conditions, easements and limitations contained herein shall constitute covenants running with the land or equitable servitudes on the land, as may be applicable, shall run perpetually unless terminated as provided herein, and shall be binding upon all Owners and those claiming by, through, under against such Owners. By acceptance of any grant or devise, all grantees or devisees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through, under or against such persons, agree to be bound by the Condominium Documents, as they may be amended from time to time. Both the benefits provided and the burdens imposed shall run with each Unit and interest in Common Elements.

ARTICLE 3 NAME

The name by which this Condominium shall be identified is **Villa Serena, a condominium.**

ARTICLE 4 FRACTIONAL SHARES OF OWNERSHIP

There shall be appurtenant to each Unit an equal, undivided fractional share in the Common Elements and the Common Surplus. At all times, each Unit shall have as an appurtenance thereto an undivided ownership interest in the Common Elements and the Common Surplus equal to one (1) divided by the total number of Units in all Phases then forming a part of the Condominium.

ARTICLE 5 DESCRIPTION OF CONDOMINIUM AND PHASE PLAN

5.1. Description of Condominium. It is anticipated that the Condominium will be established and developed in thirty (30) Phases, twenty nine (29) of which contain Units and one of which (Phase R) contains only recreational facilities and amenities. Initially, the Condominium consists only of Phase 1, which is submitted upon the original recording of this Declaration. While, it is anticipated that all Phases will be added to the Condominium, Developer reserves the right and option not to add any one or more of Phases 2 through 29. Developer covenants and agrees that it will submit Phase R within six (6) months after the date Developer submits Phase 1 by the initial recording of this Declaration. Phases need not be added in any particular order. There are ten (10) Units in Phase 1. If all Phases are added as anticipated, the total number of Units in the Condominium will be two hundred fifty-eight (258).

5.2. Phase 1. Phase 1, containing ten (10) Units, constitutes the initial Condominium and is located on the property described and designated as Phase 1 on the Plat. Phase 1 consists of one (1) building of two (2) habitable floors. Within the building, half of the Units are located on the ground floor, and half of the Units are located on the second floor. The Plat reflects the approximate location of all existing and proposed buildings and improvements for Phase 1.

5.3. Phases 2, 3, 5, 10, 13, 17, 18, 19, 24, 25, 27 & 29. Each of Phases 2, 3, 5, 10, 13, 17, 18, 19, 24, 25, 27 & 29, if submitted, will contain ten (10) Units in one (1) building, and be comprised of the Subsequent Phase Land described and designated on the Plat by the applicable Phase number designation. The Plat reflects the approximate location of all existing and proposed buildings and improvements for each of said Phases. The building types and Unit types and sizes planned for the Phases described in this Section 5.3 are substantially similar to those in Phase 1, subject, however, to the Developer's right to modify set out in Section 5.6 below.

5.4. Phases 4, 6, 7, 8, 9, 11, 12, 14, 15, 16, 20, 21, 22, 23, 26 & 28. Each of Phases 4, 6, 7, 8, 9, 11, 12, 14, 15, 16, 20, 21, 22, 23, 26 & 28, if submitted, will contain eight (8) Units in one (1) building, and be comprised of the land described and designated on the Plat by the applicable Phase number designation. The Plat reflects the approximate location of all existing and proposed buildings and improvements for each of said Phases. The building types and Unit types and sizes planned for the Phases described in this Section 5.4 are substantially similar to those in Phase 1, subject, however, to the Developer's right to modify set out in Section 5.6 below.

5.5. Phase R. Phase R will contain no Units, and be comprised of the land described and designated on the Plat as Phase R. Phase R will contain a community center, consisting of a fitness cabana, community room, restrooms, storage and utility areas, covered breezeway and veranda, swimming pool and deck. Phase R will also contain associated landscaping and parking, and a mail kiosk containing mail boxes. Developer covenants and agrees that it will submit Phase R within six (6) months after Phase 1 is submitted.

5.6. Modification of Phase Plans. Developer reserves the right to make non material changes in the legal description of any Phase. Building types, Units, and floor plans in future Phases may be substantially different from the buildings, Units, and floor plans in Phase 1. Developer reserves the right to alter the design, size, location, layout, configuration, and floor plan of any building or any Unit in any Phase. The minimum size of any Unit shall be 1,400 square feet, excluding any patio, balcony, Lanai or terrace, and the maximum size of any Unit shall be 2,000 square feet, excluding any such patio, balcony, Lanai or terrace. The maximum number of bedrooms in any Unit is four (4) and the minimum number is one (1). The maximum number of bathrooms in a Unit is three (3) and the minimum is one (1).

5.7. Share of Ownership. As provided in Article 4, each Owner of a Unit shall at all times own an equal fractional interest in the Common Elements then forming a part of the Condominium Property. Upon the addition of each Phase, the undivided ownership in the Common Elements appurtenant to each Unit then within the Condominium, and the appurtenant ownership of the Common Surplus and share of the Common Expenses, shall be equal to one (1) divided by the total number of Units in all Phases then forming a part of the Condominium Property. If fewer than all Phases are added to the Condominium, the total ownership of the Common Elements will be divided equally among the Units in the initial Phase and such of the additional Phases that have been added to the Condominium.

5.8. Impact of Additional Phases. The impact the addition of future Phases will have on Phase 1 shall primarily be an increase in the land area and number of Units included in the Condominium Property, and the pro rata reduction (based on the number of Units) in the fractional ownership of the Common Elements and Common Surplus, and responsibility for Common Expenses. The addition of such Phases increases the number of Units sharing the use and costs of recreational facilities and other costs. The addition of any particular Phase will have a similar impact upon all Phases forming a part of the Condominium at the time of addition. The impact of the addition of Phase R on Phase 1 and any other Phase submitted prior to Phase R, will be not only an increase in land area, but the addition of the clubhouse, pool and other facilities. The addition of Phase R will not only furnish the benefit of the availability of such facilities, but will bring with it the costs associated with operating and maintaining such facilities.

5.9. Association Membership and Voting. Each Owner shall be a Member of the Association, and as otherwise provided, the Owner(s) of each Unit are collectively entitled to one (1) vote attributable to each Unit owned, regardless of the Phase in which such Unit is located. If any one or more Phases are not added, the Owners of Units within those Phases forming the Condominium Property shall be the Association members.

5.10. Recreation Areas and Facilities. The recreational areas and facilities which will be owned as Common Elements by all Owners are located in Phase R and reflected on the Plat, and further described as a community center, including the following:

- ◆ Fitness cabana.
- ◆ Community Room
- ◆ Restrooms, storage and utility rooms
- ◆ Covered breezeway and veranda
- ◆ Swimming pool
- ◆ Pool deck

The Developer will provide personal property associated with such facilities, at a cost to Developer of not less than \$20,000.00. There are no recreational areas and facilities planned for any Phase other than Phase R.

5.11. No Timeshare Estates. There will be no time-share estates created with respect to Units in any Phase, and the creation of such time-share estates within any Unit is prohibited.

5.12. Time Limitation. All Phases must be added to the Condominium in accordance with this Declaration and the Condominium Act within seven (7) years from the date of recording of this Declaration.

5.13. Phases Not Added. Any Phases that are not added to the Condominium as herein provided, shall not be a part of the Condominium Property, nor subject to the Condominium Documents, and may be used for any lawful purposes; provided, however, that any Subsequent Phase Land not submitted shall have and enjoy such easements for Utilities, access, ingress, egress, drainage and other easements over the Condominium Property as hereinafter provided, and may share the use of the recreational areas and facilities within this Condominium as hereinafter provided. Developer will notify Owners of the commencement of, or the decision not to add, any subsequent Phase to the Condominium. Such notice will be given to each Owner by certified mail.

5.14. Rights and Privileges Appurtenant to Subsequent Phase Land. The Developer hereby establishes, creates and reserves for itself, its successors and assigns, and grants to all owners and occupants of the Subsequent Phase Lands not added to the Condominium, the following easements, licenses, rights, and privileges with respect to the Condominium Property (collectively the "Coordinated Development Rights"). The Coordinated Development Rights include the following:

- (a) A perpetual, non-exclusive easement and right of way for access, ingress and egress, in, to, upon, over and across streets, driveways and walks in the Condominium Property as

reflected on the Plat from time to time, as they may be built or relocated from time to time. The foregoing easement may be used for all proper and normal purposes, including, but not necessarily limited to, access between the public highway(s) or streets bounding the Condominium Property and the Subsequent Phase Land(s) and the transportation of construction materials for use in any Subsequent Phase Land not added to the Condominium.

- (b) A perpetual, non-exclusive easement in, to and under the Common Elements of the Condominium for the purpose of underground Utilities, including the right to connect with and make use of any such underground Utility lines, pipes, conduits, sewers, drainage facilities or other Utility installations, which may from time to time exist in the Condominium.
- (c) A perpetual, non-exclusive easement for stormwater drainage over and across the Condominium Property, including but not limited to, any part of the Surface Water Management System Facilities located within the Condominium Property.
- (d) A perpetual, non-exclusive right and privilege to use recreational facilities and other amenities located within the Condominium, including the clubhouse, pool, and deck, along with all associated restrooms, personal property and parking areas, and the controlled entrance to the Condominium described in Section 5.17(a).
- (e) The right to display the name(s) of any developments on any Subsequent Phase Land at the entry to the Condominium from South Gornto Lake Road, either by a separate signage or sharing signage with the Condominium, and the right to locate, maintain, repair and replace directional signs for any such development(s).

The easements established, granted and reserved by this Section are covenants running with the land, both as to the Condominium and the Subsequent Phase Land. It is Developer's intent that the Coordinated Development Rights not merge with Developer's fee simple interest in the Condominium. The Coordinated Development Rights, or any of them, may be included as common elements of any condominium(s) established on the Subsequent Phase Land. The Coordinated Development Rights shall be a dominant estate over the Condominium Property, as it exists from time to time, and shall be appurtenant to the Subsequent Phase Land, as it exists from time to time.

5.15. Covenant to Share Costs.

- (a) **Contribution from Subsequent Phase Lands.** If Subsequent Phase Land, or any part thereof, is not submitted to the Condominium, and if the owner(s) thereof elect(s) to use the Coordinated Development Rights, then and in that event, the owner of any such Subsequent Phase Land not so added shall pay a pro-rata share of the costs for the maintenance, repair, replacement and operation of the improvements that are part of or associated with the Coordinated Development Rights (the "Shared Facilities"). The pro-rata share attributable to each part of the Subsequent Phase Land shall be equal to a fraction, the numerator of which shall be the number of residential units located within and upon such part and the denominator of which shall be the total number of residential units in the Condominium and all parts of the Subsequent Phase Land then having rights in such Shared Facilities. (To the extent any Subsequent Phase Land is developed as a condominium, then the condominium association operating such condominium shall be responsible for the pro-rata share attributable to the Subsequent Phase Land within such separate condominium.) The Association shall certify, at least annually, estimated and actual costs of maintenance, repair, replacement and operation of Shared Facilities to each person or association having a duty to contribute thereto. Any person or association having an obligation to contribute such pro-rata share shall pay the amounts so certified within thirty (30) days of receipt of such certification, in default of which such amount shall bear interest at the highest rate permitted by law, and the Association shall be entitled to recover all costs and expenses, including reasonable attorneys fees, incurred in collecting

such amounts, whether collected by suit or otherwise. Where complete cost accounting is not reasonably possible, good faith estimates shall be acceptable and binding provided they are determined on a reasonable basis. In preparing the budget, the Board shall separately identify such anticipated expenses and reflect the required contribution as revenue. The pro-rata share of budget expenses due with respect to any Phase not added shall be payable in the installments and at the times that Regular Assessments are due with respect to such budget. Likewise, such pro-rata share payable with respect to any costs funded by a Special Assessment shall be payable at the same time as such Special Assessment. Provided, however, that in no event shall any part of the Subsequent Phase Land have responsibility to contribute to the cost of Shared Facilities until such time as units located thereon have been completed and a Certificate of Occupancy issued therefore.

- (b) **Contribution from This Condominium.** If Subsequent Phase Land, or any part thereof, is not submitted to the condominium, then this Condominium shall have, as Common Elements hereof, the Submitted Easements over and across such Subsequent Phase Land. Unless and until the Subsequent Phase Land is developed as a residential development, the Association shall maintain any improvements within the Submitted Easements serving this Condominium, such maintenance to be a Common Expense. However, if and to the extent any Subsequent Phase Land is developed as a residential development, then the Improvements to Submitted Easements serving this Condominium and the development on the Subsequent Phase Land shall, to the extent located within such Development, be maintained by the owner of such Development, or if such development is a condominium, by the association operating such condominium. To the extent any improvements within the Submitted Easements serve only this Condominium, the Association shall continue to be solely responsible for the maintenance thereof. With respect to any such improvements to Submitted Easements serving both this Condominium and any development or developments on Subsequent Phase Land, such improvements shall be deemed Shared Facilities. In such event, this Condominium shall pay a pro-rata share of the cost for the maintenance, repair, replacement and operation of the improvements within such Submitted Easements. Such pro-rata shares shall be equal to a fraction, the numerator of which shall be the number of Units within this Condominium, and the denominator of which shall be the total number of residential units in this Condominium and all parts of the Subsequent Phase Land then developed and having use rights in, or served by, such Shared Facilities. The Association or other person responsible for the maintenance of such shared facilities shall certify estimated and actual costs of maintenance, repair, replacement and operation of such Shared Facilities to the Association, and the Association shall pay its pro-rata share of the amounts so certified within thirty (30) days or receipt of such certification, and default of which such amount shall bear interest at the highest rate permitted by law, and the association or other person entitled to receive the pro-rata share from the Association shall be entitled to recover all costs and expenses, including reasonable attorney's fees, incurred in collecting such amounts whether collected by suit or otherwise. Where complete cost accounting is not reasonably possible, good faith estimates shall be acceptable and binding on the Association, provided that they are determined on a reasonable basis. The Board shall include any such pro-rata share for which it is responsible as a line item(s) in the annual budget. The pro-rata share of expenses shall be payable in such installments as may be specified by the Association or the person responsible for the maintenance thereof.
- (c) **Example.** As an example of the foregoing, if this Condominium should consist of Phases 1-18, inclusive, and R, and Phases 19 through 29, inclusive, shall subsequently be developed as a separate condominium ("Condominium 2"), then an example of the foregoing would be as follows. The Association would be responsible for the maintenance, repair, replacement and operation of the controlled entrance and roads within this Condominium, the recreational facilities and amenities located herein, and any other Coordinated Development Rights located herein. Each year the Association will

budget those costs, and certify them to the association operating Condominium 2. Condominium 2 would thereupon be responsible for a pro-rata share of such costs. Assuming that this Condominium has one hundred sixty (160) and Condominium 2 had ninety-eight (98) residential units, the association operating Condominium 2 would pay approximately 38% of such costs. Conversely, the association operating Condominium 2 would be responsible for the maintenance, repair, replacement and operation of the roads to the extent located within Condominium 2, and any other improvements to Submitted Easements within Condominium 2 serving both this Condominium and Condominium 2. In such event, the association operating Condominium 2 would budget for and certify to the Association such costs, and this Association shall include its pro-rata share (62%, approximately, in the example) as line items in the budget, and remit same to the association operating Condominium 2.

5.16. Reservation of Developmental Rights. The Coordinated Development Rights shall be deemed to have been reserved from each and every conveyance of a Unit, and the submission of each Phase shall be deemed subject to a reservation of Coordinated Development Rights with respect to that Phase.

5.17. Entrance to Condominium.

- (a) **Main Entrance.** The main entrance to, and exit from, the Condominium is from South Gornito Lake Road (the "Main Entrance"). The Main Entrance is a controlled access, either by gate or another mechanical barrier, which shall be operated by portable, wireless activation devices, or codes. Although the Main Entrance may contain a guard house, it will not be manned unless and until the Association shall determine, by a majority of the total Voting Interests, to staff such facility. The gate at the Main Entrance may remain in an open position until development and construction of the Condominium is completed.
- (b) **Shared Facilities.** Should any Subsequent Phase Land not be added to the Condominium, the Main Entrance shall be deemed a Shared Facility, it being intended that such entrance and exit serve the Condominium and any Subsequent Phase Lands not added as though they were a single project. Maintenance and other costs associated with the Main Entrance would require contribution in accordance with Subsection 5.15(a).
- (c) **Controlled Access Not a Security Measure.** No such controlled or restricted access shall be deemed a security service or facility, and Developer makes no representation that any restricted access feature provides any effective barrier to potential intruders. Restricted access is intended to enhance the ambiance of the Condominium and to provide a measure of control on the free vehicular access to the Condominium only.
- (d) **Reserves.** The Association shall maintain any required reserves with respect to any Shared Facilities, unless the full funding of such reserves are waived or reduced in accordance with the Condominium Act. Such reserves shall be calculated with respect to the Association's share of the obligation to maintain, repair or replace such Shared Facilities. Reserve requirements shall apply whether the Association has the duty to maintain, or whether that duty is that of another person or association. For Shared Facilities for which maintenance is the responsibility of the Association, the Association shall also certify to each other person or association having an obligation to contribute annual information on estimated useful life and estimated replacement costs. Likewise, any other person or association having the responsibility for maintenance of a Shared Facility shall provide such reserve information to the Association.

5.18. Construction of Condominium. Developer will develop, construct and equip the Condominium in substantial compliance with the plans and specifications therefore, Plans and specifications filed with the County, or any other governmental agency, shall not be deemed incorporated herein by reference. Developer hereby reserves the exclusive right, in its sole discretion, to make revisions to the plans and specifications and construction methods, and to make substitution of materials,

equipment, or appliances used in the construction of the Condominium, including variations in color, brand, grade and dimensions, and to make changes in the layout and dimensions of the Common Elements and the Units. Dimensions, specifications and features are approximate, and subject to change. Each Owner and the Association acknowledges that due to expansion, contraction, settlement or natural shrinkage, cracks may appear in stucco, concrete walkways, driveways and slabs, and agrees that such cracks, within industry standards, shall be deemed "expected minor defects" and not construction defects. Construction of the Condominium shall be in compliance with applicable governmental codes and regulations, and the final inspection and acceptance by such governmental agency, as evidenced by issuance of a Certificate of Occupancy, shall constitute conclusive evidence that the Condominium Property has been completed in accordance with the plans and specifications therefore.

ARTICLE 6 PLAT AND UNIT BOUNDARIES

6.1. Plat. The Plat, attached hereto and made a part hereof, includes a survey of the land within the Condominium Property and plot plans, which graphically describe the improvements in which Units are located, and which show all the Units, including their identifications, locations and approximate dimensions, and the Common Elements and Limited Common Elements. Together with this Declaration, the Plat is in sufficient detail to identify each Unit, the Common Elements and Limited Common Elements, and their relative locations and dimensions.

6.2. Unit Boundaries. Each Unit shall include that part of the building in which the Unit is located 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 intersections with the perimeter boundaries, as shown on the Plat:
 - (1) **Upper Boundaries.** The horizontal plane of the unfinished lower surface(s) of the metal furring channels attached to the steel floor trusses, for Units on the first floor, and the horizontal planes of the lower surface(s) of the roof trusses, for Units on the second floor, as reflected on the Plat.
 - (2) **Lower Boundaries.** The horizontal plane of the unfinished, undecorated and uncovered upper surface of the floor of the Unit. For Units on the second floor, the lower boundary over the Stairwell shall be the extended plane of the upper surface of the main floor of the Unit.
- (b) **Perimeter Boundaries.** The perimeter boundaries of the Unit shall be the vertical planes of the unfinished and undecorated interior surfaces of the perimeter walls bounding the Unit as shown the Plat, extended to their intersections with each other and with the upper and lower boundaries.
- (c) **Interior Walls and Soffits.** The interior partition walls within a Unit are not a part of the boundary of a Unit, but are part of the Unit. In Units with soffits, or in which certain rooms have a dropped ceiling, i.e. one lower than the plane of the primary ceilings of the Unit extended over such room(s), unless otherwise provided on the Plat pursuant to Section 6.2(f) below, the upper boundary shall be the plane of the primary ceiling and the soffits or the area between the dropped ceiling and the extended plane of the primary ceiling shall be considered a part of the Unit, subject, however, to any Common Element easements for Utilities pursuant to Section 7.1(b).
- (d) **Apertures.** Where there are apertures, or physical openings, in the plane of a Unit boundary, including without limitation, windows, doors, bay windows, vents or skylights, the boundaries of the Unit shall extend to the interior unfinished and undecorated surfaces of the enclosures or coverings of such openings, and the frames thereof. Therefore,

windows, doors, screens and all frames, casings, weatherstripping, and hardware therefore, are excluded from the Unit.

- (e) **Utilities.** The Unit shall not be deemed to include any pipes, wiring, ducts or other installations for Utilities that are physically within the above-described boundaries of a Unit, but which serve other Units or the Common Elements. Such Utility installations shall be Common Elements, unless same are owned by the Utility provider or another Owner, and an easement for same shall exist under Section 7.1(b).

In cases not specifically covered in this Section 6.2, or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth on the Plat shall control in determining the boundaries of a Unit, except the provisions of Section 6.2(d) above shall control over the Plat.

6.3. Identification of Units. Each Unit shall be given an identifying designation consisting of two parts, separated by a hyphen. The first number(s) identify the building. The first number following the hyphen identifies the floor, and the remaining numbers identify the specific unit on such floor in such building. Such identifying designation shall be depicted on the Plat. No Unit shall bear the same identifying designation as any other Unit. The identifying designation of a Unit is also the identifying designation of the Condominium Parcel of which such Unit forms a part.

6.4. Condominium Parcel. Each Condominium Parcel shall include a Unit, together with the following appurtenances and any other appurtenances now or hereafter provided for in this Declaration or the Condominium Act:

- (a) An equal undivided fractional ownership share in the Common Elements of the Condominium and the Common Surplus set forth in Article 4.
- (b) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Condominium Documents.
- (c) The right to use the Limited Common Elements appurtenant to the Unit, and the non-exclusive right to use the Common Elements for the purposes for which they are intended, subject to the provisions of the Condominium Documents, and the Rules and Regulations
- (d) An exclusive easement for the use of the air space 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, which easement shall be terminated automatically in any air space which is vacated from time to time.
- (e) Other appurtenances as may be provided by law or by this Declaration and its exhibits.

6.5. Restraint Upon Separation and Partition. The undivided share of ownership in the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or encumbered separately from the Unit and passes with the title to the Unit, whether separately described or not. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements will be void unless the Unit to which that interest is allocated is also so transferred. No Owner may maintain an action for partition of the Common Elements. An Owner's interest in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his Unit.

6.6. Possession and Enjoyment. Each Owner is entitled to the exclusive possession of his Unit subject to the provisions of the Condominium Documents. Each Owner is also entitled to use the Common Elements, subject to the provisions of the Condominium Documents, for the purposes for which they are intended, but such use shall not hinder or encroach upon the lawful rights of other owners. There is a joint use of the Common Elements and a mutual easement for that purpose is hereby created.

ARTICLE 7

EASEMENTS

7.1. Easements. Each of the following easements and easement rights is established and reserved over, across, under and through the Condominium Property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of the easements specified in this Section may be encumbered by any leasehold or lien other than those on the Condominium Parcels unless such lien shall automatically be subordinate to the rights of Owners with respect to such easements. The easements shall be in favor of the Association, individual or collective Owners, the Developer, governments having jurisdiction, and suppliers of Utilities or other convenience services, as the nature and purpose of the easement and context may require. Certain Common Element easements for support and/or Utilities, as contemplated by Subsections (b) and (d) below, are reflected on the Plat. To the extent such easements benefit or are in favor of an Owner or his Unit, they shall be deemed an appurtenance to such Unit.

- (a) **Ingress and Egress.** A perpetual, non-exclusive easement shall exist in favor of each Owner and Occupant, their respective Guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Common Elements as from time to time may be paved or intended for such purposes, and for purposes of ingress to and egress from public streets.
- (b) **Utilities.** Easements shall exist through each Unit and Common Elements for the inspection, existence, maintenance, repair, and replacement of conduits, ducts, plumbing, wiring, and other facilities for the furnishing of Utilities to Units or to the Common Elements, such easements to be Common Elements. Without limiting the generality of the foregoing, such easements shall exist for such Utility installations and facilities located in the area between an upper Unit boundary and a dropped ceiling or within a soffit, as contemplated by Sections 6.2 (c) and (e). There shall also be easements throughout the Common Elements as may be reasonable and necessary for the furnishing of Utilities and the location and connection of heating and air conditioning equipment located outside Unit boundaries.
- (c) **Encroachments.** If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Owner of the encroaching Unit, or if any Common Element encroaches upon any Unit, then an easement for such encroachment shall exist to the extent of that encroachment so long as the encroachment exists. Likewise, if there is any encroachment by any improvement in the Condominium on any Subsequent Phase Land or encroachment by any improvement on any Subsequent Phase Land into the Condominium Property, then an easement for such encroachment shall exist to the extent of that encroachment so long as the encroachment exists. However, such easement for encroachments shall exist only so long as the physical boundaries of the Units after construction, reconstruction, repair, replacement, shifting, settlement, or other movement, will be in substantial accord with the description of Unit boundaries set forth in this Declaration and on the Plat.
- (d) **Support.** Each Unit shall have a perpetual, non-exclusive easement of support in every portion of the Common Elements which contributes to the establishment, maintenance and support of the Unit's boundaries and the Unit itself, and likewise there shall be a perpetual, non-exclusive easement of support in every portion of a Unit which contributes to the support of a building, including but not necessarily limited to, all load bearing columns, beams, walls, and floors, whether reflected on the Plat or not.
- (e) **Access for Repair, Maintenance, and Emergencies.** Certain Common Elements are or may be located within Units, or may be conveniently accessible only through Units. Owners of other Units and the Association shall have the irrevocable right, to be exercised

exercised by the Association as agent for the Owners, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the inspection, maintenance, repair, removal, or replacement of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. If damage to the interior of a Unit resulting from the inspection, maintenance, repair, emergency repair, removal, or replacement of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or by any other Owner shall be a Common Expense, unless the need for such maintenance, repair or replacement is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's Family, or its Tenants or other Occupants of the Unit, in which case such costs shall be personal obligation of such Owner for which an Owner Charge may be levied.

- (f) **Surface Water Management System Facilities.** Easements are created, established, granted and reserved, and shall exist throughout the Condominium Property as may be necessary for the operation, monitoring, inspection, maintenance and repair of Surface Water Management System Facilities. Such easements shall be in favor of the Association, SWFWMD, Developer, and any others who may have any responsibility with respect to such facilities.
- (g) **Specific Common Element Easements Reflected on Plat.** The Plat reflects certain Common Element easements within the Units. These easements are in certain walls or columns within the Units, or other designated areas within a Unit. Such easements, identified as "C.E.U.E" or Common Element Utility Easement on the Plat are Common Element Easements for Utilities, pursuant to Subsection 7.1(b). No Owner may alter, modify, or otherwise affect any such walls or other areas subject to such a Common Element easement for Utilities, so as to interfere with Utilities located therein.
- (h) **Utility, Service, and Official Access.** A perpetual, non-exclusive easement is hereby granted by Developer for the purpose of allowing the County and other providers of Utilities serving the Condominium, fire, police, medical, and other emergency personnel, United States Postal Service representatives, and other providers of services to the Condominium, access to the Condominium for the carrying out of their respective functions and duties. Such access shall be limited to the streets, driveways, walks, and parking areas, except to the extent access to other parts of the Common Elements is reasonably necessary for the carrying out of such functions.
- (i) **Access for Property Association.** Easements are created, established, granted and reserved, in favor of the Property Association, for the purpose of the Property Association, its employees, agents, contractors, and representatives, to carry out their responsibilities pursuant to the Property Declaration, and any recorded easements in favor of the Property Association.

7.2. Easements Over Subsequent Phase Lands. Perpetual, non-exclusive easements (the "Submitted Easements") over, across, under and through the Subsequent Phase Lands are hereby created and established for the following purposes and on the following terms and conditions:

- (a) **Purposes.** The Submitted Easements shall be for the purposes as follows:
 - (1) Access, ingress and egress, over and across the Subsequent Phase Lands designated as Phases R, and 2 through 29, inclusive, on the Plat.
 - (2) Underground Utilities, including the right to connect with and make use of any such underground Utility lines, pipes, conduits, sewers, drainage facilities, or other Utility installations, which may from time to time exist in any of the

Subsequent Phase Lands.

- (3) Stormwater drainage and control, including but not necessarily limited to, any part of the Surface Water Management System Facilities that may be located on any of the Subsequent Phase Lands.
- (b) **Nature of Submitted Easements.** The Submitted Easements are blanket easements over the Subsequent Phase Lands. Developer, or any successor owner of the Subsequent Phase Lands, or any part thereof, may, at its election and cost, specifically locate facilities and installations falling within the purposes of the Submitted Easements. Upon furnishing a specific legal description and a modification of the Submitted Easements, and acceptance thereof by the Association, the blanket easements shall be deemed modified and limited to the specific legal description contained in such instrument. Separate descriptions may be provided for different purposes, e.g. one easement may be for Utilities, while another is for access. Moreover, the Developer or any other owner of any Subsequent Phase Lands, shall have the right, at its expense, to relocate any such facilities within such Subsequent Phase Lands, provided that the facilities as so relocated shall afford substantially the same benefit to the Condominium. Upon such relocation, the easement may be modified to the specific description of such relocated installations.
- (c) **Submitted Easements as Part of Condominium.** The Submitted Easements are submitted as part of the Condominium Property, as an appurtenance to Phase 1, pursuant to Section 2.1. As Subsequent Phase Lands are submitted to the Condominium, the Submitted Easements, to the extent located in a Phase then added to the Condominium, shall terminate, but the Submitted Easements in the Subsequent Phase Lands not added shall be an appurtenance to all Phases so added.

The Submitted Easements are covenants running with the land, both as to the Condominium and the Subsequent Phase Land. It is Developer's intent that the Submitted Easements not merge with Developer's fee simple interest in the Subsequent Phase Lands.

7.3. Authority to Grant, Modify or Move Easements. The Board shall have the authority to grant, modify or move any easement if the easement constitutes part of or crosses the Common Elements, or Association Property, as provided in the Condominium Act. Such easement shall include, but not necessarily be limited to, easements for Utilities, roads, and other purposes necessary for the proper operation of the Condominium. In addition to the authority to grant easements as herein provided, the Association has the right to grant permits and licenses over the Common Elements for such purposes.

7.4 Easements Deemed Created. Each easement described in this Declaration shall be deemed to have been granted or reserved, as applicable, when the Declaration, or any amendment submitting a Phase, is recorded in the Public Records, or, if necessary to its creation, upon conveyance from Developer to an Owner, without necessity for specific reference to such easement.

ARTICLE 8 LIMITED COMMON ELEMENTS

8.1 Description of Limited Common Elements. Certain Common Elements have been or may be designated as Limited Common Elements, reserved for the use of a particular Unit or Units, to the exclusion of the other Units. The Limited Common Elements and the Units to which their use has been assigned are as described in this Declaration and as may be further identified on the Plat.

- (a) **Garages and Driveways.** One-car garages, and the driveway leading thereto, as shown on the Plat, are Limited Common Elements, and the exclusive right to the use of each such garage and its driveway is assigned as an appurtenance to a designated Unit, as reflected on the Plat. Because the garages provide direct access into the interior of specific Units, no garage or its driveway may be reassigned.

- (b) **Lanais.** The airspace comprising the Lanai adjacent to and serving exclusively a particular Unit is a Limited Common Element appurtenant to that Unit.
- (c) **Stairwell.** A Stairwell, containing an entrance foyer, and stairs, providing access to a second floor Unit, is a Limited Common Element appurtenant to the second floor Unit served thereby. Such Stairwells are reflected on the Plat.
- (d) **Understair Area.** The area beneath the stairs forming a boundary of each Stairwell is a Limited Common Element appurtenant to the first floor Unit served thereby, and having access thereto. For some Units the Understair Area provides a limited storage area with a sloping ceiling. For other Units the Understair Area contains the water heater for such Unit and associated plumbing and electrical facilities. Understair Areas are reflected on the Plat.
- (e) **Covered Entry.** A Covered Entry, as reflected on the Plat, is an entrance to a Stairwell serving certain second floor Units. Such Covered Entry is a Limited Common Element appurtenant to such second floor Unit served thereby.
- (f) **Stoop.** A Stoop affords access to a Stairwell serving certain second floor Units, and is a Limited Common Element appurtenant to such second floor Unit served thereby.
- (g) **Air Conditioning Pad.** Air conditioning pads are Limited Common Elements appurtenant to the Units served thereby.
- (h) **Others.** Any part of the Common Elements that is connected to and exclusively serves a single Unit, and is specifically required pursuant to Section 11.2 of this Declaration to be maintained, repaired or replaced, in whole or in part, by, or at the expense of, the Owner, shall be deemed a Limited Common Element appurtenant to such Unit, whether specifically described above or not. This shall include windows, screens and doors, including all hardware, locks and frames.

8.2. Exclusive Use. The exclusive right to use a Limited Common Element is an appurtenance to the Unit or Units to which that right is designated or assigned. The use right passes with the Unit, whether separately described or not, and cannot be separated from it.

ARTICLE 9 THE ASSOCIATION

9.1. Operation of Condominium. The Association is the entity responsible for operating the Condominium in accordance with the Condominium Documents and the Condominium Act.

9.2. Membership in Association. Each Owner (including the Developer so long as the Developer owns any of the Units) shall automatically be a Member of the Association until he ceases to be an Owner.

9.3. Transfer of Membership. The membership of each Owner in the Association is appurtenant to and inseparable from his ownership of a Unit and shall automatically terminate upon any valid transfer or conveyance of his Unit to any transferee or grantee, whether voluntary or by operation of law, except to the extent that such transferor retains an interest in any other Unit. The transferee of a Unit shall, immediately and automatically upon the valid transfer of such Unit as provided herein, become a Member of the Association. If title to a Unit is vested in more than one person or entity, then all of the persons and/or entities which have title to such Unit shall be members of the Association. The transfer of any Unit shall operate to transfer to the new Owner thereof the undivided percentage interest of the prior Owner in the Common Elements, the Common Surplus, and any other appurtenances, even though not expressly mentioned or described in the instrument of transfer and without further instrument of transfer.

9.4. Voting. Each Owner (including Developer as to Units owned by it) shall be entitled to a Voting Interest with respect to each Unit owned. There is one (1) vote for each Unit, to be cast as otherwise provided in the Condominium Documents.

9.5. Delegation of Management. The Board of Directors may contract for the management and maintenance of the Condominium Property and authorize a manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, keeping of records, enforcement of rules, and maintenance and repair of the Common Elements with funds 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 provided in the Condominium Act.

9.6. Acts of the Association. Unless the approval or affirmative vote of the Owners is specifically made necessary by some provision of the Condominium Act or the Condominium Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Owners. The officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for the Association by reason of being an Owner.

9.7. Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and in the Condominium Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium Property and Association Property. The Association may impose reasonable fees for use of Common Elements or Association Property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other possessory or use interests in lands or facilities contiguous to the lands of the Condominium, for the use and enjoyment of the Owners.

9.8. Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the Member seeking copies.

9.9. Purchase of Units. The Association has the power to purchase Units in the Condominium and to acquire and hold, lease, mortgage, and convey them, such power to be exercised by the Board of Directors.

9.10. Acquisition of Property. The Association has the power to acquire property, real or personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in Section 9.9 above, the power to acquire interests in real property may be exercised by the Board of Directors, but only after approval by at least a majority of the Voting Interests.

9.11. Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the Board of Directors, without need for authorization by the Owners.

9.12. Roster. The Association shall maintain a current roster of names and mailing addresses of Owners. A copy of the roster shall be made available to any Member upon request.

9.13. Qualifications of Directors. Each Director must have the qualifications set forth in the Bylaws

9.14. Approval by Written Agreement. Except for the holding of the annual meeting, election of Directors, voting on reserve funding, and any other action for which an actual meeting is required by the Condominium Act, as it may be amended from time to time, any approval of the Owners on any matter called for by this Declaration, by any of the other Condominium Documents, or by any statute, to be taken at a meeting of the Owners, is hereby expressly allowed to be taken by written agreement, without a

meeting, which agreement may be executed in multiple counterparts. In order for any such written agreement to be effective, it must be executed by Owners holding Voting Interests equal to, or greater than, the number of Voting Interests that would have to approve such matter at a meeting, assuming that all Voting Interests were present and voted at such meeting. Such written agreements, which may include amendment to the Condominium Documents, shall be subject to the provisions of the Condominium Act and any other applicable provision of law.

9.15. Response to Disclosure Requests. The Association or its authorized agent is not required to provide a prospective purchaser or lienholder with any information about the Condominium or the Association, other than information or documents required to be made available or disclosed by the Condominium Act, as it may be amended from time to time, or the Condominium Documents. The Association or its authorized agent may charge a reasonable fee to a prospective purchaser, lienholder, or the then current Owner, for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law. The fee may not exceed the maximum amount provided by the Condominium Act, as it may be amended from time to time, plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with the response. The Association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

9.16. Compliance with Laws. Notwithstanding anything contained in the Condominium Documents to the contrary, the Board shall have the authority to grant such waivers or variances from the provisions of the Condominium Documents as may be determined to be reasonably necessary in order to comply with applicable laws. Without limiting the generality of the foregoing, the Board shall permit service animals otherwise prohibited under Section 12.3, and may assign exclusive parking rights in Common Element parking spaces in order to provide accessible parking for the disabled, or otherwise make reasonable accommodations for the disabled, in accordance with the Federal Fair Housing Act or other applicable laws. The Board may make such accommodations or grant such variances and waivers from the Condominium Documents in circumstances where the obligation to do so under applicable law is not free from doubt if the Board reasonably concludes, with advice of counsel, that making such accommodation or granting such waiver or variance is in the best interest of the Association in order to avoid potential litigation or administrative procedure costs, fees, or fines.

9.17. Bulk Cable or Telecommunication Services. If the Board determines that it is in the best interest of the Owners to enter a bulk services contract to provide cable television or other telecommunication services to the Units as a Common Expense, and such determination is approved by a majority of the total Voting Interests, then thereafter the Board may negotiate, enter, amend, terminate and renew such contract(s) without further approval by the Members. It is the intent hereof that the Members shall have the sole authority to determine whether the Association may enter such contracts, and if so, any specific limitations or conditions thereon, but that once such determination is made, then the Board shall have the exclusive authority to approve specific contracts consistent with the Member approval. The Members may, by vote of a majority of the total Voting Interests, determine to no longer authorize such bulk contracts, or to impose or modify limits or conditions thereon, but no such vote shall affect any contract then in effect, unless such contract specifically so provides. With respect to cable television and other telecommunication services, the Board may grant easements over Common Elements to allow providers to serve the Condominium, and may grant exclusive rights to provide specific services, if the Board reasonably determines that such grant of exclusivity is in the best interest of the Members.

ARTICLE 10 ASSESSMENTS AND LIENS

The Association has the power to levy and collect Assessments against each Unit and its Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including Regular Assessments and Special Assessments. The Association may also levy Owner Charges against any individual Unit and its Owner for any amounts other than Common Expenses which are properly chargeable against such Unit or Owner under the

Condominium Documents. Assessments and Owner Charges shall be levied, and payment enforced, as provided in the Bylaws, and as follows:

10.1. Common Expenses. Common Expenses include all expenses described in the definition of Common Expenses in Article 1, including but not limited to, the expenses of the operation, maintenance, repair, replacement and protection of the Common Elements and Association Property, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted to fund reserve accounts, or designated in the Condominium Documents as a Common Expense or incurred in carrying out any of the express or implied duties of the Association. Unless separately metered to the Units, the cost of water and sewer service to the Units, as well as garbage collection and trash removal service, shall be a Common Expense. If the Board of Directors enters into a contract for pest control or cable television or other telecommunication services in bulk for all Units, the cost of such services shall be a Common Expense. In such event, the Board shall contract for such standard services as it may deem appropriate, with any additional services to be at the option and cost of the individual Unit Owners. Liability for Assessments shall commence upon recording of the Declaration, as to Units in Phase 1, and on submission of subsequent Phases with respect to Units in those subsequent Phases.

10.2. Share of Common Expenses. The Owner of each Unit is liable for a share of the Common Expenses of the Association equal to his share of Ownership of the Common Elements and the Common Surplus, as set forth in Article 4 above.

10.3. Ownership. Assessments collected by or on behalf of the Association become the property of the Association; no Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Unit. No Owner has the right to withdraw or receive distribution of his share of the Common Surplus, except as otherwise provided herein or by law.

10.4. Liability for Assessments. The Owner of each Unit, regardless of how title was acquired, including a purchaser at a judicial sale, is liable for all Assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as provided in Section 20.5 below, whenever title to a Condominium Parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all monies owed by the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

10.5. No Waiver or Excuse From Payment. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Elements, by abandonment of the Unit for which the Assessments are made, or by interruption in the availability of the Unit or the Common Elements for any reason whatsoever. No Owner may be excused from payment of his share of the Common Expenses unless all Owners are likewise proportionately excused from payment, except as provided below as to certain mortgagees, and as may be provided for the Developer or otherwise in accordance with the Condominium Act.

10.6. Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before ten (10) days after the due date shall not bear interest, but all sums not paid by the tenth (10th) day shall bear interest until paid at the highest rate allowed by law. Assessments and installments thereon shall become due, and the Owner shall become liable for the Assessments or installments, on the date established in the Bylaws or otherwise set by the Association for payment. The Association may impose a late payment fee, in addition to interest, as allowed by law. All payments on account shall be applied first to interest, then to late payment fees, attorney's fees and costs, and finally to unpaid Assessments as required by law. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction in or accompanying the payment. No payment by check is deemed received until the check has cleared. The Association may, in its discretion, waive or compromise the amount of any such interest, late payment fees or attorney's fees and costs.

10.7. Acceleration. If any Special Assessment or installment of Regular Assessments as to a Unit becomes more than thirty (30) days past due, and a Claim of Lien is recorded with respect thereto, the Association shall have the right to accelerate the due date of the entire unpaid balance of either or

both of the Unit's annual Assessment and all Special Assessments for that fiscal year as if the balance had originally been due on the date the Claim of Lien was recorded. The Association's Claim of Lien shall secure payment of the entire accelerated obligation for the budget year in which the Claim of Lien is recorded, together with interest on the entire balance, attorney's fees and costs as provided by law, as well as other amounts secured thereby pursuant to Section 10.8. The right to accelerate is exercised by the Association sending to the delinquent Owner a notice of the acceleration, which notice shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8. Liens. The Association has a lien on each Condominium Parcel securing payment of past due Assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the Assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid Assessments and charges coming due prior to the entry of a certificate of title in a foreclosure action. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.9. Priority of Lien. The Association's lien shall attach and relate back to such time as is provided in the Condominium Act. Except as otherwise provided by law, the Association's lien for unpaid Assessments is subordinate and inferior to the lien of any recorded first mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or claim of lien was recorded. Any Lease of a Unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the Lease was executed.

10.10. Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid Assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any lien rights.

10.11. Certificate as to Assessments. Within fifteen (15) days after request by an Owner, Unit purchaser or mortgagee, the Association shall provide a certificate stating whether all Assessments and other monies owed to the Association by the Owner with respect to the Condominium Parcel have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby.

10.12. Owner Charges and Enforcement.

- (a) **Owner Expenses.** As otherwise provided herein, the Association, from time to time, will or may incur expenses directly attributable to an Owner or his Unit other than Common Expenses. Such expenses will include those necessary to reimburse the Association for costs of bring an Owner or his Unit into compliance with the Condominium Documents or Rules and Regulations (a "Compliance Expense"), or the cost for services, materials, or a combination thereof, obtained by the Association for the use and benefit of an Owner or his Unit, on behalf of such Owner who has accepted or subscribed to such material or service (a "Service Expense").
- (b) **Liability for Owner Charges.** The Association has the authority and responsibility to levy an Owner Charge against an Owner and his Unit for such Compliance Expenses and Service Expenses, and each Owner agrees to pay any Owner Charge levied against him or his Unit by the Association. Each Owner shall be liable for Owner Charges, which shall be due upon demand therefore by the Association. Any Owner Charge not paid by the tenth (10th) day after such demand shall thereafter bear interest until paid at the highest rate allowed by law, or at such lower rate as the Association may determine from time to time. All payments on account of Owner Charges shall be applied first to interest, then to attorney's fees and costs, if any, and finally to unpaid Owner Charges. Such application

shall be in effect notwithstanding any restrictive endorsement, designation or instruction in or accompanying the payment. No payment by check shall be deemed received until the check has cleared. The Association may, in its discretion, waive or compromise the amount of any such interest, or attorney's fees and costs. In any proceeding to recover Owner Charges, the prevailing party shall be entitled to recover all costs thereof, including reasonable attorney's fees.

- (c) **Levy of Owner Charges.** The Association shall levy Compliance Charges for Compliance Expenses, and Service Charges for Service Expenses.
- (d) **Payments.** If there are both delinquent Assessments and delinquent Owner Charges due with respect to any Owner or Unit, any payments on account shall be applied either with respect to Assessments or to Owner Charges, as may be expressly directed by the payor, either by notation on a check or by separate written direction. In the absence of any such written direction or annotation, the Board shall have the option of applying payments on account either with respect to Assessments or to Owner Charges, in its discretion.

ARTICLE 11 MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS

Responsibility for the protection, maintenance, repair and replacement of the Condominium Property, and restrictions on its alteration and improvement shall be as follows:

11.1. Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all Common Elements and Association Property (other than the Limited Common Elements that are required elsewhere herein to be maintained by the Owner). The cost is a Common Expense. The Association's responsibilities include, without limitation:

- (a) Electrical wiring up to the point of entry into the circuit breaker panel in each Unit.
- (b) Water lines, up to the point at which a line serving one individual Unit enters that Unit.
- (c) Cable television or other telecommunications lines up to the wall outlet (except for such telecommunication lines installed by an Owner, or for which a provider has maintenance responsibility).
- (d) Sewer lines, up to the point where a line serving one individual Unit enters that Unit.
- (e) The exterior surfaces (painting) of the outside entrance door(s) to each Unit (including the entrance door to the Limited Common Element Stairwell for second floor Units), and the exterior surfaces (painting) of the garage doors.
- (f) All exterior building walls, including painting, waterproofing, and caulking.
- (g) All building roofs, roof drains, and skylights (if any).
- (h) All structural components of the stairs providing access to second floor Units, and the structural components enclosing the Limited Common Element Stairwell.
- (j) Maintenance of Stoops and Covered Entries, other than routine cleaning thereof, which is an Owner responsibility.
- (k) Painting and caulking of the exterior of windows.
- (l) All installations, Fixtures, and equipment located within one Unit, but serving other Units or Common elements, or located outside the Unit for the furnishing of Utilities to more than one Unit or the Common Elements.

- (m) All portions of a Unit contributing to the support of the building in which the Unit is located, including, but not limited to, any walls that are structural support walls as reflected on the Plat, in which a Common Element easement exists.
- (n) Sprinkler or other fire retardant systems installed by Developer or by the Association, whether within Common Elements or within Units.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a Unit and serving only that Unit. All incidental damage caused to a Unit or Limited Common Elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a Common Expense unless the need for the work was caused by the Owner, in which case the Owner shall be responsible for such costs, and if same is advanced by the Association, it shall be an Owner Charge against such Owner. Regardless of the foregoing, the Association shall not be responsible for incidental damage to any alteration or addition to the Common Elements made by an Owner or his predecessor in title. In no event shall the Association be responsible for damage to the interior of a Unit, its contents, or any item for which the Owner has maintenance responsibility unless damage is caused by work performed or ordered performed by the Association in carrying out its maintenance responsibilities, or unless the Association has been guilty of gross negligence in carrying out its maintenance responsibilities. The Association shall comply with the mandatory provisions of Section 11.12 in carrying out its maintenance responsibilities hereunder.

11.2. Maintenance by Owner. Each Owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own Unit and of certain Limited Common Elements. The Owner's responsibilities include, without limitation:

- (a) All windows, casings, screens (including screens on a Lanai), window glass and related hardware and frames, except for exterior painting and caulking that is the Association's responsibility.
- (b) The outside door(s) to the Unit (including the outside door to a Stairwell for second floor Units), excluding painting the exterior surface; doors from garages into Units or Stairwells; and all other doors within the Unit.
- (c) Garage doors, tracks, assembly, and door openers.
- (d) The electrical, mechanical and plumbing lines, fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the Unit or serving only the Unit.
- (e) Sliding glass doors, tracks, assembly, screens and hardware between a Unit and a Limited Common Element Lanai.
- (f) The circuit breaker panel and all electrical wiring going into the Unit from the panel.
- (g) Appliances, built-in cabinets, water heaters, smoke alarms and vent fans.
- (h) All air conditioning, and heating equipment, thermostats, ducts and related installations serving the Unit exclusively, whether located within the Unit or outside the Unit, except for the air conditioning condensation drain lines outside the Unit, and except for the air conditioning support pad which, although a Limited Common Element, shall be maintained by the Association.
- (i) Carpeting and other floor coverings.

- (j) Door and window hardware and locks.
- (k) Shower pans.
- (l) The main water supply shut-off valve for the Unit, non-structural parts of a Limited Common Element Stairwell, including floor coverings in the foyer portion, carpet or other finish on the stair treads, paint or other finish on the risers, wallboard and wall coverings, electrical fixtures and outlets, light bulbs, and cleaning.
- (m) Routine cleaning of the interior of Limited Common Element garages, any steaming or painting of the garage floor, light and electrical fixtures and switches therein, light bulbs, and any interior painting.
- (n) The floor and other interior surfaces of a Limited Common Element Understair Area for ground level Units, including any wallboard, shelving or other storage installations, and any electrical or plumbing fixtures and facilities located therein (including the hot water heater).
- (o) Other facilities or Fixtures which are located or contained entirely or partially within the Unit and serve only the Unit, or which are installed by the Owner.
- (p) All interior, partition walls which do not form part of the boundary of the Unit, except for those parts of structural support walls, if any, to be maintained by the Association.
- (q) All portions of any hurricane shutter(s) that the Owner may install, upon prior written approval of the Association, including such portion of the Common Elements, if any, to which the shutter(s) is attached. In the event a hurricane shutter is attached to any Common Element, the Common Element area to which the hurricane shutter is attached shall become a Limited Common Element upon the attachment whereupon the maintenance, repair and replacement of such Limited Common Element area shall be the responsibility of the Owner.
- (r) The floor surface and other interior surfaces of a Limited Common Element Stairwell (for second floor Units), including any wallboard, floor covering, surfaces and covering materials on stair treads, risers, railings (including the stair rail and banister itself), and electrical wiring and fixtures, switches, receptacles and bulbs located therein. (The Owner's responsibility excludes only the structural floor and walls and the stair structure itself). The Owner is also responsible for all cleaning within the Stairwell.
- (s) Routine cleaning and sweeping of Covered Entries and Stoops.

11.3. Other Owner Responsibilities.

- (a) **Lanais.** The Owner of a Unit to which a Lanai is appurtenant shall be responsible for day-to-day cleaning and care of the walls, floor and ceiling bounding said area, if any; and all fixed glass and sliding glass doors in portions of the entrance way to said area, if any, screening on door to the Lanai and screening on the Lanai; electrical outlet(s) and fixture(s) thereon, if any, ceiling fans, if any, the replacement of light bulbs, and the maintenance, repair, replacement of approved tiles or other hard surface covering installed on the Lanai. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs, and railings within Lanais. No Lanai may be covered or enclosed, in any way, at any time, nor shall screening thereon be removed, other than in connection with the installation of replacement screening.
- (b) **Interior Decorating.** The Owner is responsible for all decorating within his own Unit, including painting, wallpapering, paneling, floor covering, window treatments, lamps and

other light fixtures, and other furnishings and interior decorating.

- (c) **Flooring.** Units located on the first floor are not subject to any restrictions on floor coverings. For Units on the second floor, any areas initially covered with "soft" flooring (carpet) may not be changed to a hard surface floor covering. All replacement carpet must continue to provide a reasonably sound absorbent pad under the carpet. For portions of a second floor Unit initially equipped with a hard surface floor covering (e.g. marble, slate, tile, parquet or hardwood), an Owner wishing to replace or alter such hard surface must either install carpet over a sound absorbent pad or, if the replacement is a hard surface, install a sound absorbent under layer, and/or use such assembly techniques, that minimize sound and impact transmission to other Units. An Owner must obtain written approval of the Board prior to any alteration or replacement of floor coverings in second floor Units. If the Board adopts standards or specifications for such installations, then the Owner must comply with such standards and specifications. If the installation is made without prior approval, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the removal of such materials so installed, and either order its replacement with carpeting with high quality padding, or reinstallation of the hard surface flooring in compliance with the Board requirements. All such work shall be at the expense of the offending Owner.

EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND AND IMPACT NOISE TRANSMISSION IN A BUILDING SUCH AS THE CONDOMINIUM IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY UNITS AND/OR MECHANICAL EQUIPMENT CAN AND WILL BE HEARD IN UNITS. THE DEVELOPER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND OR IMPACT NOISE TRANSMISSION BETWEEN AND AMONG UNITS AND THE OTHER PORTIONS OF THE CONDOMINIUM PROPERTY, AND EACH OWNER HEREBY WAIVES AND EXPRESSLY RELEASES, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW AS OF THE DATE OF THIS DECLARATION, ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SUCH SOUND OR IMPACT NOISE TRANSMISSION.

- (d) **Window Coverings.** The covering and appearance of windows and doors, whether by draperies, shades, blinds, shutters, reflective film or other items, whether installed within or outside of the Unit, visible from the exterior of the Unit, shall be subject to the Rules and Regulations of the Association.
- (e) **Modifications and Alterations.** If an Owner makes any modifications, installations or additions to the Common Elements, with or without Association approval, the Owner, and his successors in title, shall thereby become financially responsible for:
- (1) insurance, maintenance, repair and replacement of the modifications, installations or additions; and
 - (2) the exterior surfaces, if any, enclosed, covered or affected by such modifications; and
 - (3) all damages to other property or persons caused by such modifications, installations or additions; and
 - (4) the costs of removing and replacing or reinstalling such modifications if (i) their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium Property, or (ii) the removal is required by the Association, or any court of competent jurisdiction, because of a failure of the Owner to obtain any required Association approvals;
 - (5) Damage to the modifications, installations or additions caused by work being done by the Association; and

- (6) All costs associated with such modifications, installations or additions.

All liability of an Owner to the Association under this subsection shall be an Owner Charge. *Nothing contained herein shall be deemed to relieve an Owner of the obligation to obtain Association approval of any such modification, installation, or addition.*

- (f) **Use of Licensed and Insured Contractors.** Whenever an Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Unit or Common Elements, such Owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the Owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

11.4. Alteration of Units or Common Elements by Unit Owners. No Owner shall make or permit the making of any material alterations or substantial additions to his Unit or the Common Elements, or in any manner change the exterior appearance of any portion of the Condominium, except after review and approval pursuant to this Section 11.4.

- (a) Except as provided in Subsection (b), there shall be no material alterations or substantial additions to a Unit or the Common Elements, nor any change in the exterior appearance of any portion of the Condominium, made by any Owner without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines, in its sole discretion, that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. The Board shall answer, in writing, any written application by an Owner for approval of such addition, alteration or improvement within forty-five (45) days after receipt in writing of such application and all additional information requested by the Board. The Board may, by notice given within such forty-five (45) day period, defer final decision for up to an additional thirty (30) days. Failure to do so within the stated time shall constitute the Board's consent. The Board may condition the approval in any manner, including without limitation, retaining approval rights of the contractor to perform the work. In no event shall there be any alteration or addition that is otherwise prohibited by the Condominium Documents.
- (b) Except as provided in Section 11.3(c), an Owner may alter or improve the interior of his Unit without approval of the Board, provided such alteration or improvement (i) does not materially affect the structural integrity or stability of the building of which such Unit forms a part (including removing, moving, or otherwise affecting any load bearing beam, truss, column, floor, wall or other support), (ii) will not cause any increase in any insurance cost to the Association, (iii) will not have a material effect on the Association's maintenance responsibilities, (iv) will not change the appearance of the building in which the Unit is located, viewed from the exterior of the Unit, (v) will not adversely affect any facilities for the furnishing of Utilities to other Units or Common Elements for which there is an easement pursuant to Section 7.1(b), (vi) will not adversely affect or require changes in the Common Element sprinkler system, and (vii) will not adversely affect any fire rated wall, floor, door or ceiling. Before commencing any such alteration or improvements, an Owner shall notify the Association and describe generally the alterations or improvements proposed. The Board may request additional information with respect to the proposal, and if the Board reasonably determines within thirty (30) days of the receipt of the proposal and all requested additional information that the proposed work may not comply with this Subsection (b) in any particular, then it shall notify such Owner within such time, and the Owner shall not commence or complete such work until approval of the Board has been obtained as otherwise provided herein. Before commencing any such alteration or improvements, an Owner shall cause a notice of commencement to be filed in the Public Records, and posted as may be required by law, which notice shall clearly indicate that the proposed improvements are only to the Owner's Unit.

- (c) Proposed additions, alterations and improvements shall be made in compliance with all applicable laws, rules, ordinances, codes and regulations of all governmental authorities having jurisdiction, the provisions of the Condominium Documents, and with any conditions imposed by the Board with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise.
- (d) An Owner making or causing to be made any such additions, alterations or improvements agrees, for himself, his heirs, his personal representatives, successors and assigns, to hold the Association, the Developer, and all other Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and Association Property, the property of other Owners within their Units, expenses arising therefrom, and any and all costs, claims, demands, causes of action, and expenses (including reasonable attorney's fees in resisting any such assertion) arising out of, or in any way connected to, any lien or claim of lien, pursuant to Chapter 713 or otherwise, that may be asserted against the Association, Developer, or any other Owner, or any part of the Condominium Property or Association Property other than such Owner's own Unit, which arises out of or is in any way related to such additions, alterations or improvements effected by such Owner. If any claim of lien pursuant to chapter 713, Florida Statutes, shall be filed against any Condominium Property or Association Property, other than the Unit of the Owner making such improvements, then such Owner shall cause all such other property to be released from such lien within ten (10) days of the filing of such lien in the Public Records. If an Owner does not so effect such release within such time, then the Owner shall be liable for any damages or costs incurred or suffered by the Association and any other Owner. Any affected Owner or the Association may cause such lien to be released or transferred to security with respect to any property affected thereby (other than the Unit of the Owner effecting such work), and such Owner shall promptly reimburse the Association or other Owner for all sums so expended. If the Association shall expend any amounts, it shall be levied against such Owner as an Owner Charge.
- (e) Any glass, screen, curtain, blind, shutter, or other modification, addition or installation which may be installed within a Unit, but which is visible from outside the Unit, is subject to regulation by the Board. No Owner may alter the landscaping of the Common Elements in any way without prior Board approval. ***In no event may an Owner remove the screen from a Lanai, enclose a Lanai, or attach anything to, or otherwise alter the exterior of the building in any manner, except as may be expressly provided by applicable law or this Declaration. The Board shall have no authority to grant approval for any such alteration or modification.***
- (f) It is not the intent hereof to authorize an individual Owner to make material alterations or substantial additions to the Common Elements in general, but only to provide for such minor alterations or additions in and around the exterior of a particular Unit, which are not expressly prohibited by the Condominium Documents, as the Board may deem appropriate and in the best interests of the Condominium as a whole.
- (g) Requests for Board approval of proposed alterations or improvements pursuant to this Section 11.4 shall be in writing, shall be on such application form or forms as may be promulgated from time to time by the Board, and shall be accompanied by such plans, specifications, drawings, samples or other materials as may be reasonably required by the Board in order to evaluate the proposal. The Board may waive formalities in the approval process. The Board may establish and modify from time to time a reasonable schedule of fees for review of applications pursuant to this Section. The Board, where it deems it necessary, may engage the services of architects, engineers or other design professionals, to advise the Board in carrying out its functions. In such event, costs associated therewith may either be taken into consideration in the establishment of any fee schedule, or charged to the Owner as an Owner Charge. The Board may condition approval of any proposed alteration or improvement on such conditions as it deems

appropriate, including but not limited to, the execution and recording among the Public Records of an agreement of the Owner with respect to any maintenance obligations or other terms or conditions of such approval, which agreement shall be binding upon such Owner's successors in interest. The Association shall maintain records of all applications pursuant to this Section, and shall furnish a certificate in recordable form upon the request of any Owner verifying the compliance or non-compliance of such Owner and his Unit with the provisions of this Section.

- (h) If an Owner proposes any alterations that would otherwise be permissible without Board approval under Subsection 11.4(b), but such alteration will adversely affect or require changes in the Common Element sprinkler system in such Unit, then such alterations, to the extent of any impact on the sprinkler system, shall require Board approval. If an alteration requires any change in the sprinkler system, the Board may designate the contractor that the Owner must engage to perform such work. If the interior alteration requires the installation of additional sprinkler heads, then the Board may require that such Owner accept responsibility for the cost of maintenance, repair, and replacement of such additional sprinkler heads, and that the Owner execute a recordable instrument accepting such responsibility, which shall be binding upon successors in interest to such Owner's Unit.

Neither the Developer, the Association, the Board, nor any of their members or advisors, shall have any responsibility for the design or quality of materials, construction or structural soundness of any proposed alterations or improvements, nor compliance thereby with any governmental codes or requirements. No liability relating to the construction of such alterations or improvements shall result from the Developer, the Association, Board, or any consultant engaged by the Association from reviewing, approving, or commenting on any proposal. Neither the Developer, the Association, the Board, nor any of their advisors or members evaluate applications or proposals to determine that same meet architectural or engineering standards, or comply with government codes and regulations, nor do they evaluate the quality of workmanship and material. Further, neither the Developer, the Association, the Board, nor any of their members or consultants, shall have any liability associated with any approval of a contractor engaged by an Owner.

11.5. Alterations and Additions to Common Elements and Association Property. The Association shall make no material alteration of, nor substantial additions to, the Common Elements or real property owned by the Association except pursuant to this Section 11.5.

- (a) The Board may not effect any substantial additions to, or alterations of (as distinguished from maintenance, repair, and replacements) Common Elements or Association Property, the cost of which, in the aggregate, will exceed the Improvement Cap (hereinafter defined) in any calendar year, unless the making of such additions or alterations has been approved by a majority of the Voting Interests represented at a meeting at which a quorum is attained. For the purposes of determining whether the aggregate cost in any calendar year exceeds the Improvement Cap, there shall be included the actual cost of any such additions or alterations, even if such costs are to be paid from borrowed funds to be repaid in subsequent years.
- (b) If the proposed additions or alterations cost less than the Improvement Cap in the aggregate in any calendar year the Board alone may authorize such substantial additions or material alterations without the necessity of a vote by the Owners.
- (c) If in any calendar year the Board has authorized such additions or alterations, the aggregate cost of which will not exceed the Improvement Cap, and thereafter the Board proposes one or more further additions or alterations, which would cause the aggregate annual cost to exceed the Improvement Cap, then and in that event, an approval of the Owners shall be required only for such additional projects. In all events, with respect to any additions or alterations requiring Owner approval, the Board may either group projects, or require a separate Owner vote with respect to each separate proposed project

of addition or alteration.

- (d) For the purposes hereof "Improvement Cap" means the sum of \$150,000, as such amount may be adjusted from time to time to reflect the fluctuating purchasing power of the United States dollar. The Improvement Cap shall be adjusted as of January 1, 2010, and every five (5) years thereafter. On each adjustment date, the Improvement Cap shall be adjusted to equal an amount determined by multiplying the Improvement Cap in effect immediately prior to the adjustment times a fraction, the numerator of which is the Consumer Price Index, U.S. Urban Average, all items and commodities, for the month of October preceding the adjustment date, and the denominator which is such index five (5) years previous thereto. Should such index change, an appropriate conversion factor shall be used, and if such index shall be discontinued, the Board shall have the authority and responsibility to select another appropriate index. For the purposes of this Section 11.5, "aggregate in any calendar year" shall include the total debt incurred during that year, if such debt is incurred to perform additions, alterations or improvements, regardless of whether the repayment of any part of that debt is required to be made beyond that year.
- (e) Subject to any required compliance with the Condominium Act, the cost and expense of any such additions or alterations to the Common Elements or Association Property shall be a Common Expense.

If work reasonably necessary to protect, maintain, repair, replace or insure the Common Elements or Association Property, or to come into compliance with applicable laws, codes, rules or regulations, also constitutes a material alteration of, or substantial addition to, the Common Elements, no prior Owner approval is required.

11.6. Enforcement of Maintenance. If after reasonable notice the Owner of a Unit fails to maintain the Unit, or its appurtenant Limited Common Elements, as required by the Condominium Documents or the Rules and Regulations, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation. Any expenses incurred by the Association in effecting such remedy shall be charged to the offending Owner as a Compliance Charge. The Association shall be entitled to attorneys' fees pursuant to Section 19.4 in any such proceeding.

11.7. Negligence; Damage Caused by Condition in Unit. Each Owner is liable for the expenses of any maintenance, repair or replacement of Common Elements, other Units, or personal property made necessary by his act or negligence, or by that of any member of his Family, a Tenant or the Tenant's Family, or their respective Guests, employees, and agents. Each Owner has a duty to maintain his Unit, any Limited Common Element appurtenant to the Unit (except to the extent same are required to be maintained by the Association), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, the Common Elements or the property of other Owners and residents. If any condition, defect or malfunction, resulting from an Owner's failure to perform this duty causes damage to other Units, the Common Elements, Association Property or property within other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the Units involved is not occupied at the time the damage is discovered, the Association may enter the Unit without prior notice to the Owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the Owner. The expenses so incurred by the Association shall be levied as an Owner Charge.

11.8. Association Access to Units. The Association has an irrevocable right of access to the Units for the purposes of protecting, maintaining, repairing and replacing the Common Elements or portions of a Unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more Units, or the Common Elements. The exercise of the Association's rights of Unit access shall be accomplished with due respect for the rights of Occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the Unit. The Association may retain a pass-key to all Units. If it does, no Owner shall alter any lock, nor

install a new lock, which prevents access when the Unit is unoccupied, unless the Owner provides a key to the Association. If the Association is not given a key, the Owner shall pay all costs incurred by the Association in gaining entrance to the Unit, as well as all damage to his Unit caused by forced entry, and all damage resulting from delay in gaining entrance to his Unit caused by the non-availability of a key, all of which shall be a Compliance Expense.

11.9. Pest Control. The Association may elect to supply pest control services inside of each Unit, with the cost being a Common Expense. An Owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the Owner thereof must either permit the Association's pest control company to enter his Unit or must employ a licensed pest control company to enter his Unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control services provided by the Association is a Common Expense, the election of any Owner not to use the service shall not reduce the Owner's Assessments.

11.10. Other Service Contracts. The Association may elect to enter contracts for certain services for inspection, maintenance, and/or servicing of items located within Units and which are otherwise the responsibility of the Owner, such as water heaters, dryer vents, water conservation parts, heating and air conditioning compressors, air handlers, or similar equipment or installations serving individual Units, if the Board reasonably determines such inspection and maintenance contracts are for the benefit of the Owners generally. The expenses of any such contractual undertakings shall be a Common Expense, and any election by an Owner not to take advantage of the services or maintenance provided by such contract shall not excuse the Owner from paying his share of the Common Expense associated therewith. All maintenance, repairs and replacements not covered by such contract shall remain the responsibility of the Owner. The Board may require periodic replacement of water heaters, heating and air conditioning equipment, or other facilities within a Unit as a preventative measure, to reduce the possibility of damage to other Units or Common Elements in the event of a failure of such equipment or component.

11.11. Hurricane Protection. The Board of Directors shall comply with the Condominium Act, as it may be amended from time to time, with respect to hurricane shutters and other hurricane protection. Hurricane shutters, if installed, shall remain open unless and until a storm or a storm warning is announced by the National Weather Center or other recognized weather forecaster. An Owner or other Occupant who plans to be absent from a Unit during all or any portion of the hurricane season must prepare the Unit prior to departure, and remove all objects from any Lanai, and relocate them to the interior of the Unit or a secure storage area. The Board may also require Owners who are absent during all or any portion of a hurricane season to designate a responsible firm or individual to care for his Unit should a hurricane threaten, or should the Unit be damaged by a hurricane. No hurricane shutter except of the standard model, color and style adopted by the Board of Directors shall be used in or upon the Condominium. The Board may, and shall if required by applicable law, adopt an emergency evacuation plan.

11.12. Association Mandatory Maintenance Standards. The Association, in carrying out its responsibilities under this Article 11, shall comply with the following minimum standards, requirements and guidelines:

- (a) The Board shall cause all Utilities and Utility systems forming a part of the Common Elements to be maintained properly and in good condition, and effect repairs thereto as needed. The Board shall cause all water and/or sewer infrastructure to be inspected at least four times per year, and at least one such inspection each year shall be performed by a licensed and qualified contractor, engineer or architect, with expertise in the construction and maintenance of such water/sewer infrastructure. Common Element sewer lines shall be cleaned annually, or on such other periodic frequency as deemed reasonably prudent by the Board, from each building to the point of intersection with the public system. Common Element water lines shall be "exercised" at least once each year, or on such other periodic frequency as deemed reasonably prudent by the Board, by turning each valve off and on several times in succession.

- (b) The Board shall cause all drainage systems, landscape installations, and irrigation systems within the Common Elements to be inspected at least monthly. In particular, the Board shall inspect for any misaligned, malfunctioning or non-functional sprinkler or blocked drainage grates, basins, lines, and systems, which circumstance could cause damage to the Condominium Property. At least one such inspection each year shall be performed by a licensed and qualified contractor, engineer or architect with expertise in the construction and maintenance of such drainage and landscape installations. Without limiting the foregoing, all landscaping shall be maintained in accordance with the following minimum maintenance standards:
- (1) Lawn and ground cover shall be kept mowed and/or trimmed regularly;
 - (2) Planting shall be kept in a healthy and growing condition;
 - (3) Fertilization, cultivation, spraying and tree pruning shall be performed as part of the regular landscaping program;
 - (4) Stakes, guides, and ties on trees shall be checked regularly to insure the correct function of each; ties shall be adjusted to avoid creating abrasions or girdling of the trunk or stem;
 - (5) damage to planting shall be ameliorated within thirty (30) days of occurrence; and
 - (6) Irrigation systems shall be kept in sound working condition; adjustments, replacement or malfunctioning parts and cleaning of systems shall be an integral part of the regular landscaping program.
- (c) The Board shall cause all hardscape, paved areas and internal streets within the Condominium Property to be inspected at least four times per year. At least one such inspection each year shall be done by a licensed and qualified contractor, engineer or architect with expertise in the construction and maintenance of such hardscape and paved areas. Without limiting the foregoing, the Board shall cause all asphalt to be sealed and restriped at least once every two to three years, or more frequently, if so required, using two coats of a guard top or walk top type sealer.
- (d) The Board shall cause the roofs within the Condominium Property to be inspected at least semi-annually. At least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such structures and roofs.
- (e) The Board shall carry out such other periodic inspections, and obtain such other expert reports, as may be prudent and appropriate. In each instance in which a contractor, engineer, architect or other professional with expertise in a specific area is engaged to conduct an investigation or inspection, such expert shall promptly provide a written report thereof to the Board. The written report shall identify all items of maintenance or repair which either requires current action by the Association, or which will need further review, inspection or analysis. The Board shall, in each case, cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage.

This Section 11.12 is intended only to provide specific minimum maintenance and inspection requirements in particular areas, and shall in no way limit the Association's general responsibility with respect to maintenance in a prudent manner, designed to prevent avoidable deterioration or property damage.

- 11.13. Unit Maintenance Standards.** The Board may adopt, as part of the Rules and Regulations, maintenance standards for Units and their Limited Common Elements, if the Board reasonably determines that maintenance to such standards is related to the general appearance, security, or stability of the buildings, or that a failure to maintain to such a standard may have an adverse material impact on the Association, other Owners, or the Condominium generally.

ARTICLE 12 USE RESTRICTIONS

The use of the Units and the Common Elements shall be in accordance with the following provisions, so long as the Condominium exists:

12.1. Residential Occupancy. Each Unit shall at any time be occupied by only one Family, its servants and Guests, as a residence and for no other purpose. In no event shall occupancy (other than temporary occupancy by Guests) exceed two (2) persons per bedroom, plus one (1) person per den. No business, commercial activity or profession may be conducted from any Unit, nor may the name of the Condominium or the address of any Unit be publicly advertised as the location of any business. The use of a Unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his Unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his Unit. Such uses are expressly declared customarily incident to residential use. This Section 12.1 is, however, intended to prohibit commercial or business activity by an Owner which would unreasonably disrupt the residential ambience of the Condominium, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers or clients.

12.2. Age. There is no restriction on the age of Occupants of Units. All Occupants under eighteen (18) years of age must be closely supervised at all times by an adult to insure that they do not become a source of annoyance to other residents.

12.3. Pets. It is expressly understood and agreed by all Owners, Tenants and Occupants, that the keeping of pets within the Condominium is a privilege, and not a right. No animals of any kind may be kept or maintained within the Condominium Property at any time, except as may be expressly provided herein. The Occupants of a Unit may keep no more than two (2) household pets in the Unit. For the purposes of this Section, "household pets" means dogs, domestic cats and such other animals, if any, as may be expressly permitted by the Association. In addition to the household pets herein described, Occupants may keep tropical fish or caged household-type birds in reasonable numbers, so long as they do not become a source of unreasonable annoyance to other Occupants. Pets must be leashed, caged, or carried at all times while outside of the Unit. Each pet owner is responsible for cleaning up after his pet. The Board of Directors may order and enforce the removal of any pet which becomes a nuisance or an unreasonable source of annoyance to other Occupants of the Condominium. Without limiting the generality of what may constitute a nuisance or an unreasonable annoyance, the Board may order the removal of pets that behave in an aggressive or threatening manner, pets who bark, growl, hiss, howl, squawk, or otherwise emit loud or annoying sounds of such severity, duration, or frequency as to be deemed unreasonable by the Board, pets who damage or soil the Common Elements or Units of others, pets persistently emitting obnoxious odors, pets whose owners fail to comply with the provisions of this Section 12.3, or pets that would otherwise be permissible, but which are kept, bred, or maintained for any commercial purpose. In no event shall there be at any time any reptile, rodent, poultry, amphibians, or swine permitted on the Condominium Property.

12.4. Nuisances. No Owner shall use his Unit, or permit it to be used, in any manner that is unreasonably disturbing, detrimental or a nuisance to the Occupants of another Unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each Unit shall be consistent with existing laws, the Community Declaration and the Condominium Documents, and Occupants shall at all times conduct themselves in a peaceful and orderly manner. All parts of the Condominium Property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor shall a fire hazard be allowed to exist.

12.5. Vehicles; Parking. This Section shall govern the parking and storage of "Vehicles" (as hereinafter defined) upon the Condominium Property.

- (a) For the purposes of this Section, and any Rules and Regulations promulgated with respect hereto, the term "Vehicles" shall mean and include the following:
- (1) "Passenger Vehicles" which includes cars, station wagons, passenger vans and mini vans (the cargo capacity of which is devoted primarily to seating for passengers), sport utility vehicles and pick up trucks (without slide-end cabs or other enclosures of the bed), which pick up trucks are intended for, and primarily used as, personal transportation, plus such other non specified passenger vehicles primarily intended and used as transportation for personal and family purposes.
 - (2) "Commercial Vehicles" which includes trucks, vans and mini vans (other than those deemed Passenger Vehicles under Section 12.5(a)(1) above), commercial or public service vehicles (meaning those which are not primarily designed and used for passenger transportation for personal or family purposes), and such other vehicles which by design, nature, size, use or appearance, the Board determines from time to time to be of a commercial nature.
 - (3) "Recreational Vehicles" which includes trailers, campers, motor homes, boat trailers, camper vans, conversion vans, and pick up trucks with camper cab within or attached to the bed.
 - (4) "Ancillary Vehicles" which includes motorcycles, motor scooters, motorbikes, golf carts, boats, canoes, kayaks, all terrain vehicles, and similar conveyances.
- (b) Because the number of available parking spaces is limited, the Occupants of each Unit, collectively, shall be permitted to keep, park or store no more than two (2) Vehicles upon the Condominium Property at any given time, except as may be expressly authorized by the Rules and Regulations, or permitted as to a specific Unit for specific circumstances and time by the Board. No Vehicle shall be parked or stored anywhere on the Condominium Property except in a paved and designated parking space.
- (c) Vehicles belonging to the Occupants of a Unit shall be required to be kept, parked and stored in the Limited Common Element garage and driveway assigned to that Unit.
- (d) Commercial Vehicles, Recreational Vehicles, or any Passenger Vehicle not in operable condition or validly licensed, and Ancillary Vehicles, may not be parked, kept or stored anywhere on the Condominium Property, except as expressly authorized by, or pursuant to, this Declaration. Such Vehicles may, however, be parked, kept, or stored within the Condominium Property if within an enclosed Limited Common Element garage. In such event, such Vehicle shall count as one of the two (2) Vehicles permitted to the Occupants of a Unit.
- (e) Anything herein contained to the contrary notwithstanding, this Section 12.5 shall not be deemed to prohibit (i) the occasional parking of Commercial Vehicles, Recreational Vehicles, motorcycles, motor scooters, or motor bikes, being used as transportation by Guests, the duration and frequency of which may be regulated by the Rules and Regulations (in no event shall there be any overnight camping in any Recreational Vehicle); (ii) temporary parking of Commercial Vehicles carrying out business, such as making deliveries or service calls, or for temporary loading or unloading; (iii) parking of a motorcycle or golf cart of an Occupant, provided that such motorcycle, motor scooter, motor bike, or golf cart is counted as one of the two (2) permitted Vehicles of such Occupant and is parked in such Occupant's garage; (iv) temporary parking of a Recreational Vehicle for loading or unloading, or temporary parking of a Recreational Vehicle of a Guest if approved by the Board, or as may be allowed by the Rules and Regulations (in no event to exceed twenty-four hours), or (v) such parking, storage and use by an Occupant of such specified Ancillary Vehicles as may be expressly permitted

by the Rules and Regulations, or expressly authorized in advance by the Board.

- (f) Recognizing that the design and use of Vehicles evolves over time, and that on occasion it may be difficult to determine whether a specific Vehicle falls into one classification or another, it is the intent of this Section that Vehicles of a customary size, the purpose and use of which is predominately for personal transportation, shall be deemed Passenger Vehicles, notwithstanding that any such Vehicle may have lettering or a sign attached to or painted on the Vehicle announcing a commercial enterprise, or that such Vehicle may also be used for transportation of passengers carrying out commercial enterprises. Vehicles classified as Commercial Vehicles are those which by virtue of design, size, nature, use or appearance are such as to most nearly fall within the Commercial Vehicle classification, the open parking of which within the Condominium would tend to degrade the appearance and values of the Condominium. The Board shall have the authority from time to time to adopt and amend standards of interpretation of this Section, as part of the Rules and Regulations, providing in more detail for the delineation of different Vehicles and Vehicles types, including further determination of which classification of Vehicle is applicable to a specific Vehicle. In making such determinations, the Board may take into consideration the general condition and appearance of the Vehicle in question. Where any specific Vehicle is not clearly and unambiguously addressed by this Section, or by the Rules and Regulations, the Board may determine the restrictions applicable thereto. All such determinations and standards adopted by the Board shall be conclusive for all purposes, and binding on all Owners, Occupants and Guests.

12.6. Garages and Driveways. The Limited Common Element garages and driveways are intended for the purpose of parking Vehicles, and, with respect to the driveways, providing access to the garages. No garage shall be enclosed or converted to any other use primary use, nor shall any garage be used as a workshop or for the repair of Vehicles or as storage, except for such storage which does not interfere with the primary use of the garage for parking of a Vehicle. The Board may, by Rules and Regulations, authorize such ancillary uses of Limited Common Element garages that it may determine as not be disruptive to the Condominium and its Occupants, and which do not create an unsightly condition, or generate noise or dust, or interfere with the availability of such garages for the parking of a Vehicle. When ingress and egress to a garage is not required, the garage door shall remain closed, except to permit ventilation when the garage is in use by the Owner or other Occupant. Driveways leading to garages shall not be blocked, and shall not be used for parking except by the Occupant of the Unit to which such garage is assigned, the Guests of such Occupants, and Vehicles making deliveries or otherwise providing services to the Unit to which such driveway is assigned. Common Element parking spaces are not assigned, and are available on a first come, first serve basis, subject to the Board's right to designate certain spaces as accessible parking for the handicapped pursuant to Section 9.16.

12.7. Signs. No sign, flag, banner, billboard, notice or advertisement of any kind shall be displayed anywhere within the Condominium Property, including but not limited to those posted in windows of buildings or Vehicles, except as otherwise expressly provided in the Declaration or as may be permitted by law. This prohibition shall not apply to signs, banners, flags, billboards, advertisements or notices used or erected by the Developer, entry, directional and informational signs installed by Developer and signs or notices required by law. The Association shall designate a place within the Condominium Property for the posting of notices required or permitted by the Condominium Documents and the Condominium Act, and may specify by Rules and Regulations such other type or types of notices and information that Owners may post at such location, if any. Provided, however, notwithstanding anything else contained herein to the contrary, an Owner may display one portable, removal, United States flag in a respectful way, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veteran's Day, may display in a respectful way, portable, removable, official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corp, or Coast Guard, as provided by the Condominium Act.

12.8. Visual Clutter. No garments, rugs, towels, or other materials may be hung from windows, railings, balconies, or Lanais or be otherwise placed on or around the exterior of any building. No Owner may place or maintain any item or material in or upon any walkways, stairs or other Common

Elements, except that the Association may, by uniform Rules and Regulations, authorize the placement of small potted plants near the front door of a Unit so long as such plants do not protrude or block access. If the Association determines that authorizing such small plants is no longer in the best interest of the Condominium, the Association may prohibit same.

12.9. Antennas and Dishes. No antenna, mast, satellite dish, disc or other similar radio or telecommunication sending or receiving device may be located, installed, or maintained by an Owner within or upon any Common Element except in accordance with this Section.

- (a) An Owner may install or erect a Regulated Device that is or will be located totally within the Limited Common Element Lanai appurtenant to that Owner's Unit, provided that the Regulated Device is wholly within such Lanai and does not extend beyond or protrude from the Lanai, and that such device is not attached to any Common Element wall other than the back interior wall or side interior wall of such Lanai. With respect to any Regulated Device to be installed within a Lanai, no Owner may drill a hole or otherwise penetrate any Common Element wall for the purpose of installing wires or other connectors, unless and until such Owner has applied for and received written approval from the Association to do so. The Association has no obligation to authorize the penetration of any Common Element Wall, and if it elects to do so, may impose such restrictions and limitations as the Board deems appropriate.
- (b) If and to the extent the restrictions of this Section on the location of any such devices may be regulated by the Federal Communications Commission, then such devices shall be deemed to be permitted to the extent provided by such regulation. In such event, however, the Association may, by regulation, impose such procedures, restrictions and other provisions relating to the installation and location of such device as may be permissible under the regulations of such governmental agency.
- (c) The Owner erecting or installing any such device shall be responsible for all costs related to the installation, maintenance, repair and replacement thereof, and for any cost the Association may incur as a consequence of such device's installation or existence. An Owner's successor in interest to his Unit shall be deemed to have assumed all responsibility for any such device. If an Owner wishes to remove such device, he may do so, but shall be responsible for any costs the Association may incur as a consequence of such removal. The Owner of each Unit as to which such a device is installed shall indemnify and hold the Association harmless for all costs, expenses and liabilities that may be asserted against the Association with respect thereto. No installation of any telecommunication receiving device will relieve an Owner from payment of his share of Common Expenses for any cable television or other telecommunications provided by the Association as a Common Expense.

12.10. Lanais. No Owner shall place, store or use any item within a Lanai without the approval of the Association, except for appropriate furniture and furnishings and potted plants. Gas, electric, and charcoal grills are prohibited on Lanais. An Owner may install a ceiling fan on a Lanai, but only after approval by the Board pursuant to Section 11.4. Any ceiling fan installed on a Lanai must be white, and any lights must be clear or frosted white, and without color.

12.11. Absence of Occupants. If Occupants of a Unit are to be absent for an extended period of time, they may turn off specific circuit breakers, but shall not turn off the main circuit breaker to the Unit, nor turn off the dehumidifier.

12.12. De Facto Timesharing Prohibited. A Unit, including but not limited to, those owned by multiple Owners, trusts or business entities, may not be used for *de facto* timesharing, i.e., meaning that Occupancy of the Unit is rotated between or among two (2) or more Families. Multiple Owners, trusts, or business entities, may be required by the Board to designate a specific Family as the Owner-Occupants of the Unit. Occupancy by any Family other than such designated Family, even if the other Family includes an Owner, shall be deemed Guest Occupancy, subject to the provisions of Section 12.13.

12.13. Guest Occupancy. Guests Occupying a Unit when the Family that is entitled to Occupancy is not residing in the Unit ("Guest Occupancy") is limited to fifteen (15) consecutive days, and thirty (30) days total each calendar year. Guest Occupancy in excess of either of such limits shall be deemed a Lease and subject to the provisions of Article 13.

12.14. Exercise Facilities. Exercise equipment at the fitness cabana is provided for the use and convenience of Occupants physically capable of using the equipment. Children under the age of 16 shall not use the equipment unless accompanied and supervised by a responsible adult. No person should use the exercise equipment unless that person is physically capable of doing so without risk. No one should use such equipment without first consulting with his or her physician. *PERSONS USING THE EXERCISE EQUIPMENT SHALL DO SO AT THEIR OWN RISK, AND NEITHER THE DEVELOPER, THE ASSOCIATION, NOR THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, DIRECTORS, OR OFFICERS HAVE ANY LIABILITY TO ANY PERSON USING SUCH EQUIPMENT.* The Board may adopt reasonable Rules and Regulations restricting the hours of use of the exercise equipment, and providing other terms and restrictions.

12.15. Covered Entry and Stoop. No items shall be placed or stored within a Limited Common Element Covered Entry or Stoop without the express approval of the Association, except for a single welcome mat and any potted plants that may be allowed pursuant to the Rules and Regulations. No modifications to a Covered Entry or Stoop shall be made by any Owner or other Occupant, including but not limited to, painting or other coverings of the floors, or painting or other alteration of the railing (with respect to Stoops).

ARTICLE 13 LEASING OF UNITS

All Leases of Units must be in writing. An Owner may lease only his entire Unit, and then only in accordance with this Section. The ability of an Owner to lease his Unit is a privilege, not a right. The privilege may be revoked by the Board of Directors if it is abused by the Owner, or the Owner fails or refuses to follow the required procedures.

13.1. Procedures.

- (a) **Notice.** An Owner intending to lease his Unit must give to the Board of Directors (or its designee) written notice of such intention at least five (5) days prior to the starting date of the proposed Lease, together with the name and address of the proposed Tenant, and other information about the Tenant or the Lease that the Board may reasonably require.
- (b) **Failure to Give Notice.** Any Lease entered into without notice in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the Tenant by summary proceedings without securing consent to such eviction from the Owner.

13.2. Term of Lease and Frequency of Leasing. The minimum Lease term is seven (7) months. No Lease term may begin sooner than seven (7) months after the beginning of the last Lease term. No subleasing or assignment of Lease rights by the Tenant is allowed. There may be no more than two (2) new Leases commenced during any calendar year. The extension of the term of an existing Lease with the same Tenant shall not be deemed a new Lease, but a Lease with a prior Tenant for a term commencing after the expiration of the term of the prior Lease shall be deemed a new Lease. Notwithstanding the foregoing, there shall be no Lease of a Unit within the twelve (12) month period following initial conveyance of a Unit to an Owner.

13.3. Occupancy During Lease Term. No one but the Tenant and the members of his Family within the first degree of relationship by blood, adoption or marriage may occupy the Unit. The total number of overnight Occupants of a leased Unit is limited to six (6) persons, or such lesser number as may be elsewhere provided in this Declaration.

13.4. Use of Common Elements and Common Areas. An Owner whose Unit is leased may not use the parking or other facilities during the Lease term.

13.5. Compliance by Tenants and Others. All of the provisions of the Condominium Documents and the Rules and Regulations shall be applicable and enforceable against any person occupying a Unit as a Tenant, Occupant, or Guest to the same extent as against the Owner. The Association may require a Tenant to post a security deposit as provided by law to protect against damage to the Common Elements. A covenant on the part of each Tenant, and other Occupant, to abide by the Rules and Regulations and the provisions of the Condominium Documents, designating the Association as the Owner's agent with the authority to terminate any Lease agreement and evict the Tenant in the event of breach of such covenant, shall be deemed to be included in every Lease, whether oral or written, and whether specifically expressed in such agreement or not. Thus, a violation of the Condominium Documents or the Rules and Regulations by a Tenant, or any Occupant or Guest in the Unit leased by the Tenant, shall constitute a material breach of his Lease and grounds for damages, termination and eviction. An Owner and his Tenant agree that the Association may proceed directly against such Tenant, and that the Tenant and Owner shall be jointly and severally responsible for all of the Association's costs and expenses (including, without limitation, attorney's fees and costs of any kind, whether at trial or appellate levels or otherwise). If such costs and fees are not immediately paid by the Tenant, the Owner shall pay them, and until paid they shall be an Owner Charge. Each Owner irrevocably appoints the Association as his Agent authorized to bring actions in such Owner's name and at such Owner's expense (as a Charge), including proceedings for injunction, damages, termination, and eviction.

ARTICLE 14 OWNERSHIP OF UNITS

The transfer of Ownership of Units shall be subject to the following restrictions:

14.1. Notice to Association. An Owner intending to sell his Unit shall give the Association written notice of such intent at least seven (7) days prior to the closing of the sale, including the name of the purchaser and such other information about the purchaser as the Association may reasonably require. A new Owner acquiring title shall provide to the Association a copy of the recorded deed, or other instrument evidencing title, within thirty (30) days after the transfer occurs.

14.2. Life Estate. A Unit may be subjected to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be the Member of the Association from such Unit, and occupancy of the Unit shall be as if the life tenant were the only Owner. The life tenant shall be liable for all Assessments and Charges against the Unit. The Association's lien for Assessments shall attach to the entire ownership interest in the Unit, both life estate and remainder. Any consent, approval or vote required may be given by the life tenant, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-Owners for purposes of determining voting and occupancy rights. However, for the purposes of distribution of proceeds pursuant to Articles 15, 16, 17 or 18, the Owner of a remainder interest in a Unit may, prior to a distribution of such proceeds, give notice to the Association, Insurance Trustee (hereinafter defined) or Trustee (hereinafter defined), as applicable. If such notice is timely given and received, then for the purposes of any distribution of proceeds or surplus (other than to the extent a return of Assessments), the Owner of the remainder and the life tenant shall both be deemed an Owner and distributions shall be made to them jointly, or as they may otherwise direct in writing, subject to any rights of a Mortgagee to also be a joint payee.

14.3. Designation of Family. Upon any change in ownership of a Unit, the Board may require that the Owner(s) designate a specific Family as the Family entitled to Occupy the Unit pursuant to such ownership. Occupancy by any Family other than that designated, even if one or more members of such Family is/are an Owner, or trustee or beneficiary of a trust Owner, or a shareholder, partner, member, officer, director, or manager of an entity Owner, shall be deemed Occupancy by Guests. Such Occupancy shall be subject to Sections 12.12 and 12.13. Once a Family is designated, such designation may not be changed more than once in any twelve (12) month period, except upon a change in ownership.

ARTICLE 15 INSURANCE

15.1. Purchase of Insurance. The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association Property, the Common Elements and the Condominium Property required to be insured by it. Such insurance shall include insurance against those risks, with such coverages and limits, as provided in Section 15.2 below, together with such other insurance as the Association deems necessary. The premiums for all such insurance and other expenses in connection with said insurance shall be assessed as part of the Common Expenses. The named insured shall be the Association, individually and as agent for the Owners and their mortgagees, as their interests may appear, without naming them. For purposes of this and the following Article, all buildings within the Condominium shall collectively be deemed one "Building" and shall include any additional building as a part thereof which may hereafter become a part of this Condominium.

15.2. Coverage.

- (a) **Fire and Other Perils.** The Association shall obtain, maintain and pay the premiums upon a policy or policies of hazard insurance providing primary coverage for the Building, and all Improvements located on the Common Elements and the Association Property from time to time, together with all Fixtures, building equipment, personal property and supplies constituting the Common Elements or Association Property. For the purposes hereof, the term Building shall include, but not necessarily be limited to, Fixtures, installations, or additions comprising that part of the Building within the boundaries of the Units and required to be insured by the Association under the Condominium Act, as amended from time to time, as such property was initially installed, or replacements thereof of like kind or quality, in accordance with the original plans and specifications, or as they existed at the time the Unit was initially conveyed if the original plans and specifications are not available. The term "Building" shall exclude Unit floor, wall, and ceiling coverings, and do not include the following equipment if it is located within a Unit and the Unit Owner is required to repair or replace such equipment: electrical fixtures, appliances, air conditioner or heating equipment (whether located within or without the Unit), water heaters, water filters, and countertops, and the term Building shall also exclude window treatments, furniture, furnishings, and other personal property of an Owner or Occupant. With respect to the coverage provided for by this Subsection 15.2(a), the Unit Owners shall be considered additional insureds under the policy. The specifications with respect to coverage for a Building containing Units shall not apply to buildings and other Improvements that are Common Elements or Association Property, and which do not contain Units.
- (1) The policy or policies shall be in an amount equal to one hundred (100%) percent of current replacement cost of the Building, or other insured Improvement, exclusive of land, foundation, excavation and other items normally excluded from coverage, if available, and any deductibles established pursuant to Section 15.2(h).
- (2) The policies may also be issued in the name of an authorized representative of the Association, including any Insurance Trustee (hereinafter defined) with whom the Association has entered into an insurance trust agreement, or any successor trustee, as insured, for the use and benefit of the individual Owners and their mortgagees, as their interests may appear. Loss payable shall be in favor of the Association or Insurance Trustee, as a trustee, for each Unit Owner and each such Owner's mortgagee(s). The Association or Insurance Trustee, if any, shall hold any proceeds of insurance in trust for Unit Owners and their mortgage holders, as their interests may appear. Each Unit Owner and each Unit Owner's mortgagee(s), if any, shall be beneficiaries of the policy in the fraction of ownership of the Common Elements set forth in this Declaration. Certificates of insurance shall be issued to each Unit Owner and mortgagee upon request.

- (3) Policies are unacceptable where: (i) under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against borrowers, FEDERAL HOME LOAN MORTGAGE CORPORATION ("FHLMC"), FEDERAL NATIONAL MORTGAGE ASSOCIATION, ("FNMA"), or the designee of FHLMC OR FNMA; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.
- (4) The policies shall also provide for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Unit Owners individually; that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Unit Owner has other insurance covering the same loss.
- (5) The insurance policy shall afford, as a minimum, protection against the following:
 - (i) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
 - (ii) In the event the Condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accident in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent based on the nature of the property); and
 - (iii) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement.

In addition, such policies shall include an "agreed amount endorsement" and, if available, an "inflation guard endorsement."

- (6) The Association shall provide, on an individual case basis, if required by any Institutional Mortgagee, construction code endorsements (such as a demolition cost endorsement, a contingent liability from operation of building laws endorsement and an increased cost of construction endorsement) if the Condominium is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of the Condominium by an insured hazard.
- (7) Such policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the Pinellas County area and shall name any holder of mortgages on Units within the Condominium. Such policies shall provide that they may not be canceled or substantially modified, without at least ten (10) days' prior written notice to the Association and to each Institutional Mortgagee listed as a scheduled holder of a first mortgage in the policy.

- (b) **Liability Insurance.** The Association shall maintain general public liability insurance coverage. Coverage limits shall be in such amounts as the Board shall determine, from time to time. The Association shall provide, if so determined by the Board, and if required by any Institutional Mortgagee, insurance protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and

use, including but not limited to, host liquor liability, employers liability insurance, contractual and all written contract insurance, and comprehensive automobile liability insurance.

- (c) **Flood Insurance.** If the Condominium is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the Association shall obtain and pay the premiums upon, as a Common Expense, a policy or policies of flood insurance on the buildings and any other property covered by the required form of policy (the "Insurable Property"), in an amount deemed appropriate by the Association, as follows: The lesser of: (1) the maximum coverage available under the NFIP for all buildings and other Insurable Property within the Condominium to the extent that such buildings and other Insurable Property are within an area having special flood hazards; or (2) one hundred (100%) percent of current "replacement cost" of all buildings and other Insurable Property within such area.

Such policy shall be in a form which meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator.

- (d) **Fidelity Bonds.** Blanket fidelity bonds shall be maintained by the Association for the president, secretary, treasurer, and all other persons who are authorized to sign checks, or otherwise control or disburse funds of the Association. If a management agent has the responsibility for handling or administering funds of the Association, the management agent shall maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall name the Association as an obligee. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The premiums of all bonds required herein, except those maintained by the management agent, shall be paid by the Association as a Common Expense. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association. Under no circumstances shall the principal sum of the bonds be less than the amount required by Section 718.111(11)(d), of the Condominium Act, as it may be amended or renumbered from time to time.
- (e) **Worker's Compensation.** Worker's Compensation Insurance meeting all of the requirements of the State of Florida.
- (f) **D & O Insurance.** Directors and officers liability insurance, if available at reasonable cost. Such insurance may include, if the Board so determines, coverage for committee members of the Association.
- (g) **Additional Coverage.** Such other insurance as the Board shall determine from time to time to be desirable and in the best interest of the Association and the Owners.
- (h) **Deductibles.** The Board, in the exercise of its reasonable business judgment, may obtain policies of casualty and liability insurance having reasonable deductibles. In the event of a loss, the deductible amount, if any, with respect to any such policy shall be treated as a Common Expense payable from Regular Assessments, Special Assessments, or, if appropriate, from an applicable reserve. If, however, the claim or damage arises from the negligence of a particular Owner or Owners, the Association may recover payment of any such amount due from the Owner responsible therefore and same shall be an Owner Charge.

15.3. Individual Policies. Every insurance policy issued to an individual Owner shall provide that the coverage afforded by such policy in excess over the amount recoverable under any other policy

which shall cover the same property without rights of subrogation against the Association.

15.4. Annual Determination. The Board shall determine, not less often than annually, the insurance coverages and amounts provided for in this Article 15. Policies may contain reasonable deductible provisions as determined by the Board from time to time.

15.5. Insurance Trustee; Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear, and all policies and endorsements thereto shall be held by the Association. All proceeds covering property losses shall be paid to an insurance trustee which shall be designated, from time to time, by the Board (the "Insurance Trustee"). The Insurance Trustee shall not be liable for payment of premiums, the renewal or the sufficiency of policies, or the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein and for the benefit of the Owners in the following shares, which shares need not be set forth on the records of the Insurance Trustee:

- (a) **Common Elements.** Proceeds on account of damage to Common Elements: an undivided share for each Owner, such share being the same as the undivided share in the Common Element appurtenant to his Unit.
- (b) **Units.** Proceeds on account of damage to Units shall be held in the following undivided shares:
 - (1) When the Condominium Building is to be restored, for the Owner so damaged in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association. In the event of a reasonable dispute or reasonable act of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
 - (2) When the Condominium Building is not to be restored, an undivided share for each Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

15.6. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:

- (a) **Expenses of the Trustee.** All expenses of the Insurance Trustee shall be paid first or provision made therefore, as a Common Expense.
- (b) **Advancements.** If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.
- (c) **Construction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost of repairing the damage. Any proceeds remaining after defraying such costs shall be distributed to the Owners and their Mortgagees, jointly, in the amount of their respective undivided shares.
- (d) **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Owners and their Mortgagees, jointly, in their respective undivided shares.
- (e) **Certificate.** In making distributions to Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association, executed by its President or Vice

President and Secretary or Assistant Secretary, as to the names of the Owners and their Mortgagees and their respective shares of the distribution.

15.7. Association as Agent. The Association is hereby irrevocably appointed agent and attorney in fact for each Owner and for each holder of a mortgage or other lien upon a Unit, and for each owner of any other interest in the Condominium Property, with power to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

15.8. Mortgagees. No mortgagees shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Owner and mortgagee pursuant to this Declaration. The requirement of joint remittance to Owners and mortgagees, whether in this Article 15 or elsewhere in the Declaration, is a covenant for the benefit of any mortgagee of a Unit, and may be enforced by such mortgagee.

15.9. Owner's Obligation. Each Owner shall have the obligation to purchase public liability insurance to protect himself against claims due to accidents within his Unit, and casualty insurance on the contents within said Unit, the ceiling, floor and wall coverings, and electrical fixtures, appliances, water heater, water filter, if any, and built-in cabinets and countertops, to the extent that these items are located within the Unit, air conditioning and heating equipment (whether located within or without the Unit), window treatments, furniture, furnishings, and other personal property, and any improvements made within the Unit which are not covered by the Association policy. Each Owner shall further be responsible to ensure any portion of the Condominium Property which may be removed from Association insurance responsibilities as a result of amendments to Section 718.111(11), Florida Statutes. Each Owner is expected to carry homeowner's insurance, with coverage for additions and alterations, loss assessment protection, or to recognize and accept that such Owner bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance. In addition, each Owner should review the coverage of the Association to determine any additional insurance that may be advisable for him or her to purchase.

ARTICLE 16 RECONSTRUCTION OR REPAIR

16.1. Determination to Reconstruct or Repair. If any part of the Condominium Property is damaged by casualty, whether it shall be reconstructed or repaired shall be determined in the following manner:

- (a) **Common Elements.** If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.
- (b) **Condominium Building:**
 - (1) **Lesser Damage.** If the damaged improvement is the Condominium Building, and if Units to which fifty percent (50%) or more of the Common Elements are appurtenant are found by the Board of Directors to be tenantable, the damaged property shall be reconstructed or repaired unless, within sixty (60) days after the casualty, it is determined by agreement in the manner elsewhere provided that the Condominium shall be terminated.
 - (2) **Major Damage.** If the damaged improvement is the Condominium Building, and if Units to which more than fifty percent (50%) of the Common Elements are appurtenant are found by the Board of Directors to be untenable, the damaged property shall neither be reconstructed nor repaired and the Condominium shall be terminated without agreement as elsewhere provided unless, within sixty (60)

days after the casualty, the majority of Owners of the Common Elements agree in writing to such reconstruction or repair.

- (c) **Certificate.** The Insurance Trustee may rely upon a certificate of the Association executed by its President or Vice President and Secretary or Assistant Secretary in determining whether the damaged property is to be reconstructed or repaired.

16.2. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Condominium Property; or, if not, then in accordance with plans and specifications approved by the Board of Directors and, if the damaged property is the Condominium Building, by the Owners of not less than seventy five percent (75%) of the Common Elements, including the Owners of all damaged Units, whose approval shall not be unreasonably withheld. If reconstruction in accordance with the original plans and specifications cannot be effected because of governmental regulations intervening between the time of original construction and the time of reconstruction, then the Board shall have the authority to make such modifications to the construction plans as may be necessary to comply with such changes and regulations, as determined by the Board only, without necessity of Owner approval; provided, however, that if such governmental restrictions will prevent the reconstruction of all Units in the Condominium, then the Condominium shall be terminated.

16.3. Responsibility. If the damage is only to those portions of a Unit or Units for which the responsibility of maintenance and repair is that of the Owner(s), then the Owner(s) shall be responsible for reconstruction and repair after casualty. In all other instances, it shall be the Association's responsibility to reconstruct and repair after casualty.

16.4. Estimate of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility for reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

16.5. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction or repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs.

16.6. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of insurance proceeds held by the Insurance Trustee and funds collected by the Association from Assessments against Owners, shall be disbursed in payment of such costs in the following manner:

- (a) **Association.** If the total Assessments made by the Association in order to provide funds for the payment of costs of reconstruction and repair which is the responsibility of the Association exceed \$100,000.00, the sums paid upon such Assessments shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such Assessments and disburse the same in payment of the costs of reconstruction and repair.
- (b) **Insurance Trustee.** The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the Association from collections of Assessments against 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:
 - (1) **Association – Under Threshold Amount.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than the Threshold Amount (hereinafter defined), then the construction fund shall be disbursed in payment of such costs upon the order of the Association.

- (2) **Association – Threshold Amount or Over.** If the amount of estimated costs of reconstruction and repair which is the responsibility of the Association is the Threshold Amount or more, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.
- (3) **Owner.** The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Owner shall be paid by the Insurance Trustee to the Owner.
- (4) **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of 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; provided, however, to the extent a distribution to an Owner is not in excess of Assessments paid by such Owner into the construction fund, such distribution shall not be made payable jointly to any mortgagee.
- (5) **Threshold Amount.** "Threshold Amount" means, for the purposes of this Article, \$150,000.00, as increased by three (3%) percent on January 1 of each year, beginning January 1, 2008. The 3% increase each year shall be calculated with reference to the Threshold Amount for the immediately preceding year.
- (6) **Certificate.** Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, whether a disbursement is to be made from the construction fund, or whether surplus funds to be distributed are less than the Assessments paid Owners. Instead, the Insurance Trustee may rely upon a certificate of the Association, executed by its President or Vice President and Secretary or Assistant Secretary, as to any or all of such matters stating that the sums to be paid are due and properly payable in the name of the designated payee and the amount to be paid.

16.7. Failure to Reconstruct. In the event of "major damage" to or destruction of all or a substantial part of the Condominium Property and if the Property is not repaired, reconstructed or rebuilt within a reasonable period of time, any Owner shall have the right to petition a court of competent jurisdiction for equitable relief which may, but need not, include termination of the Condominium and partition.

ARTICLE 17 CONDEMNATION

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

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

will be constructed or repaired after a casualty. For this purpose, the taking by eminent domain shall also be deemed a casualty.

17.3. Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the award and Special Assessments shall be deemed to be insurance proceeds and shall be owned and distributed in a manner provided with respect to the ownership and distribution of insurance proceeds, if the Condominium is terminated after 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 awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds by the Insurance Trustee (if appointed) after casualty or as otherwise provided in this Article.

17.4. Unit Reduced but Habitable. If the taking reduces the size of the Unit, and the remaining portion of the Unit can remain habitable (in the sole opinion of the Association) the award from the taking of the portion of the Unit shall be used for the following purposes and in the order stated and the following changes shall be made to the Condominium:

- (a) **Restoration of the Unit.** The Unit shall be made habitable and 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, with respect to 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 mortgagees.

17.5. Unit Made Not Habitable. If the taking is of the entire Unit or so reduces the size of the Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking the Unit shall be used for the following purposes and in the order stated and the following changes shall be made to the Condominium:

- (a) **Payment of Award.** The award shall be paid first to the Association for any due and unpaid Assessments; then to the affected Owners and to each mortgagee of the Unit as their interests may appear, the remittance being made payable jointly to the Owner and the mortgagee(s).
- (b) **Addition to the Common Elements.** The remaining portion of the Unit, if any, shall become a part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for the use by some or all Owners, in manner approved by the Board. Such Unit shall no longer be deemed a Unit. In no event shall the total of such distributions, with respect to any specific Unit, exceed the market value of such Unit immediately prior to the taking.
- (c) **Adjustment of Shares.** The shares in the Common Elements appurtenant to the Units that continue as a part of the Condominium shall be adjusted to distribute the ownership shares in the Common Elements that were appurtenant to the deleted Unit(s), among the remaining Units, in proportion to the ownership shares of the remaining Units immediately prior to such adjustment.
- (d) **Assessments.** If the balance of the award (after payments to the Owner as provided above), for the taking is not sufficient to alter the remaining portions of the Unit for use with the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all the Owners who will continue as Owners of Units after the changes in the Condominium affected by this taking. The Assessment shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effective pursuant hereto, by reason of this taking.

17.6. Taking of Common Elements. The award for the taking of Common Elements shall be

used to render the remaining portion of the Common Elements usable in the manner provided by the Board. The balance of the award for the taking of the Common Elements, if any, shall become part of the Common Surplus.

17.7. Amendment to the Declaration. The changes in the Unit, and the Common Elements and the ownership of the Common Elements and the share of 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 the majority of all Directors of the Association, together with any consent or approval required by Eligible Holders pursuant to Article 20

ARTICLE 18 TERMINATION

The Condominium may be terminated in the following manner:

18.1. Agreement. The Condominium may be caused to be terminated at any time by written agreement of the Owners of at least three-fourths (3/4ths) of the Units, and agreement of Eligible Holders required by Section 20.2.

18.2. Termination Upon Casualty. If the Condominium suffers "Lesser Damage" as defined in Section 16.1(b)(1), above, the Condominium may be terminated upon the written agreement of the Owners of not fewer than seventy-five percent (75%) of the Units, and any required consent of Eligible Holders under Section 20.2. If the Condominium suffers "Major Damage" as defined in Section 16.1(b)(2) above, then the Condominium will be terminated unless Owners of not less than a majority of the Units agree in writing that the Condominium will be repaired and not terminated, provided that there is any required agreement and consent of Eligible Holders to such termination pursuant to Section 20.2.

18.3. Certificate of Termination. The termination of the Condominium by either of the foregoing methods shall be evidenced by a certificate of termination (the "Certificate"), executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The Certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as trustee (the "Trustee"), and shall be executed by the Trustee indicating willingness and ability to serve in that capacity. Termination of the Condominium occurs when a certificate meeting the requirements of this Section is recorded in the Public Records. The recording of that Certificate terminates the Condominium and vests legal title in the Trustee, to all real and personal property which was formerly the Condominium Property or Association Property, without need for further conveyance. Each Owner, however, designates the Association as his attorney in fact irrevocably for the purpose of executing a deed conveying the interest of such Owner in the Condominium Property to the Trustee, if the Trustee or the Association deems such conveyance necessary or desirable. Beneficial title to the former Condominium and Association Property is owned by the former Owners as tenants in common, in the same undivided shares as each Owner previously owned in the Common Elements. Upon termination, each lien encumbering a Condominium Parcel shall be automatically transferred to the equitable share in the Condominium Property attributable to the Unit encumbered by the lien, with the same priority. The Association shall provide any notice of intention to terminate, a copy of the Certificate, and such other information within the times, and as may be required by, the Condominium Act, as it may be amended from time to time. Such information shall be provided to the Division of Land Sales, Condominiums and Mobile Homes, or to such other agency as may be provided by the Condominium Act, as amended.

18.4. Wind-up of Association Affairs. The termination of the Condominium does not, by itself, terminate the Association. The former Owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles and Bylaws, for the purpose of winding up the affairs of the Association in accordance with this Article. When the affairs of the Association have been fully wound up, the Association shall be dissolved in accordance with law.

18.5. Trustee's Powers and Duties. The Trustee shall hold title to the property for the benefit of the former Owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former Owners approve a sale of the property as provided in this Article, the Trustee shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Article. The Trustee shall be entitled to reasonable fees for acting in such capacity, and such fees, and all costs and expenses incurred by the Trustee in the performance of its duties, shall be paid by the Association or paid from the proceeds of the sale of the former Condominium and Association Property, or other Association assets, and shall constitute a lien on the property superior to any other lien. The Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Trustee unless such liabilities are the result of gross negligence or malfeasance. The Trustee may rely upon the written instructions and information provided to it by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions. In the event of the resignation or incapacity of the Trustee, a successor Trustee may be appointed by the Circuit Court on the petition of the Association.

18.6. Partition; Sale. If following a termination, at least sixty-seven percent (67%) of the Voting Interests agree to accept an offer for the sale of the property, the Board of Directors shall notify the Trustee, and the Trustee shall complete the transaction. If the Owners have not authorized a sale of the former Condominium and Association Property within one (1) year after the recording of the Certificate, the Trustee may proceed to sell the property without agreement by the former Owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Trustee to the beneficial Owners thereof, as their interests shall appear. At any time more than one (1) year following termination, the former Condominium Property and Association Property may be partitioned and sold upon the application of any Owner; provided, however, that no proceeding seeking partition may be filed if there is then pending a contract for the sale of the property, and during the pendency of any such partition proceeding, such proceeding shall be held in abeyance if a contract to sell the property is executed. If the property is sold pursuant to any such contract, then any pending partition proceeding shall be dismissed.

18.7. New Condominium. The termination of the Condominium does not bar creation of another Condominium including all or any portion of the same property.

18.8. Provisions Survive Termination. The provisions of this Article 18 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles, and shall have the power to levy Assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Trustee, as well as post-termination costs of maintaining the former Condominium Property and winding up the affairs of the Association, are Common Expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former Owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

ARTICLE 19 OBLIGATION OF OWNERS

19.1. Duty To Comply; Right To Sue. Each Owner, his Tenants and Guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, Condominium Documents and the Rules and Regulations. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by an Owner against:

- (a) The Association;
- (b) An Owner;
- (c) Directors designated by the Developer, for actions taken by them prior to the time control of the Association is assumed by Owners other than the Developer;

- (d) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.
- (e) Any Tenant, Occupant, Guest, or any other invitee occupying a Unit.

The foregoing list shall not be deemed to be exclusive.

19.2. Discretion to Enforce. The decision to pursue an enforcement action in any particular case shall be up to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (a) the Association's position is not strong enough to justify taking any or further actions; or
- (b) the covenant, restrictions, or rule being enforced is, or is likely to be construed as, inconsistent with applicable laws; or
- (c) although a technical violation may have existed or occurred, it is not of such a material nature or duration as to be objectionable to a reasonable person, or to justify expending the Association's resources; or
- (d) that it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, as determined by the Board, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances, or preclude the Association from enforcing any other covenants, restriction, or rule. Without limiting the generality of the foregoing, the Board may compromise claims for delinquent Assessments, including interest and late charges with respect thereto, and attorney's fees incurred with respect to the collection thereof, where, in the reasonable business judgment of the Board, after consultation with counsel, such compromise is deemed to be in the best interest of the Association, taking into consideration the value of the Unit against which the Association has a lien, the amount of any first mortgages or other liens that are prior to the lien for the Association's Assessments, the apparent collectability of the Owner or other persons who may have personal liability for such amounts, the cost to the Association to continue to pursue collection of the full amount, and any risks or other uncertainty with respect to the Association's position.

19.3. Waiver of Rights. The failure of the Association or of a Member to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or Member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by an Owner if the waiver would adversely affect the rights of the Owner or defeat the purpose of the provision, except that Owners or Directors may waive notice of specific meetings as provided in the Bylaws.

19.4. Attorney's Fees. In any legal proceeding arising out of an alleged failure of a Tenant, Owner, Occupant, Guest, Director, Officer, Committee Member or other Association representative, or the Association to comply with the requirements of the Condominium Act, the Condominium Documents or the Rules and Regulations, as they 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 as may be awarded by the court.

19.5. No Election of Remedies. All rights, remedies and privileges granted to the Association or Owners under any terms, provisions, covenants, or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from existing such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity.

ARTICLE 20 RIGHTS OF MORTGAGEES

20.1 Approvals of Amendments. Amendments to the Condominium Documents materially affecting the rights or interests of Eligible Holders must have the approval of Eligible Holders representing at least 51% of the Voting Interests attributable to Units subject to the mortgages held by such Eligible Holders. The following matters shall be presumed to materially affect the rights or interests of Eligible Holders:

- (a) By act or omission, seek to abandon or terminate the Condominium;
- (b) Change the pro-rata interest or obligations of any individual Condominium Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro-rata share of ownership of each Unit in the Common Elements;
- (c) Partition or subdivide any Unit, or the exclusive easement rights appertaining thereto;
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or Limited Common Elements. (The granting of easements for Utilities or for other purposes consistent with the intended use of the Common Elements for the Condominium shall not be deemed a transfer within the meaning of this clause.);
- (e) Use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement or construction of such Condominium Property substantially in accordance with the original plans and specifications and this Declaration;
- (f) Change the Voting Interests appertaining to any Unit; and
- (g) Amend any provisions of the Declaration, Articles or Bylaws which are for the express benefit of holders or insurers of first mortgages on Units.

20.2. Consent to Termination. Anything else contained in this Declaration to the contrary notwithstanding, any action to terminate the Condominium as a result of substantial destruction from a casualty or condemnation must be agreed to by Eligible Holders representing at least 51% of the Voting Interests, attributable to Units subject to mortgages held by such Eligible Holders, and if the action to terminate the Condominium is for any reason other than substantial destruction or condemnation, then by Eligible Holders representing at least 67% of the Voting Interests attributable to the Units subject to mortgages held by such Eligible Holders.

20.3. Implied Approval. Implied approval under Sections 20.1 and 20.2 shall be assumed when such Eligible Holder fails to respond to any written request for approval within thirty (30) days after the Eligible Holder receives proper notice of the proposal, provided the notice was delivered certified or registered mail with "return receipt" requested. In the event that Eligible Holder consent is provided other than by a properly recorded joinder, such consent shall be evidenced by affidavit of the Association and recorded in the Public Records. Such consent may not be unreasonably withheld.

20.4. Right to Information. The Association shall provide the following information to each Eligible Holder, for which the Association may charge a reasonable fee:

- (a) **Notice of Casualty or Condemnation.** Notice of any condemnation or eminent domain proceedings, or any casualty loss, affecting a material portion of the Condominium Property or Association Property, or which affects any Unit on which the Eligible Holder holds any Institutional Mortgage.
- (b) **Financial Statements.** A copy of the financial statement or financial report of the

Association as delivered to the Owners for the immediately preceding fiscal year, as required by Section 718.111(13) of the Condominium Act, as it may be amended or renumbered from time to time. (An Eligible Holder may, at its cost, have financial statements audited.)

- (c) **Notice of Delinquency.** Notice of any delinquency of sixty (60) days or longer in the payment of Assessments or Charges owed by the Owner of any Unit on which it holds an Institutional Mortgage.
- (d) **Notice of Insurance Modification.** Notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association. (No notice shall be required upon a change in companies or policies where coverage is maintained, or if a policy becomes unavailable).
- (e) **Notice of Actions Requiring Consent.** Notice of any proposed action that requires consent of a specified percentage of Eligible Holders.

The failure of the Association to send any such notice to any such Eligible Holder shall have no effect on any meeting, action, or thing that was to have been the subject of such notice, nor affect the validity thereof, and shall not be the basis for liability on the part of the Association.

20.5. Mortgage Foreclosure. If the mortgagee of a first mortgage of record, or any other person, acquires title to a Condominium Parcel as a result of foreclosure of the mortgage, or by a deed given in lieu of foreclosure, the liability of the new Owner for payment of the shares of Common Expenses or Assessments attributable to the Condominium Parcel, which came due prior to the acquisition of title shall be governed by the Condominium Act, as it may be amended from time to time. Any unpaid share of Common Expenses for which such the new Owner is exempt from paying becomes a Common Expense collectible from all Owners, including the acquirer and his successor and assigns. No Owner or acquirer of title to a Condominium Parcel by foreclosure (or by a deed in lieu of foreclosure) may, during his period of ownership, whether the parcel is occupied or not, be excused from paying any Assessments coming due during the period of such ownership.

20.6. Redemption. If proceedings are instituted to foreclose any mortgage or lien on any Unit, the Association, on behalf of one or more Owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the Unit at the foreclosure sale. A mortgagee has an unrestricted, absolute right to accept title to the Unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the Unit at the foreclosure sale.

20.7. Right to Inspect Books. The Association shall make available to Institutional Mortgagees, upon written request, current copies of the recorded Condominium Documents, and the books, records and financial statements of the Association. "Available" means ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies provided at the request of the mortgagee shall be at the expense of the mortgagee.

ARTICLE 21 DEVELOPER'S RIGHTS AND DUTIES

Notwithstanding any other provision of this Declaration, so long as the Developer or any successor in interest to the developmental rights of the Developer is offering any Units in the Condominium for sale in the ordinary course of business, the following shall apply:

21.1. Developer's Use. Until all the contemplated improvements to the Condominium have been completed and all of the Units have been sold, and the development and sale of all Units in the Subsequent Phase Lands has been completed, neither the Owners nor the Association may use the Condominium Property in any way that unreasonably interferes with the completion of construction and the sale of Units within the Condominium and the Subsequent Phase Lands. The Developer, its successors,

successors, assignees, and designees, may make any use of the unsold Units, Association Property, and the Common Elements as may reasonably be expected to facilitate such completion and sales, including, but not limited to, maintenance of a sales office, use of Unit(s) as model(s), display of signs, showing the Units, Association Property, and Common Elements to prospective purchasers, and being, for itself and its designees, exempt from Vehicle parking restrictions, but only if such Vehicles are engaged in any activity relating to the construction, maintenance or marketing of the Units. Without limiting the generality of the foregoing, the Developer shall have the following rights and easements:

- (a) **Construction and Maintenance.** The Developer (including its designees and contractors) shall have the right to enter the Condominium Property and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, and the development, construction, and sale of Units and the Subsequent Phase Lands, including but not limited to, the right to prohibit access to any area of the Condominium being developed or under construction.
- (b) **Sales Activity.** For so long as it holds any Unit in the Condominium or the Subsequent Phase Lands for sale in the ordinary course of business, the Developer and its designees shall have the right to use, without charge, any Units owned by it, and the Common Elements in order to establish, modify, maintain and utilize, as it and they deem appropriate, model Units, sales and other offices, and hospitality suites. Without limiting the generality of the foregoing, the Developer and its designees may show model Units or the Common Elements to prospective purchasers or tenants, permit short term occupancy in Units used as hospitality suites, notwithstanding the provisions of other provisions of this Declaration, erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease, and take all other action helpful for sales, leases, promotion, and construction of the Condominium, and the development, construction, and sale of Units in the Subsequent Phase Lands.

21.2. Assignment. All or any of the rights, privileges, powers and immunities granted or reserved to the Developer in the Condominium Documents may be assigned by the Developer to a successor developer without the consent of any other Owner or any holder of a mortgage secured by any Unit. In the event of the foreclosure of any construction or other mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer with respect to the property subject to such foreclosure or deed in lieu thereof. Provided, however, that anything contained in this Section 21.2 to the contrary notwithstanding, no such assignment of succession in interest to Developer's rights may be used by such successor developer to retain control of the Association after a majority of the Units have been sold, except in compliance with Rule 61B-23.003, F.A.C., or any successor Rule.

21.3. Amendments by Developer. Notwithstanding anything to the contrary contained herein or in any other of the Condominium Documents, the Developer reserves the exclusive right to amend the Condominium Documents, which exclusive right shall continue for such period of time as the Developer shall be in control of the Association, except as such amendment rights may be limited by the Condominium Act, including, but not necessarily limited to, those matters set forth in Sections 718.110(4) and (8) of the Condominium Act. Developer reserves the right to add modest additional recreational amenities, such as, but not limited to, picnic facilities, BBQ grills, walking paths, and other amenities, provided that any such facilities so added will not have a material impact on the Owners' cost of maintenance. As authorized by Section 718.110(4) of the Condominium Act, Developer expressly reserves the right to modify floor plans, and to change the configuration or size of any Unit, and to modify the Limited Common Elements appurtenant thereto, and to construct any mix of Unit types, including omitting a particular Unit type altogether, so long as the Units affected are owned by Developer. Said amendments may be made and executed solely by the Developer and recorded in the Public Records, and without any requirement of securing the consent or approval of any Owner, the Association, or the owner and holder of any lien encumbering a Condominium Parcel. The Developer shall not have the right to combine or subdivide Units so that the number of Units is altered.

21.4. Sale of Units. The Developer shall have the right to sell or transfer any Unit owned by it to any person, on such terms and conditions as it deems in its own best interest.

21.5. Developer's Rights. So long as the Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer.

- (a) Any amendment of the Condominium Documents which would adversely affect the Developer's rights.
- (b) Any Assessment of the Developer as an Owner for capital improvements.
- (c) Any action by the Association that would be detrimental to the sales of Units by the Developer. However, an increase in Assessments for Common Expenses shall not be deemed to be detrimental to the sales of Units.

ARTICLE 22 AMENDMENT OF DECLARATION

Except as otherwise provided above as to amendments made by the Developer, all amendments to this Declaration shall be proposed and adopted as follows:

22.1. Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by the Owners of at least one-fourth (1/4th) of the Units.

22.2. Procedure. If any amendment to this Declaration is proposed as provided above, the proposed amendment shall be submitted to a vote of the Owners not later than the next annual meeting for which proper notice can be given. In the case of proposed amendments by petition of the Owners, the Association may have Association counsel revise the wording of the amendment or its manner of presentation, but only for the purpose of meeting minimum requirements for form or presentation of amendments, and to clarify or correct the wording of the amendment without materially changing the intent and effect of the amendment if it is adopted. The Association is under no obligation to present to the members for a vote any proposed amendment that in the opinion of Association counsel would require or permit any person to perform an unlawful act or omission to act.

22.3. Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium Documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the total Voting Interests of the Condominium who are present in person, or by proxy, and voting at any annual or special meeting called for the purpose, with Eligible Holder consent pursuant to Section 20.1, if required. Prior to the assumption of control of the Association by Owners other than the Developer, this Declaration and all exhibits may be amended only (a) by Developer pursuant to Section 21.3, or (b) by vote of a majority of the Directors, with the written consent of Developer, and no vote of the Owners is required, nor any consent of Eligible Holders pursuant to Section 20.1, (except where the Condominium Act requires a vote of the Owners, which requirement cannot be modified by this Declaration, in which case a vote of the Owners is required), or (c) by the Owners as provided in Section 22.3, with the written consent of Developer.

22.4. Written Agreement. This Declaration, and any of the other Condominium Documents, may be amended by written agreement of the Owners representing not fewer than the number of Voting Interests required to approve such amendment. Any such proposed amendment submitted for approval by written agreement shall nevertheless be presented in the form and manner as required by the Condominium Act. Any such written agreement shall be subject to the provisions of the Condominium Act and any other applicable provisions of law.

22.5. Certificate; Recording; Effective Date. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association. The amendment shall be effective when the certificate and copy of the amendment are

recorded in the Public Records.

22.6. Proviso. An amendment to this Declaration may change the configuration or size of any Unit in a material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Owner of a parcel shares the Common Expenses and owns the Common Surplus, only if the record Owner of the Unit, his Institutional Mortgagee, if any, and the Owners of at least a majority of the Units, consent to the amendment. This proviso does not apply to changes ordered by a governmental agency as a result of condemnation or a taking by eminent domain under Section 17.7 above, to the modifications effected by filing additional Phases pursuant to Article 5, or to changes in the configuration or size of a Unit by the Developer while the Developer still owns such Unit.

22.7. Amendment of Provisions Relating to Developer. So long as the Developer holds any Units for sale in the ordinary course of business none of the following actions may be taken without approval in writing by the Developer; Assessment of the Developer as an Owner for capital improvements; and any action by the Association that would be detrimental to the sales of Units by the Developer. However, an increase in Assessments for Common Expenses, without discrimination against the Developer, shall not be deemed to be detrimental to the sales of Units.

22.8. Limitation. Anything contained in this Declaration or any other Condominium Document to the contrary notwithstanding, any provision of this Declaration or of any of the other Condominium Documents, which provision establishes a specific percentage or number of Voting Interests as required for the approval, consent or concurrence of the Owners on any particular matter, may not be amended except upon the approval of such amendment by the percentage or number of Voting Interests specified in such provision, or such other number as may be otherwise provided for an amendment, whichever is greater.

ARTICLE 23 SURFACE WATER MANAGEMENT SYSTEM

The provisions of this Article 23 shall apply with respect to the Surface Water Management System and the Surface Water Management System Facilities, which are developed, operated and maintained pursuant to the terms and conditions of the ERP.

23.1. Easement. Developer hereby reserves for itself, its successors and assigns, and grants to SWFWMD, the Association, and their respective designees, and to the owners, from time to time, of all or a part of the Subsequent Phase Land, a perpetual, nonexclusive easement over and across all areas within the Condominium Property and Subsequent Phase Land in which there is or will be located Surface Water Management System Facilities. The purpose of such easement shall be for the operation maintenance, inspection, monitoring, repair and replacement of such Surface Water Management System Facilities. The easement shall include the reasonable right of access across the Condominium Property to carry out any maintenance or operational rights or responsibilities of the Developer, the Association, or SWFWMD.

23.2. Responsibility for Operation. The Association is responsible for the operation and maintenance of the Surface Water Management Facilities, pursuant to the ERP. The Association's cost with respect thereto shall be a Common Expense. Operation and maintenance and reinspection reporting with respect to the Surface Water Management Facilities shall be performed in accordance with the terms and conditions of the ERP. If there is a delayed transfer of the ERP to the Association, then the permittee thereunder shall continue to have responsibility thereunder until such responsibility is transferred to the Association. (In such event, the permittee must submit to SWFWMD appropriate documentation required by SWFWMD, which must be approved by SWFWMD, before the transfer of responsibility to the Association is effective.) Upon transfer of responsibility from the permittee, the Association shall thereafter be responsible for operation and maintenance of the Surface Water Management Facilities. Notwithstanding that the responsibility pursuant to the ERP may not have yet been transferred to the Association, the cost of operation and maintenance of the Surface Water Management Facilities prior to such transfer shall be paid by the Association as a Common Expense.

23.3. Location. The Surface Water Management Facilities are located on land designated as Common Property on the Plat, are located on land that is Association Property, or are located on land that is subject to an easement that is Common Property or is in favor of the Association and its successors.

23.4. Activities Prohibited. No construction activities may be conducted relative to any portion of the Surface Water Management System Facilities. Prohibited activities include, but are not necessarily limited to, digging or excavation, depositing fill, debris or any other material or item, constructing or altering any water control structure, or any other construction to modify the Surface Water Management System Facilities. If the Condominium includes a "wetland mitigation area," or a "wet detention pond," as those terms are defined by SWFWMD, no vegetation in those areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from SWFWMD. Construction and maintenance activities which are consistent with the design and permit conditions approved by SWFWMD in the ERP may be conducted without specific written approval from SWFWMD.

23.5. Enforcement. SWFWMD has the right to take enforcement measures, including a civil action for injunction and/or penalties against the Association to compel it to correct any outstanding problems with the Surface Water Management System Facilities for which the Association has responsibility.

23.6. Amendments. Any amendment to the Condominium Documents affecting the Surface Water Management System Facilities, or the operation and maintenance thereof, shall require the prior written approval of SWFWMD.

23.7. Alternate Responsibility. If the Association ceases to exist, the Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water Management Facilities in accordance with the requirements of the ERP, unless and until an alternate entity assumes responsibility as provided in the Articles.

23.8. On-Site Wetland Mitigation. If the Condominium has on-site wetland mitigation, which requires ongoing monitoring and maintenance, the Association shall allocate sufficient funds in its budget each Fiscal Year for monitoring and maintenance of the wetland mitigation area (until SWFWMD determines that the area(s) is/are successful in accordance with the ERP).

23.9. Wetlands and Jurisdictional Lands. This Declaration is subject to the rights of the State of Florida over any part of the Condominium Property which may be considered wetlands, marshes, sovereignty or jurisdictional lands, and every Owner and the Association shall obtain any permit necessary prior to undertaking any dredging, filling, mowing, improving, landscaping, or removal of plant life existing on the Condominium Property.

23.10. Use and Access. SWFWMD and the Board shall have the right to adopt reasonable rules and regulations from time to time in connection with the use of the surface waters of any portion of the Surface Water Management System Facilities, and shall have the right to deny such use to any person who, in the opinion of the Board, may create or participate in a disturbance or nuisance on any part of the Surface Water Management System Facilities. The use of such surface waters within the Condominium Property by the Owners shall be subject to and limited by the rules and regulations of the SWFWMD, the Developer, and the Association, all permits issued by governmental authorities, and any rights granted to other persons pursuant to the rules and regulations of the SWFWMD, Developer and the Association. Only Developer and the Association shall have the right to pump or otherwise remove any water from any part of the Surface Water Management Facilities for purposes of irrigation or any other use, and only then to the extent such removal is permitted by any SWFWMD permit. No gas or diesel driven watercraft shall be operated on any portion of the Surface Water Management System Facilities, including the retention lakes. Any Rules and Regulations with respect to Surface Water Management System Facilities adopted by the Board shall be consistent with the ERP and the rules of SWFWMD.

23.11. Liability. Neither Developer, nor the Association shall have any liability whatsoever to Owners, Guests, Tenants, or invitees in connection with the Surface Water Management System Facilities

and any easements with respect thereto, or any part of the Surface Water Management System Facilities. Each Owner, for itself and its Guests, Tenants, or invitees, releases Developer, and the Association from any liability in connection therewith.

Neither Developer, the Association, nor any of their successors, assigns, officers, directors, committee members, employees, management agents, contractors or subcontractors (collectively the "Listed Parties") shall be liable or responsible for maintaining or assuring the water quality or level in any lake (including the lake, a portion of which lies in or is adjacent to Phase 3), pond, retention area, canal, creek, marsh area, stream or other water body within or adjacent to the Condominium Property, except as such responsibility may be specifically imposed by an applicable governmental or quasi-governmental agency or entity as referenced herein. Further, all Owners and users of the Condominium Property located adjacent to or having a view of any of the aforesaid areas shall be deemed, by virtue of their acceptance of a deed to, or use of, such property, to have agreed to hold harmless the Listed Parties from all liability related to any changes in the quality and level of the water in such bodies. Further, none of the Listed Parties shall be liable for any property damage, personal injury or death occurring in, or otherwise related to, any water body, or persons using same, doing so at their own risk.

All persons are hereby notified that from time to time alligators and other wildlife may inhabit or enter into water bodies contained within or adjacent to the Condominium Property and may pose a threat to persons, pets and property, but that the Listed Parties are under no duty to protect against, and do not in any manner warrant against, any death, injury or damage caused by such wildlife.

All persons are hereby notified that lake banks and slopes within certain areas of the Condominium Property may be steep and that depths near shore may drop off sharply. By their acceptance of a deed to, or use of, any Unit, all Owners or users of such property shall be deemed to have agreed to hold harmless the Listed Parties from all liability or damages arising from the design, construction, or topography of any lake banks, slopes, or bottoms

23.12. Additional Wetland Restrictions.

- (a) Neither the Association nor any Owner within the Condominium may construct or maintain any building, residence, or structure, or undertake or perform any activity in the Wetland Area(s), buffer area(s), upland conservation area(s) and drainage easement(s) described in the ERP and recorded Plat of the Condominium, unless prior approval is received from SWFWMD, Venice Regulation Department.
- (b) With respect to all Units abutting wet detention ponds, the Unit Owners shall not remove native vegetation (including cattails) that become establish within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Unit Owners shall address any questions regarding authorized activities within the wet detention ponds to SWFWMD, Venice Regulation Department, Regulation Manager.
- (c) The removal of littoral shelf vegetation (including cattails) from wet detention ponds is prohibited unless otherwise approved by SWFWMD. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Any questions regarding authorized activities within the wet detention pond shall be addressed to SWFWMD's Regulation Manager, Venice Regulation Department."

23.13. Indemnity. From and after the recording of this Declaration, or the transfer of responsibility for the operation of the Surface Water Management Facilities to the Association, whichever is later, the Association agrees that it shall hold Developer harmless from all suits, actions, damages, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising out of any occurrence in, upon, at or from the maintenance of the Surface Water Management Facilities occasioned in whole or in part by any action, omission of the Association or its agents, contractor, employees, servants, or licensees, but not excluding any liability occasioned wholly or in part by the acts of the Developer, its successors or assigns. Upon completion of construction of the Surface Water

Management Facilities, Developer shall be deemed to have assigned all its rights, obligations and duties with respect thereto to the Association, effective upon such completion or the effective transfer of responsibility to the Association, whichever is later. The Association shall thereupon assume all such rights, duties and liabilities and shall indemnify and hold Developer harmless therefrom.

ARTICLE 24 PROPERTY DECLARATION AND PROPERTY ASSOCIATION

24.1. Condominium Subject to Property Declaration. The Condominium is subject to all the terms and provisions of the Property Declaration.

24.2. Membership in Property Association. The Association is a member of the Property Association.

24.3. Property Association Assessment and Collection. The Property Association has the authority to levy assessments against the Association. The Association is the deemed "owner" of the Condominium Property, in accordance with the Property Declaration. The Property Association has the right to a lien against the Units for all assessments so levied if not paid. The Association shall include all such assessments levied by the Property Association in the annual budget, and such assessments are Common Expenses. Each Owner consents to the lien rights of the Property Association, as contained in the Property Declaration.

24.4. Functions of Property Association. The Property Association has certain responsibilities for maintaining the "Common Areas and Facilities," as defined and described in the Property Declaration. Those areas and facilities are described and defined in the Property Declaration as Stormwater Collection Facilities, Stormwater Retention Facilities, the Surface Water Management System (to the extent described in the Property Declaration), Wetland Mitigation Areas, and the Bypass Ditch. Portions of these areas and facilities are located within the Condominium and portions on other land. The Property Association's responsibilities are separate and apart from those of the Association.

ARTICLE 25 MISCELLANEOUS

25.1. Severability. The invalidity or non-enforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not affect the remaining portions thereof.

25.2. Applicable Statutes. The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it exists on the date of recording this Declaration in the Public Records. The Condominium Documents shall not be construed more strongly against any person, regardless of the extent to which such person may have participated in the preparation hereof.

25.3. Conflicts. If there is an irreconcilable conflict between any provision of the Condominium Documents and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles and Bylaws, this Declaration shall control.

25.4. Interpretation. The Board of Directors is responsible for interpreting the provisions of the Condominium Documents. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

25.5. Headings, Emphasis, and Capitalization. The headings used in the Condominium Documents, the use of bold print and italics, and the capitalization of certain words, are intended to enhance the clarity and readability of the documents, but they do not constitute substantive matter intended to be considered in construing the terms and provisions of these documents.

25.6. Gender and Number. Whenever used in the Condominium Documents, one gender shall be deemed to include all other genders, the singular shall include the plural, and the plural the singular, as the context may require.

25.7. Mold and Mildew Awareness and Preventions. There are many ways that the Association, to the extent of its limited responsibility for maintenance under Article 11, and Owners can help to control moisture and mold located on, under, within or adjacent to the Condominium Property. The following is a list of suggestions, which is not meant to be all inclusive:

- (a) Owners and other Occupants should keep indoor humidity levels as low as possible by running the air conditioning unit at a comfortable level. The cooler the air is, the less humidity it will hold, thereby limiting the growth of mold and mildew.
- (b) Use of a dehumidifier by Owners and Occupants is a good way to keep the humidity levels lower than normal when humidity levels may be high.
- (c) Owners can install a humidistat to existing air conditioning control systems, which is one way to keep the humidity levels lower when an indoor space is left unoccupied for extended periods of time.
- (d) There are numerous brands of moisture absorbent chemicals available to Owners and Occupants, which can help keep the humidity inside the Unit at a proper level while indoor space is unoccupied for short periods of time.
- (e) Owners and other Occupants should not run air conditioners with windows open. Air conditioning systems are not designed to keep up with the moisture and heat load this condition will generate. When windows are left open, there is a risk of saturating everything inside the indoor space (walls, furniture, carpeting, etc.) with more moisture than the air conditioning system is designed to remove. Mold needs moisture to survive. The drier the indoor space, the better off the indoor space will be.
- (f) Owners, their Tenants and other Occupants must fix leaking plumbing and any other source of unwanted water immediately. If the source of the leak is not within the Unit or not the responsibility of the Owner, then the leak must be reported in writing immediately to the Association, or the Owner(s) or Occupant(s) of adjacent or nearby Units which may be the source of the leak.
- (g) Owners, Tenants and other Occupants must maintain proper humidity levels in Units. Equipment that conditions the air, such as air conditioners, dehumidifiers and ventilation systems, should be operated year round. Owners must have major appliances and equipment, such as heating, ventilating and air conditioning systems inspected, cleaned and serviced regularly by a qualified professional.
- (h) Owners, Tenants and other Occupants must clean and dry refrigerator, air conditioner and dehumidifier drip pans and filters regularly.
- (i) The Association, Owners and Occupants, respectively, should respond promptly when they see or have called to their attention signs of moisture or mold in areas for which the Association, Owner or Occupant has responsibility, as applicable.
- (j) Moisture must not be allowed to stand or make contact with carpet, furniture and cellulose-based materials, such as wood, drywall or other non-tile, non-plastic or non-metal materials.
- (k) All water damaged areas and items must be immediately dried in order to prevent or minimize mold growth.
- (l) If mold develops, the party responsible should clean up the mold by washing off hard surfaces with a commercial strength cleaner and mold/mildew inhibitor (such as "Tile Air II) or "Miltrol" from the Marinize Product Corporation) or equal, making sure to follow directions as specified.
- (m) Depending upon the nature and extent of the mold infestation, trained professionals may be needed to assist in the remediation effort.
- (n) Whenever Units will be unoccupied for any length of time, Owners must arrange not only for appropriate temperature and humidity settings, but must also arrange for the periodic inspection of their Unit so that it can be inspected and monitored to be sure the equipment maintaining temperature and humidity is working properly, and to observe and promptly

report or address, as indicated, any leaks than may contribute to mold and mildew growth, cause other damage, or both.

- (o) Mold that is not properly and adequately removed may reappear.
- (p) There are no clear, comprehensive standards for the way in which to deal with mold and mildew, nor what are acceptable levels of exposure. Standards and recommendations from governmental agencies and others are likely to change with time. While the foregoing may be consistent with what is known at the time the Declaration is initially recorded, new standards and recommendations may evolve over time. Owners and the Association have a responsibility to monitor those changing standards and recommendation and to act responsibly and prudently within the context of those changing standards and recommendations.

Mold and mildew will be present within the Condominium Property, as mold, mildew and other contaminants have been present in our environment, essentially forever. Mold thrives and grows particularly in damp and warm conditions, such as those found in Florida. The foregoing guidelines and suggestions are intended to assist the Association and, in particular, the Owners in minimizing the growth of mold and mildew, but they in no way will prevent or eliminate the presence of mold, mildew or other contaminants. To the extent that mild or mildew may pose a problem for some individuals, following the foregoing suggestions may be of help, but does not assure that one with a particular sensitivity to mold or other contaminants will be insulated from them. Moreover, potential unwanted effect of mold and mildew will stem primarily from mold and mildew *within a Unit*, and of course only the enclosed spaces within the Condominium, primarily the Units, are capable of having temperature and humidity controlled. Thus the primary responsibility for dealing with the presence of mold, mildew, or other contaminants, and the possible effects thereof, rests upon Owners and Occupants.

The Association and each Owner acknowledges and agrees that neither the Developer, nor any of its contractors (a "Contractor"), will be liable to the Association or to any Owner, Tenant, or other Occupant, for any special, incidental or consequential damages based on any legal theory whatsoever, including but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of mold, mildew and/or microscopic spores located on, under, within or adjacent to the Condominium Property, including, but not limited to, the Units, Common Elements and Limited Common Elements, unless caused by the sole negligence or willful misconduct of the Developer or a Contractor. The Association, on behalf of itself and its Owner members, and each Owner, Tenant, invitee, licensee and any other Occupants, hereby release and agree to indemnify Developer and each Contractor and their officers, directors, partners, members, successors and assigns from and against any and all claims, actions, damages, causes of action, liabilities and expenses (including, without limitation, attorneys' fees and costs of enforcing this release and indemnity) for property damage, injury or death resulting from the exposure to microscopic spores, mold and/or mildew and from any loss of resale value due to the presence and/or existence of mold, mildew and/or microscopic spores; provided, however, that in no event is the Association, any Owner, Tenant, invitee, licensee or other Occupant, releasing or indemnifying Developer or any Contractor as a result of the presence and/or existence of mold, mildew and/or microscopic spores if caused by the sole negligence or willful misconduct of the Developer or any such Contractor. Similarly, each Owner, Tenant and other Occupant agrees that neither the Association, nor its Directors or Officers, are liable to any Owner, Tenant or other Occupant for any special, incidental or consequential damages based on any legal theory whatsoever, including but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of mold, mildew and/or microscopic spores located on, under, within or adjacent to the Condominium Property, including, but not limited to, the Units, Common Elements and Limited Common Elements, unless caused by the sole negligence or willful misconduct of the Association or its Directors or Officers.

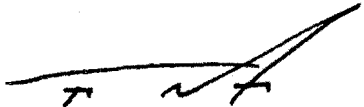
IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed in its name by its officers thereunto duly authorized as of the day and year first above written.



PULTE HOME CORPORATION, a Michigan corporation

Print Name Brian M. Mihelich


A. Cromie
Print Name A. Cromie

By: 
Timothy Murray, its President
Vice

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 15th day of May, 2006 by Timothy Murray, as Vice President of Pulte Home Corporation, a Michigan corporation, on behalf of the corporation, who (✓) is personally known to me or () produced _____ as identification.




Notary Public
My Commission Expires: 6/7/08