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DECLARATION OF CONDOMINIUM FOR OCEANHOUSES AT SOUTHPOINTE, A CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM FOR OCEANHOUSES AT SOUTHPOINTE, A CONDOMINIUM (hereinafter "Declaration") is made this _____ day of _____, 200 __, by RCR DEVELOPMENT COMPANY, INC., a Florida corporation (hereinafter "Developer") as the Owner of the real property hereinafter described and as Developer of the improvements thereon, for itself, its successors, grantees, assigns and/or their transferees. Developer hereby makes the following declarations:

Article I SUBMISSION AND NAME

1.1 **The Land.** The Developer owns the fee simple title to certain land located in St. Lucie County, Florida as more particularly described in **Exhibit "A"** attached hereto (hereinafter "Phase I").

1.2 **Submission Statement.** The Developer hereby submits the Phase I land and all improvements erected or to be erected thereon and all other property, (real, personal or mixed), now or hereafter situated on or within the Phase I land, but excluding all public or private utility installations therein or thereon, (e.g., cable television), to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter amended or renumbered. Without limiting any of the foregoing, no property, (real, personal or mixed), not located within or upon the Phase I land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided.

All provisions of this Declaration shall be construed to be perpetual covenants running with the Phase I land and with every part thereof and interest therein, and every Condominium Parcel Owner and claimant of the Phase I land, or any part thereof or interest therein, and their heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Declaration, unless this Declaration shall be terminated pursuant to the Condominium Act and/or as

provided in this Declaration. Both the burdens imposed and the benefits shall run with each Condominium Parcel as defined in this Declaration.

1.3 Name. The name by which this condominium is to be identified is **OCEANHOUSES AT SOUTHPOINTE, A CONDOMINIUM** (hereinafter "Condominium")

Article II **DEFINITIONS**

The terms used in this Declaration and in the Articles of Incorporation, the Bylaws and the Rules and Regulations of Oceanhouses at Southpointe Association, Inc., shall have the meaning stated in the Condominium Act and as follows, unless the context otherwise requires. Further, whenever the context so requires, the use of any gender shall be deemed to include all genders, the use of the plural shall include the singular, and the use of the singular shall include the plural.

2.1 Act means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter amended or renumbered.

2.2 Articles of Incorporation mean the Articles of Incorporation of the Association, as amended from time to time.

2.3 Assessment means a share of the funds required for the payment of Common Expenses and other expenses as provided for in this Declaration, which from time to time is assessed against the Unit Owner(s), and includes Annual Assessments and Special Assessments.

2.4 Association means Oceanhouses at Southpointe Association, Inc., a Florida not-for-profit corporation, the entity responsible for the operation of the Condominium.

2.5 Association Property means that property, (real, personal or mixed), which is owned by, or is dedicated by a recorded plat to, the Association for the use and benefit of its Members.

2.6 Board means the Board of Directors, from time to time, of the Association.

2.7 Building means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.

2.8 By-Laws means the By-Laws of the Association, as amended from time to time.

2.9 Committee means a group of Board Members, Unit Owners or a combination thereof appointed by the Board, or a member of the Board, to make recommendations to the Board regarding the Association budget or to take action on behalf of the Board.

2.10 Common Elements mean the Condominium Property that is not included within the Units together with easements for utility services within the Units, easements of support within the

Units and any other parts of the Condominium Property designated as Common Elements in this Declaration.

2.11 Common Expenses means all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as "Common Expense" by the Act, this Declaration, the Articles of Incorporation or the By-Laws.

2.12 Common Surplus means the excess of all receipts of the Association, including but not limited to Assessments, rent, profit, and revenue on account of the Common Elements, over the Common Expenses.

2.13 Condominium Parcel means a Unit together with the individual share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.

2.14 Condominium Property means, as of the recording of this Declaration, the Phase I land, the Improvements located thereon and other property described in Article I hereof, subject to the limitations thereof and exclusions therefrom, now submitted to Condominium ownership as part of the Condominium. Condominium Property also means Phase II and/or Phase III of this Condominium which may in the future be submitted to Condominium Ownership as part of this Condominium upon amendment to this Declaration by Developer.

2.15 Declaration means this instrument and all exhibits attached hereto, as the same may be amended from time to time.

2.16 Developer means RCR Development Company, Inc., a Florida corporation, its successors or assigns. Any assignment by Developer of its rights hereunder or of its status as Developer must be in writing, signed by Developer and recorded in the Public Records of St. Lucie County, Florida, to be valid.

2.17 Division means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.

2.18 Institutional First Mortgagee means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "**Majority of Institutional First Mortgagees**" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty percent (50%) plus one (1) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are encumbered.

2.19 Limited Common Elements means those Common Elements that are reserved for the use of certain Unit or Units to the exclusion of other Units, as specified in this Declaration.

2.20 Master Association means the Ocean Village Property Owners' Association, Inc., a Florida not-for-profit corporation.

2.21 Master Association Assessments means any assessment for and levied against each Unit Owner, as such amount is determined by the Board of Directors of the Master Association.

2.22 Master Association Common Expenses means all expenses incurred by the Master Association in connection with its ownership, maintenance and other obligations set forth under the Master Declaration, the Articles of Incorporation of the Master Association or the Bylaws of the Master Association.

2.23 Master Association Member means every person or entity who holds membership in the Master Association.

2.24 Master Declaration means those certain instruments providing notice of covenants, restrictions and easements on the Development in which the Property is located as recorded in Official Records Book 231, Page 1570, and Official Records Book 241, Page 485, respectively, of the Public Records of St. Lucie County, Florida, and any and all amendments or supplements thereto.

2.25 Member means every person or entity who holds membership in the Association.

2.26 Ocean Village means the Development within which the Condominium is located and is more particularly described in the Exhibit "A" attached to the Master Declaration.

2.27 Ocean Village Common Property means all property, (real, personal or mixed), together with all easements and other interests therein, together with the facilities and improvements located thereon, which the Master Association now or hereafter owns or otherwise holds or controls for the common use and enjoyment of the property owners, Unit Owners and residents within Ocean Village.

2.28 Unit means a part of the Condominium Property which is subject to exclusive ownership.

2.29 Unit Owner (or "Owner" or "Owner of a Unit") means a record owner of legal title to a Condominium Parcel.

2.30 Utility Services means, but shall not be limited to, electric power, gas, water, garbage and sewage disposal, solid waste disposal, and other required services imposed by governmental authorities.

Article III **PHASE CONDOMINIUM**

3.1 Impact of Phasing. This is a phase condominium, as permitted by §718.403, Florida Statutes, consisting of three (3) potential phases. Upon the recording of this Declaration, Phase I of

the Condominium shall be submitted to condominium ownership. The following Exhibits are attached hereto and incorporated herein by reference. To wit:

Exhibit "A" - The legal description of Phase I;

Exhibit "B" - A combined survey/plot plan of Phase I;

Exhibit "C" - Elevations and floor plans of Phase I;

Exhibit "D" - Each Unit's Percentage Ownership of Common Elements;

Exhibit "E" - The legal descriptions of Phase II and Phase III;

Exhibit "F" - Combined survey/plot plan of Phase II showing the approximate location of proposed building and improvements that may ultimately be contained within the Condominium.

Exhibit "G" - Combined survey/plot plan of Phase III showing the approximate location of proposed building and improvements that may ultimately be contained within the Condominium.

Exhibit "H" - Survey of entire Condominium Property (Phases I, II, and III);

Exhibit "I" - Copy of Articles of Incorporation of Association; and

Exhibit "J" - Copy of By-Laws of the Association.

The remaining two (2) phases may be submitted to Condominium ownership and become a part of this Condominium, at the sole discretion of the Developer. Submitting additional phases to this Condominium shall increase the number of Units in this Condominium, which shall decrease the percentage of Common Elements attributable to each previously created Unit, as set forth in this Declaration. Adding one or both phases to this Condominium will affect the vote of each Unit Owner, in that although each Unit Owner shall have one vote per Unit, the total number of Units, and therefor votes, shall increase. If the Developer decides not to add either or both of Phase II and Phase III to this Condominium, the total number of Units in this Condominium shall be the number of Units which have, at that time, been submitted to this Condominium by this Declaration and any amendments hereto (if any) adding a phase, and such Unit Owners shall own 100% of the Common Elements.

3.2 Phasing Plan. The attributes of the phasing of this Condominium are as follows:

(a) The Phases. By recording this Declaration, Developer submits only Phase I of this Condominium to condominium ownership. The land included in Phase I is described in Exhibit "A" attached hereto. Phase I contains twenty-four (24) Condominium Units in one Building. The Developer may, but shall not be required to, add to the Condominium, one or both of the remaining potential phases legally described on Exhibit "E" as Phase II, and Phase

III. Notwithstanding anything to the contrary in this Declaration or on its Exhibits, Phase II and Phase III are not being submitted to condominium ownership by this Declaration, but rather are described in order to meet the requirements of §718.403, Florida Statutes, for a phase condominium and may be added to this Condominium by one or more amendments to this Declaration, adding one or both phases, at Developer's sole discretion. Provided however, such phases, if added to this Condominium, must be so added within seven (7) years after the date of recording of this Declaration in the Public Records of St. Lucie County, Florida.

(b) **Modification of Plot Plans and Phase Descriptions.** As allowed by §713.403, Florida Statutes, the plot plans of Phase II attached as Exhibit "F" and Phase III attached as Exhibit "G" may be modified by the Developer to change the Unit types and Building types so that the number of bedrooms and bathrooms and size of Units and floor plans and number of Units in each Building and the style of the Building may change. Furthermore, as provided in §718.403, the Developer may make non-material changes in the legal description of Phase II or Phase III.

(c) **Number and Size of Units.** The minimum and maximum numbers and general size of Units to be included in each Phase are as follows:

<u>Phase</u>	<u>Number of Units</u>		<u>General Size of Units in Square Feet</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Maximum</u>
I	24	24	1,400	2,100
II	24	24	1,400	2,100
III	24	24	1,400	2,100

(d) **Each Unit's Percentage Ownership of Common Elements.** Attached as Exhibit "D" is the percentage of Common Elements of each Unit within Phase I. Such allocation has been determined by calculating the approximate square footage of each Unit in Phase I, adding such numbers to determine the total square footage of all Units within Phase I, and then determining the percentage of such sum attributable to each Unit, rounding as necessary so that the total of such percentage interests equals 100%. A similar computation shall be made by the Developer as each Phase is added by determining the square footage of all Units in the phases submitted to the Condominium, determining the percentage of such total attributable to each Unit, and rounding as necessary so that the total of such percentages equal 100%. The undivided interests of all Unit Owners in the Common Elements shall at all times equal 100%.

(e) **Recreational Facilities.** The Common Elements may include a swimming pool with a deck and cabana to be constructed concurrent with the development of Phase II and located adjacent and to the east of proposed Phase II. The Developer is under no obligation to install the swimming pool, deck and cabana if Phase II is not developed.

(f) **Voting Rights.** Subject to the voting rights retained by the Developer in this Declaration and the Exhibits hereto, each Unit in the Condominium (regardless of the number

of phases submitted to the Declaration) is entitled to one (1) vote. Upon the submission of any additional Phase to the Condominium, the total number of votes in the Association shall be adjusted by adding one (1) vote for each Unit added to this Condominium.

(g) No Timeshare Estates. No timeshare estates shall be created in any Unit in any Phase of this Condominium.

(h) Notification. As required by §718.403(3), Florida Statutes, the Developer shall notify the owners of all existing Units of the decision not to add either or both of Phase II and Phase III, such notice shall be in writing sent by first-class mail, addressed to each Unit Owner at the address of his or her Unit or at his or her last known address.

(i) Amendments Adding Phases. The Developer may add additional Phases to this Condominium by recording amendments to this Declaration in the Public Records of St. Lucie County, Florida containing the following:

(i) a statement submitting the additional Phase to condominium ownership as an addition to this Condominium;

(ii) the legal description of the Phase being added to this Condominium;

(iii) an identification by letter, name or number, or a combination thereof, of each Unit within the Phase added to this Condominium, to ensure that no Unit in the Condominium, including the additional Phase, will bear the same designation of any other Unit;

(iv) a survey of the additional land in the Phase; a plot plan showing the location of buildings and improvements; a floor plan identifying the Units and Common Elements; and a certificate of a surveyor, all in conformance with §718.104(4)(3), Florida Statutes;

(v) the undivided share in the Common Elements appurtenant to each Unit in this Condominium stated as a percentage, which, in the aggregate, must equal 100% and must be determined as provided in this Declaration;

(vi) the percentage portion of, and the manner of sharing, Common Expenses and owning Common Surplus, which shall be the same as the undivided share in the Common Elements; and

Such amendment shall be recorded in the Public Records of St. Lucie County, Florida and shall be executed and acknowledged in compliance with the same requirements as for a deed. All persons who have record title to the interest in the land submitted to Condominium ownership, or their lawfully authorized agents, must join in the execution of the amendment. Each such amendment shall comply with §718.104(3), Florida Statutes.

(j) **Developer's Discretion.** The Developer shall have the sole discretion to determine whether Phase II and/or Phase III shall be added to the Condominium. No amendment adding a Phase to the Condominium shall require the execution of such amendment or any form of consent thereto by a Unit Owner (or any mortgagee of a Unit), the Association, or any other person or entity other than the Developer. Developer, in its sole discretion, reserves the right to submit Phase II and/or Phase III, or one or both of them, in such numerical or chronological order as Developer deems appropriate, it being the intent hereof that it shall not be necessary to develop or submit the Phases in any particular numerical or chronological order. Any Phase or Phases not added to the Condominium may be used for any use allowed under applicable land use laws, as such may be amended from time to time, free and clear of anything contained in this Declaration.

(k) **Alterations.** The Developer reserves the right to alter the design, boundaries, configuration and size in Phase II and Phase III in the following manner: (i) the floor plans of units may be changed and reversed, (ii) Units may contain rooms that are converted to or from bedrooms, (iii) the boundaries of Phase II and/or Phase III may be altered in a non-material manner, (iv) the location and style of Condominium Building may be modified, provided that the outside edge of any such Building shall not change by more than 100 feet in any direction, (v) the number and style of Units and numbering of Units may be changed, and (vi) in any other manner reserved to the Developer in this Declaration. Such modifications shall be accomplished by an amendment to this Declaration, which need only be signed by the Developer, without the consent, joinder or approval of any other person or entity.

3.3 **Construction.** The construction of Phase I is not substantially completed. Upon substantial completion, the Developer shall amend this Declaration to include the certificate of surveyor and mapper pursuant to F.S. Section 718.104(4)(e).

Article IV CONDOMINIUM AS PART OF OCEAN VILLAGE

4.1 **Ocean Village.** This Condominium is part of Ocean Village. It is the express intent of the Developer that this Condominium be subject to the general scheme of restrictions and uniform scheme of development effective and enforceable as to Ocean Village. Unit Owners within the Condominium shall be members of the Master Association, and shall have all rights and obligations set forth in the Master Declaration.

4.2 **Covenants.** Each Unit Owner shall be bound by the Master Declaration to the same extent as if such Unit Owner had joined in the Master Declaration for the purposes therein expressed, including but not limited to:

(a) subjecting all of the Unit Owner's right, title and interest in Unit Owner's Condominium Unit to the lien rights granted to the Master Association in the Master Declaration; and

(b) promising to perform each and every one of the obligations to be performed by property owners subject to the Master Declaration.

Article V
DESCRIPTION OF CONDOMINIUM

5.1 Identification of Units. Each Unit is identified by a separate numerical designation. The designation of each Unit within Phase I is set forth on the floor plans included in Exhibit "C" attached hereto. Exhibit "C", together with Exhibit "B" (the survey/plot plan), and this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

5.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries.

(a) **Upper and Lower Boundaries.** The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(i) **Upper Boundaries.** The horizontal plane of the unfinished lower surface of the ceiling.

(ii) **Lower Boundaries.** The horizontal plane of the unfinished upper surface of the floor of the Unit.

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

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

(d) **Exceptions.** In cases not specifically covered above, and/or in any case of conflict or ambiguity, the floor plans of the Units set forth in Exhibit "C" hereto shall control in determining the boundaries of a Unit, except that the provisions of Section (c) above shall control unless specifically depicted and labeled otherwise on such floor plans.

5.3 Common Elements. Common Elements shall consist of the Condominium Property that is not included within the units; easements through Units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to Units and the Common Elements; an easement of support in every portion of a Unit that contributes to the support of a Building; the property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements; and any other parts of the Condominium Property designated as Common Elements in this Declaration.

(a) **Land Acquisition.** The Association has the power to acquire title to, lease, or otherwise hold real property upon approval by two-thirds (2/3) of the voting interest of all Unit Owners. Upon acquisition of the additional real property, the acquired land may be submitted to condominium ownership and be incorporated into the Condominium Property (upon affirmative vote of two-thirds (2/3) of the voting interest of all Unit Owners, which vote may be taken concurrent with the vote to approve acquisition). If the acquired land is incorporated into the Condominium Property, then the Association shall cause to be prepared an amendment to this Declaration describing the acquired land and certifying to the requisite approval by two-thirds (2/3) of the voting interest of Unit Owners and such amendment shall be recorded in the Public Records of St. Lucie County, Florida, whereupon the acquired land shall become part and parcel of the Common Elements.

(b) **Land Not Incorporated.** Land acquired by the Association in accordance with Paragraph 5.3(a) above but not approved for submittal to condominium ownership shall be construed as Association Property and all costs associated with ownership and maintenance of the acquired land shall be a Common Expense. The acquired land may be sold or mortgaged or otherwise disposed of by the Association upon approval of two-thirds (2/3) of the voting interest of the Unit Owners as evidenced by a certificate stating that the approval was duly given, which certificate shall be executed by the officers of the Association with the formalities of a deed and delivered to a purchaser or mortgagee of such land.

(c) **Personal Property.** The Association has the power to acquire personal property. Any personal property acquired by the Association may be sold or mortgaged or otherwise disposed of by the Association. The power to acquire, sell, mortgage or otherwise dispose of personal property shall be exercised by the Board.

5.4 Limited Common Elements. Each Unit may, to the extent applicable and subject to the provisions of this Declaration, have as Limited Common Elements appurtenant thereto:

(a) **Balconies and Terraces.** Balconies or terraces (and all improvements thereto) to which direct and exclusive access shall be afforded to a particular Unit, to the exclusion of all other Units, shall be a Limited Common Element of such Unit.

(b) **Parking Spaces.** Each Unit shall include the exclusive right to use one (1) Parking Space in the parking garage. Said Parking Space shall be a Limited Common Element of such Unit. The parking spaces in the parking garage and the Unit to which each Parking Space is assigned is more particularly depicted in Exhibit "C" attached hereto. Exclusive use of the Parking Space shall be appurtenant to the Unit to which it is assigned and

requires no independent assignment or reference in the instrument of conveyance upon the conveyance of a Unit. A Unit Owner may not re-assign or transfer the Parking Space appurtenant to a Unit independent of the conveyance of said Unit. No additional parking spaces shall be assigned.

(c) Storage Areas. Each Unit shall include the exclusive right to use one (1) Storage Area in the parking garage. Said Storage Area shall be a Limited Common Element of such Unit. The storage areas in the parking garage and the Unit to which each Storage Area is assigned is more particularly depicted in Exhibit "C" attached hereto. Exclusive use of the Storage Area shall be appurtenant to the Unit to which it is assigned and requires no independent assignment or reference in the instrument of conveyance upon the conveyance of a Unit. A Unit Owner may not re-assign or transfer the Storage Area appurtenant to a Unit independent of the conveyance of said Unit. No additional storage areas shall be assigned.

(d) Miscellaneous Areas, Equipment. Any fixtures or equipment (e.g., an air conditioning compressor or hot water heater) serving a Unit or Units exclusively, and any area (e.g., a closet, ground slab or roof area) upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s). The maintenance of any such equipment and/or areas so assigned shall be the sole responsibility of the Unit Owner(s) to which it is assigned.

(e) Other. Any other portion of the Common Elements which, by its nature, cannot serve all Units, but serves one Unit or more than one Unit, shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by said Unit Owner(s). In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board and shall be binding and conclusive when so made.

Article VI EASEMENTS

The following easements are hereby created (in addition to any easements created under the Act and any easements affecting the Condominium Property and recorded in the Public Records of St. Lucie County). Each of the following easements is a covenant running with the Condominium Property and notwithstanding any of the other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with their proper and intended use and purpose, and shall survive the termination of the Condominium and the exclusion of any lands of the Condominium.

6.1 Support. Every portion of a Unit contributing to the support of the building or an adjacent Unit shall be burdened with an easement of support for the benefit of all other Units and Common Elements in the building.

6.2 Utilities and Services. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utilities, cable television,

communications, monitoring systems and other services (including drainage) in order to serve the Condominium, Members or Units. A Unit Owner shall do nothing within or outside the Unit that interferes with or impairs, or may interfere with or impair, the providing of such utilities, cable television, communications, monitoring systems, other services or drainage facilities (or the use of these easements). The Association shall have a right of access to each Unit to maintain, repair or replace the pipes, wires, lines, ducts, vents, cables, conduits, cable television, communications and similar systems, service and drainage facilities, such other utilities which may exist, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).

6.3 Unintentional and Non-Negligent Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements; (c) any "improvements" of or upon an easement encroach upon the Condominium Property; or (d) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alternation or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand. An encroachment easement shall not exist if the condition was caused by the intentional or negligent act of the Unit Owner or anyone acting at the direction of the Unit Owner.

6.4 Ingress and Egress. A non-exclusive easement in favor of each Unit Owner (their guests, tenants and invitees), each resident (their guests and invitees), each Member (their guests, tenants and invitees), and for utility and/or service providers shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other rights-of-way serving the Units, a part of the Common Elements and Association Property as necessary to provide reasonable access to the public ways; and for vehicular (including, without limitation, construction vehicles) and pedestrian traffic over, through and across, and parking on, such portions of the Common Elements and Association Property as from time to time may be paved and intended for such purposes.

6.5 Construction and Developer Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion, from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, of any Improvements or Units located or to be located thereon, and/or any improvements located or to be located upon an easement and for repair, replacement and maintenance or warranty purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so (for so long as any portion of same is owned by the Developer). Except in the event of an emergency, entry into an occupied Unit shall be made on not less than one (1) day's notice (which notice shall not,

however, be required if the Unit Owner is absent when the giving of notice is attempted); and such entry shall be made only during reasonable hours (i.e., between 8:00 a.m. and 5:00 p.m. and excluding Sundays and holidays).

6.6 Maintenance of Common Elements. Whenever it is necessary to enter any Unit for the purpose of performing any maintenance, alteration, replacement or repair to the Common Elements or any portion of a Unit to be maintained by the Association, or as necessary to prevent damage to the Common Elements or to a Unit, the Unit Owner of each Unit shall permit the duly constituted and authorized agent of the Association to enter such Unit for such purposes. Except in the event of an emergency, entry into an occupied Unit shall be made on not less than one (1) day's notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted); and such entry shall be made only during reasonable hours (i.e., between 8:00 a.m. and 5:00 p.m. and excluding Sundays and holidays).

6.7 Common Elements. The Common Elements, (excluding the Limited Common Elements), shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Unit Owners in the Condominium, their tenants, guests and invitees as well as any other authorized residents of the Unit, for all proper and normal purposes, and for the furnishings of services and facilities for which the same are reasonably intended, for the enjoyment of said Unit Owners.

6.8 Right of Entry into Units in Emergencies. In case of an emergency originating in or threatening any Unit, regardless of whether or not the Unit Owner is present at the time of such emergency, the Board, or any other person authorized by it, or the building manager or managing agent, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

6.9 Sales Activity. For as long as there are any Units owned by the Developer, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property for guest accommodations, model apartments and sales, leasing and construction offices relating to the Condominium, to show model Units and the Common Elements to prospective purchasers and tenants of Units, and to erect on the Condominium Property and Association Property signs and other promotional material to advertise Units for sale or lease.

6.10 Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas, cable television, security systems, communications, service, drainage or other utility easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or Members, or for the purpose of carrying out any provisions of this Declaration,

provided that such easements, or the relocation of existing easements, will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

Article VII OWNERSHIP

7.1 **Type of Ownership.** Ownership of each Unit may be in fee simple or in any other estate in real property recognized by law and subject to this Declaration.

7.2 **Association Membership.** The Unit Owners of record of the Units shall be Members of the Association. There shall be one membership for each Unit and if there is more than one record Unit Owner per Unit, then such membership shall be divided among such Unit Owners in the same manner and proportion as is their ownership in the Unit. Notwithstanding the divided ownership of a Unit, each Unit shall be entitled to one, (and only one), vote to be cast by the Unit Owners in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association.

7.3 **Common Elements, Common Surplus and Share of Common Expenses.** The percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit is as set forth in Article III, Paragraph 3.2(d) herein.

7.3 **Unit Owner's Rights.** The Owner of a Unit is entitled to the exclusive possession of the Unit. The Owner shall be entitled to use the Common Elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the Owners of other Units. There shall be a joint use of the Common Elements (exclusive of the Limited Common Elements).

Article VIII RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

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

Article IX COMMON EXPENSES AND COMMON SURPLUS

The Common Expenses to be borne by each Unit Owner shall be a proportionate share of the total expenses and costs of the Association. Each Unit Owner shall be responsible for a portion of the Common Expenses and costs, and such share shall be in the percentage of the undivided share in the Common Elements associated with each Unit as set forth in Article III, Paragraph 3.2(d) herein.

9.1 Common Expenses. Common Expenses shall include the costs of carrying out the power and duties of the Association and any other expenses designated as Common Expenses by this Declaration and the Bylaws, including, but not limited to, the following:

(a) Expenses for the operation, servicing, maintenance, repair, replacement or improvement of the Common Elements, including such amounts, if any, as the Board shall deem necessary to establish reserves for replacement of the Common Elements.

(b) Expenses of the Association in carrying out its powers and duties.

(c) Expenses of obtaining trash removal service and water and sewer service for all Unit Owners.

(d) Expenses for obtaining services for use in connection with the operation and maintenance of the Common Elements, including, but not limited to, electric service, water services, telephone service, sewer service, trash removal service, vermin extermination service, elevator maintenance service, custodial service, lawn and ground maintenance service, security service, if any, and any other utilities service.

(e) Premiums of all policies of insurance maintained by the Association pursuant to the provisions of this Declaration.

(f) Fees or compensation due to any manager retained by the Association and fees and salaries for such employees as may be retained by the Association.

(g) Such amounts as the Board deems proper for working capital, general operating reserves, reserves for contingencies and to make up any uncollectible delinquencies in the payment of Assessments.

(h) Fees for legal, accounting and other professional services necessary or desirable for the operation of the Common Elements or for the administration of the Association.

(i) Fees payable by the Association to the Division.

(j) Any expense designated or contemplated as a Common Expense by the provisions of the Act, this Declaration or the By-laws.

(k) Expenses agreed upon as Common Expenses by two-thirds (2/3) of the voting interest of all Unit Owners.

(l) Any tax or special assessment levied by a governmental entity against the Condominium Property as a whole.

9.2 Working Capital Fund. A working capital fund shall be established to provide the Association with initial funding. At the time of closing of the initial sale of each Unit by the

Developer, the initial purchaser of each Unit from the Developer shall contribute to the working capital fund a sum equal to two months' Annual Assessment installments for the Unit as determined by the operating budget of the Association. Only the initial Purchaser of each Unit from the Developer shall be required to contribute to the working capital fund. Neither the Developer nor any Unit purchaser other than the initial Purchaser of each Unit from the Developer shall be required to contribute to the working capital fund. The working capital fund shall be held by the Association as Common Surplus and each Unit Owner's interest in the fund shall be in proportion to each Unit Owner's interest in the Common Elements. Amounts paid into the fund shall not constitute advance payment of regular Annual Assessments. The Board may make any expenditures of the working capital fund for any purpose by majority vote of the Board present at a Board meeting at which a quorum is present.

Article X
MAINTENANCE AND REPAIRS

Responsibility for the maintenance and repair of the Condominium Property shall be as follows:

10.1 Units and Limited Common Elements. Responsibility for the maintenance and repair of the Units and Limited Common Elements shall be as follows:

(a) **By the Association.** The Association shall be responsible for the structural elements of the Building and shall maintain, repair, and replace, at the Association's expense, (i) all portions of the Units and Limited Common Elements contributing to the support of the Condominium Building, which portion shall include, but not be limited to, outside walls of the Buildings and all exterior fixtures, those portions of the boundary walls not a part of the Unit or Limited Common Element, floor and ceiling slabs, load-bearing columns and load-bearing walls; (ii) all conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services contained within a Unit or Limited Common Element but which serve part or parts of the Condominium other than the Unit or Limited Common Element within which contained; and (iii) all incidental damage caused to a Unit or Limited Common Element by such maintenance, repair or replacements.

(b) **By the Unit Owner.** It shall be the responsibility of the Unit Owner to (i) keep and maintain the Unit, its equipment and appurtenances in good order, condition and repair, and to perform promptly any and all maintenance, repair and replacement work within the Unit that, if omitted, would affect the Condominium in its entirety or in a part belonging to others; (ii) maintain, repair and replace any and all windows, window coverings, the interior surface of the structural wall, interior non-structural walls, the interior side of the entrance door, all interior doors, the ceilings, interior floor coverings and all interior surfaces lying within the boundaries of the Unit or the Limited Common Elements appurtenant to a Unit in the entire interior, not otherwise the responsibility of the Association, located within the boundaries of the Unit or the appurtenant Limited Common Elements; (iii) maintain, repair and replace all electrical, plumbing, heating and air conditioning equipment located within a Unit or appurtenant Limited Common Element and not otherwise the responsibility of the Association or exclusively servicing a Unit or appurtenant Limited Common Element

and not otherwise the responsibility of the Association; (iv) maintain, repair and replace all approved enhancements to the Limited Common Element appurtenant to a Unit; (v) maintain and keep in neat and fit condition the floor, interior walls, screening, windows and railings of Units or appurtenant Limited Common Elements; (vi) keep the appearance of the assigned Parking Garage and the balcony and/or terrace appurtenant to the Unit in a neat and clean condition; and (vii) promptly report to the Association any defect or need for repairs for which the Association is responsible.

10.2 Common Elements and Association Property. Except to the extent (a) expressly provided to the contrary herein, or (b) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements and Association Property (other than those Limited Common Elements to be maintained by the Unit Owners as provided hereinabove) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as Common Expenses, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners.

Article XI

ADDITIONS, IMPROVEMENTS OR ALTERATIONS

11.1 By the Association. After the completion of the improvements included in the Common Elements contemplated by this Declaration, there shall be no material alteration or substantial additions to the Common Elements or to the Association Property without approval by not less than two-thirds (2/3) of the voting interests of all Unit Owners. General improvements, non-material alterations or non-substantial additions to the Common Elements or Association Property may be made upon majority approval of the Board.

Whenever improvements, alterations or additions (as distinguished from maintenance, repairs and replacements) shall cost in excess of \$50,000.00 in the aggregate in any calendar year, such expenditure must be approved by a majority of the voting interest of the Association represented at a meeting at which a quorum is attained. The \$50,000.00 threshold shall be adjusted every ten (10) years after the recording of this Declaration for any change in the cost of living. The cost and expense of any such additions, alterations or improvements to the Common Elements or Association Property shall be assessed to the Units and Unit Owners as a Special Assessment. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

11.2 By the Unit Owner. No Unit Owner shall make any addition, alteration or improvement in or to the Unit, Limited Common Elements, Common Elements or the Association Property except upon consent of a majority of the Board. A Unit Owner shall not make any improvements, alterations or additions which would adversely affect the safety or soundness of the Common Elements or any portion of the Association Property or Condominium Property which is to be maintained by the Association.

The Board shall have the obligation to answer, in writing, any written request by a Unit Owner for approval of such an addition, alteration or improvements within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from, and to indemnify them for, any liability or damage to the Condominium Property and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Associations' rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to a Unit, agrees not to seek damages from the Developer and/or the Association arising out of the Associations' review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder.

11.3 By the Developer. Anything to the contrary notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (a) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (b) change the layout or number of rooms in any Developer-owned Units; and (c) change the size of Developer-owned Units by combining separate Developer-owned Units into a single apartment (although being kept as two separate legal Units), or otherwise. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Paragraph, shall be

effected by the Developer alone pursuant to Article XIX, Paragraph 19.6, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Article XIX, Paragraph 19.3 hereof. Without limiting the generality of Article XIX, Paragraph 19.6 or Article XXII, Paragraph 22.7 hereof, the provisions of this Paragraph may not be added to, amended or deleted without the prior written consent of the Developer.

Article XII ASSOCIATION

In order to provide for the proficient and effective administration of this Condominium by the Unit Owners, a not-for-profit corporation known as Oceanhouses at Southpointe Association, Inc., has been organized under the laws of the State of Florida and said corporation shall administer the operation and management of this Condominium, and undertake and perform all acts and duties incident thereto in accordance with the terms, provisions and conditions of this Declaration, the By-laws and the Rules and Regulations promulgated by the Association from time to time.

12.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached hereto as Exhibit "I".

12.2 By-laws. The By-laws of the Association shall be the by-laws of the Condominium, a copy of which is attached hereto as Exhibit "J".

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

(a) The irrevocable right to have access to each Unit and appurtenant Limited Common Element from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, (including repair or replacement), of any Unit or appurtenant Limited Common Element, if any to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units (or appurtenant Limited Common Elements), including, without limitation, (but without obligation or duty) to close or attach hurricane shutters in the event of the issuance of a storm watch or storm warning.

(b) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property.

(c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.

(d) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in this Declaration, the Articles of Incorporation, the By-Laws and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

(e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board and a majority of the Unit Owners represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-laws with respect to certain borrowing.

(f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property and Association Property.

(g) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board, subject to the provisions of Article V, Paragraph 5.3(c) hereof and the limitations of Article XI, Paragraph 11.1 hereof (pertaining to the threshold amount). Real property shall be acquired, conveyed, leased or encumbered upon a approval by two-third (2/3) of the voting interest of all Unit Owners, subject to the provisions of Article V, Paragraphs 5.3(a) and 5.3(b) hereof and the limitations of Article XI, Paragraph 11.1 hereof (pertaining to the threshold amount). Provided, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.

(h) The power to levy an "Individual Charge" against a Unit Owner or Occupant as permitted by the Act, this Declaration or the By-laws. Individual Charges may include, but are not limited to, the costs of maintenance, repairs or replacements, within or without the individual Unit(s) which the Unit Owner(s) thereof has failed to perform and which failure or refusal to perform has, in the opinion of the Board, endangered or impaired the use, value or appearance of the Condominium Property.

(i) The power to levy an "Fine" against a Unit Owner or Occupant as permitted by the Act, this Declaration or the By-laws to enforce the provisions of this Declaration, the By-Laws and the rules and regulations promulgated by the Association.

(j) All of the powers which a corporation not-for-profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the By-laws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration, this Declaration shall take precedence over the Articles of Incorporation, By-laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-laws and applicable rules and regulations; and the By-laws shall take precedence over applicable rules and regulations, all as amended from time to time.

12.4 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not the same shall have been approved by the Association.

12.5 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to a Unit.

12.6 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.

12.7 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board, is specifically required in this Declaration, the Articles of Incorporation, the By-laws, applicable rules and regulations or applicable law, then all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board, without the consent of Units Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

12.8 Effect on Developer. If the Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer:

- (a) Assessment of the Developer as a Unit Owner for capital improvements;
- (b) Any action by the Association that would be detrimental to the sale of Units by the Developer, provided, however, that an increase in Annual Assessments for Common Expenses without discrimination against the Developer may not be deemed to be detrimental to the sale of Units.

Article XIII **ASSESSMENTS**

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

13.2 Special Assessments. In addition to Annual Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board may levy "Special Assessments" upon each Unit and Unit Owner, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature, including, but not limited to costs incurred by the Association for the acquisition of property and the installation, construction or replacement (as distinguished from repairs and maintenance) of any improvements located or to be located within the Common Elements or Association Property.

13.3 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments (including Annual and Special Assessments) coming due while he is the Unit Owner. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be

avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

13.4 Payment of Assessments. Annual Assessments for Common Expenses shall be payable in monthly or quarterly installments as the Board shall determine. Annual Assessments for Common Expenses shall be considered delinquent if not paid by the due date established by the Board. Past due payments shall accrue interest at the rate of twelve percent (12%) per annum from the due date until paid, and any payment not made within fifteen (15) days of the due date shall be subject to a late charge equal to five percent (5%) of the delinquent installment due (subject to the restrictions of the Act).

Special Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if Special Assessments in any year exceed \$2,500.00 per Unit or cause the total sum of Annual Assessments and Special Assessments levied to exceed 115% the total sum of Annual Assessments and Special Assessments levied for the preceding calendar year, the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum is attained.

13.5 Lien For Assessments. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Condominium Parcel, interest thereon and reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessments or enforcement of the lien. Except as set forth herein, the lien is effective from, and shall relate back to, the date of recording of this Declaration. However, as to an Institutional First Mortgagee of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a Claim of Lien in the Public Records of St. Lucie County, stating the description of the Condominium Parcel, the name of the record Owner, and the name and address of the Association. The lien shall continue in effect until all unpaid Assessments (together with interest, costs and attorney's fees) have been fully paid or until it is barred by law. The Claim of Lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the Claim of Lien and prior to the entry of a Final Judgment of Foreclosure thereof. A Claim of Lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

Additionally, each Unit Owner by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have assigned all rents, issues and profits (the "Collateral Assignment of Rents") on each such Unit to the Association, which Collateral Assignment of Rents shall become absolute upon default of such Unit Owner hereunder.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a Claim of Lien, the Association may declare the next twelve (12) months of Annual Assessment installments to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the twelve (12) month period, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of the same taking effect.

13.6 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by hand delivery of a copy of it to the Unit Owner or by mailing a copy by certified or registered mail, return receipt requested, addressed to the Unit Owner at the Unit or, if the Unit Owner does not reside in the Unit, then to the Unit Owner's address on file with the Association, and upon such mailing, the notice shall be deemed to have been given. If the Unit Owner does not reside in the Unit and has failed to provide the Association with a current mailing address where the Unit Owner can receive notice, the court shall proceed with the foreclosure action and shall award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

13.7 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.

13.8 Institutional First Mortgagee. An Institutional First Mortgagee who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's receipt of the deed. However, the Institutional First Mortgagee's liability is limited to a period not exceeding six (6) months, but in no event does the Institutional First Mortgagee's liability exceed one percent (1%) of the original mortgage debt. The Institutional First Mortgagee's liability for such expenses or Assessments does not commence until thirty (30) days after the date the Institutional First Mortgagee received the last payment of principal or interest. In no event shall the Institutional First Mortgagee be liable for more than six (6) months of the Unit's unpaid Common Expenses or Assessments accrued before the acquisition of title to the Unit by the Institutional First Mortgagee or one percent (1%) of the original mortgage debt, whichever amount is less. An Institutional First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses or Assessments coming due during the period of such ownership. This provision is subject to future amendments to Florida Statutes Section 718.116.

13.9 Developer Guarantee. During the period from the date of the recording of this Declaration until the earlier of the following dates (the "Guarantee Period"): (a) the last day of the twelfth (12th) complete calendar month after the recording of this Declaration, or (b) the date that control of the Association is transferred to Unit Owners other than the Developer as provided in the By-laws and the Act, the Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to the Units owned by the Developer. The Developer guarantees that, during the Guarantee Period, the aggregate Annual Assessment shall not exceed the sum of \$59,900.00 (exclusive of Master Association Assessments). Each Units respective monthly assessment payment shall be calculate by taking the Unit's percentage share of the aggregate Annual Assessment and dividing the sum by 12. During the Guarantee Period the Developer shall be obligated to pay any amount of Common Expenses actually incurred by the Association and not produced by the Annual Assessments at the guaranteed levels receivable from other Unit Owners and/or from income of the Association. After the Guarantee Period, the Developer shall thereafter pay the share of Common Expenses and Assessments attributable to Units it then owns. The Developer reserves the right to extend the Guarantee Period.

13.10 Certificate of Unpaid Assessments. Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

13.11 Application of Payments. Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent Assessment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

Article XIV **INSURANCE**

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

14.1 Purchase, Custody and Payment.

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

(b) **Approval.** Each insurance policy, the agency and company issuing the policy, and the Insurance Trustee (if appointed) hereinafter described, shall be subject to the approval of the Majority of Institutional First Mortgagees in the first instance, if requested thereby.

(c) **Named Insured.** The named insured shall be the Association, individually, and as agent for Unit Owners covered by the policy, without naming them, and as agent for

their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insured.

(d) **Custody of Policies and Payment of Proceeds.** All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).

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

(f) **Personal Property and Liability.** Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expenses and for any other risks not otherwise insured in accordance herewith.

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

(a) **Casualty.** The Building(s) (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and appurtenant Limited Common Elements and required by the Act to be insured under the Association's policies) and all Improvements located on the Common Elements and the Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude, all furniture, furnishings, Unit floor coverings, wall coverings and ceiling coverings, other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and all electrical fixtures, appliances, air conditioner and heating equipment, water heaters and built-in cabinets, to the extent that any of same are required to be repaired or replaced by the Unit Owners. Such policies may contain reasonable deductible provisions as determined by the Board. Such coverage shall afford protection against loss or damage by fire and other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) **Liability.** Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by

the Board, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. Minimum coverage amounts shall be adjusted every ten (10) years from the recording of this Declaration for any increase or decrease in the cost of living. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.

- (c) **Workers' Compensation** and other mandatory insurance, when applicable.
- (d) **Wind Storm Insurance** covering the Common Elements, Association Property and Units.
- (e) **Flood Insurance** covering the Common Elements, Association Property and Units.
- (f) **Fidelity Insurance**, if required by the Act or FNMA/FHLMC, covering all persons who control or disburse Association funds, such insurance to be in an amount not less than three (3) times the total monthly Annual Assessment installments.
- (g) **Association Property**. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, as the Board shall determine from time to time, where such coverage is available.
- (h) **Other Insurance**. Such other insurance as the Board shall determine from time to time to be desirable.

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

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

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

insurance or any renewal thereof, the Board may (or if required by FNMA/FHLMC, shall) obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Article XIV.

14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board deems appropriate.

14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board as provided in Paragraph 14.10 below, and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

(a) **Insured Property.** Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in Sub-Paragraph (b) below.

(b) **Optional Property.** Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of Optional Insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

(c) **Mortgagees.** No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and the mortgagee pursuant to the provisions of this Declaration.

14.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

(a) **Expenses of the Trust.** All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.

(b) **Reconstruction or Repair.** If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.

(c) **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided herein that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Paragraph 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

(d) **Certificate.** In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

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

14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.

14.9 Benefit of Mortgagees. Certain provisions in this Article XIV entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

14.10 Appointment of Insurance Trustee. The Board shall have the option, in its discretion, of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

Article XV
RECONSTRUCTION OR REPAIR AFTER CASUALTY

15.1 Determination to Reconstruct or Repair. In the event of damage to, or destruction of, the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed), shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

Provided, however, if 75% or more of the Insured Property (and the Optional property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damages suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

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

15.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board and then applicable building and other codes, and, if the damaged property which is to be altered is the Building(s) or the Optional Property, by the Owners of not less than eighty percent

(80%) of the applicable interests in the Common Elements, as well as the Owners of all Units and Optional Property (and their respective mortgagees) which are to be altered.

15.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of Optional Insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

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

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

(ii) **Association - Major Damage.** If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Sub-Paragraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work. The \$100,000 threshold amount utilized herein and in Sub-Paragraph (i) above shall be adjusted every ten (10) years from the recording of this Declaration for any change in the cost of living.

(iii) **Unit Owners.** If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board;

provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds so disbursed must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

(iv) **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of the Special Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

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

15.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair of Insured Property (excluding Optional Property) to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair of Insured Property (excluding Optional Property) are insufficient, Special Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements. If the proceeds of the insurance are not sufficient to defray the costs of reconstruction and repair of Optional Property (and insurance has been obtained by the Association with respect thereto), Special Assessments shall be made against the individual Unit Owners for the deficit in proportion to their respective interest in the Optional Property to be reconstructed or repaired..

15.5 Benefit of Mortgagees. Certain provisions in this Article XV are for the benefit of mortgagees of Units and may be enforced by any of them.

Article XVI
CONDEMNATION

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

16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Article XVI specifically provided.

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

(a) **Restoration of Unit.** The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed as a Special Assessment against the Unit and the Unit Owner.

(b) **Distribution of Surplus.** The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.

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

(a) **Payment of Award.** The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.

(b) **Addition to Common Elements.** The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for improvements to the Common Elements.

(c) **Adjustment of Shares.** The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the percentage share of continuing Unit Owners in accordance with Article III, Paragraph 3.2(d) herein.

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

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

16.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

Article XVII
USE RESTRICTIONS

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

17.1 Occupancy. Each Unit shall be used as a single-family residence only and in accordance with all applicable County and State codes, ordinances and regulations. The provisions of this paragraph shall not apply to Units used by the Developer for model apartments, sales or resale offices or to Units used by the Developer or Association for management or administrative services. The provisions of this paragraph shall not be amended without the affirmative vote of not less than seventy-five percent (75%) of the total voting interests of the Unit Owners.

17.2 Exterior. Nothing shall be hung, displayed or placed on the exterior walls, doors or windows of a Unit or the Building(s) without the prior written consent of the Board. No clotheslines or similar devices shall be allowed on any balcony, terrace or any other part of the Condominium Property without the written consent of the Board.

17.3 Alterations. Without limiting the generality of Article XI hereof, but subject to Article XII hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements, Common Elements or Association Property, including but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna (including satellite television dishes), machinery, or air-conditioning units (other than replacements with similar units), which in any manner change the appearance of any portion of the Building(s) or the exterior of said Unit, without obtaining the prior written consent of the Board. Curtains or drapes (or linings thereof) which face the exterior windows of Units are required and shall be white or off-white in color and shall be subject to disapproval by the Board, in which case they shall be removed and replaced with acceptable items.

17.4 Subdivision. Except as specifically reserved to the Developer in this Declaration, no Unit may be divided or subdivided into a smaller Unit nor any portion thereof sold or otherwise transferred.

17.5 Pet Restrictions. Owners, tenants or other residents (hereinafter "Occupants") may keep as pets domesticated cats, dogs, birds and other small mammals. Occupants may not keep more

than two (2) pets per Unit, which pets shall not exceed an aggregate weight of 150 pounds (exclusive of seeing-eye dogs). No Occupant may keep exotic cats, non-human primates, fowl, reptiles, obnoxious animals, farm livestock or zoo-type animals on the Condominium Property. The determination of what is or what may be an obnoxious animal, fowl or reptile shall be determined by the Board in its sole and absolute discretion. Pets must be on a leash at all times when outside of Owner's Unit and must be curbed or carried when on Common Elements. It shall be the Occupant's obligation to remove and otherwise properly dispose of their pet's waste material from the Condominium Property, and failure to remove and dispose of the pet's waste material shall be deemed a nuisance. The Board shall have the right to order the removal of any pet which, in the Board's sole and absolute discretion, is considered a nuisance and the same shall be done without compensation to the Occupant.

If the pet of any Occupant shall make excessive noise or otherwise act in a way which is obnoxious to, or otherwise interferes with the quiet enjoyment of, the Occupant of another Unit, then the Board may fine the Unit Owner the sum of Fifty Dollars (\$50.00). If further incidents shall occur with respect to the same pet or Occupant after the initial fine, then the Board may fine the Unit Owner the sum of One Hundred Dollars (\$100.00) for each day that the interference of the quiet enjoyment of the other Occupants remains uncured. The imposing of such fines shall require a two-thirds (2/3) approval of the Board and shall otherwise be subject to such notice provisions, limitations and opportunity for hearing as shall be required by Statute and the By-Laws. The Board's right to impose a fine hereunder shall be in addition to the Board's right to declare such pet a nuisance and order the removal of the pet.

17.6 Leases. No Unit shall be leased or subleased for a term of less than ninety (90) days or more than two (2) years. All leases must be written leases and the Unit Owner shall provide the Association with a copy of the fully executed lease within three (3) business days of execution of the lease. Every lease of a Unit shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto) and with any and all rules and regulations adopted by the Association from time to time (before or after the execution of the lease). The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Elements resulting from acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant and an Individual Charge may be levied against the Unit Owner therefor. All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease.

17.7 Entity Ownership. Whenever any Condominium Parcel is owned by an entity other than a natural person, then the principal owner of the entity shall designate, at least ten (10) days prior to closing, the individual who shall be entitled to use the Condominium Parcel and to exercise the rights of a Member. Only the designated individual, their families, tenants, invitees and guests may use the Condominium Parcel.

17.8 Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.

17.9 Nuisances. No nuisances shall be allowed on the Condominium Property nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper residential use of the Condominium Property by its residents. 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 or any fire hazard allowed to exist. No Unit Owner shall permit any use of his Unit, the appurtenant Limited Common Elements, or the common Elements which will increase the rate of insurance upon the Condominium Property.

17.10 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or the By-laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Paragraph. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Paragraph.

17.11 Signs. No signs shall be displayed from a Unit or on Common Elements except such signs as shall have advance written approval by the Board.

17.12 Rules and Regulations. Reasonable rules and regulations concerning the use of the Condominium Property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-laws. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners and Occupants of the Condominium upon request.

17.13 Motor Vehicles. No commercial vehicles, boats or RV's shall be kept on the Condominium Property.

17.14 Hurricane Shutters. The Board shall, from time to time, establish hurricane shutter specifications which comply with the applicable building code, and establish permitted colors, styles and materials for hurricane shutters. The Board shall approve the installation or replacement of hurricane shutters conforming with the Board's specifications. The Board may, with the approval of a majority of voting interests in the Condominium, install hurricane shutters, and may (without requiring approval of the Membership) maintain, repair or replace such approved shutters, whether on or within Common Elements, (including Limited Common Elements), Units or Association Property; provided, however, that if laminated glass or window film, in accordance with all applicable building codes and standards, architecturally designed to serve as hurricane protection, is installed, the Board may not install hurricane shutters in accordance with this provision.

17.15 Balconies and Terraces. No equipment, materials or other items shall be kept or stored on any balcony or terrace area of the Condominium, including but not limited to towels, clothing, and bicycles. The foregoing shall not prevent, however, placing and using patio-type furniture, planters and other items in such areas if same are normally and customarily used for a residential balcony or terrace area; provided, however, that if a Unit Owner shall be gone more than fourteen (14) days, all such items shall be stored indoors. Also, all such items shall be stored indoors in the event of a hurricane warning. No grilling or cooking is allowed or permitted on any balcony or terrace area. No surface covering or coating shall be applied to any balcony or terrace area, (except for replacement of the original covering or coating with the same material), unless prior written approval is obtained from the Board. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Board shall be final and dispositive.

17.16 Effect on Developer. Subject to the limitations of Rule 61B-18.007 of the Florida Administrative Code, the restrictions and limitations set forth in this Article XVII shall not apply to the Developer nor to Units owned by the Developer.

Article XVIII **TRANSFER AND LEASES**

In order to maintain a community of congenial residents who are financially responsible, and thus protect the value of the Units, the acquisition and transfer of Units by any Owner, other than the Developer, shall be subject to the following provisions so long as the Condominium exists and the Building(s) in useful condition exist upon the land, which provisions each Unit Owner covenants to observe.

18.1 Option. In the event any Unit Owner wishes to sell or otherwise transfer his Unit, (or any interest therein), the Association shall have the option to purchase or acquire said Unit upon the same conditions as are offered by or to the Unit Owner to or by a third person. Any attempt to sell or otherwise transfer without prior approval of the Association shall be deemed a breach of this Declaration, shall be void, and shall confer no title or interest whatsoever upon any purchaser or party acquiring and interest, provided, however, any deed or instrument of conveyance may be validated by subsequent approval of the Association in the event of a sale or transfer without prior approval as herein provided.

18.2 Notice. Should a Unit Owner wish to sell or otherwise transfer his Unit, (or any interest therein), he shall, before making or accepting any offer to purchase or transfer his Unit, deliver to the Board a written notice containing the terms of the offer he has made or received, the name and address of the person(s) to whom the proposed sale or transfer is to be made and such other information (to be requested within five (5) days from receipt of such notice) as may be required by the Board.

18.3 Association Approval or Disapproval. The Board, within ten (10) days after receiving such notices and such supplemental information as is required by the Board, shall either approve the transaction specified in said notice, or by written notice delivered to the Unit Owner's Unit (or mailed to the place designated by the Unit Owner for such notice), designate the Association

or one or more persons who are willing to purchase, or otherwise acquire such interest, upon the same terms as those specified in the Unit Owner's notice.

18.4 Association Designee. The stated designee of the Board shall have fourteen (14) days from the date of the notice sent by the Board within which to make a binding offer to buy (or otherwise acquire) upon the same terms and conditions specified in the Unit Owner's notice. Thereupon, the Unit Owner shall either accept such offer or withdraw and/or reject the offer specified in his notice to the Board. Failure of the Board to designate such person(s) or failure of such person(s) to make such binding offer within the said fourteen (14) day period shall be deemed approval by the Board to the transaction specified in the Unit Owner's notice, and the Unit Owner shall be free to make or accept the offer specified in his notice, and sell or otherwise transfer said interest pursuant thereto to the party identified in his notice within sixty (60) days after his notice was given.

18.5 Failure to Close. In the event the sale or transfer to a third party is approved by the Board (or otherwise deemed approved) but is not ultimately consummated or the Unit Owner rejects the offer of the stated designee of the Association, the Unit Owner may not sell or otherwise transfer any interest in his Unit without further complying with the terms and conditions of this Article XVIII within ten (10) days after receipt of such notice and information.

18.6 Certificate of Approval. The approval of the Board shall be in proper recordable form, signed by an officer of the Association and shall be delivered to the purchaser or transferee. Should the Board fail to act, as herein set forth, and within the time provided herein, the Board shall, nevertheless, thereafter prepare and deliver its written approval in proper recordable form, as aforesaid.

18.7 Leasing; Sub-Leasing. Unit Owners may lease their Unit for a term of no less than ninety (90) days nor more than two (2) years. During the term of the lease, occupancy of the Unit shall be limited to the lessee, his family members, guests and invitees. The sub-leasing or sub-renting of a Unit Owner's interest shall not be allowed. The Association shall have the right to require that a substantially uniform form of lease be used or in the alternative, the Board's approval of the lease form to be used may be required.

18.8 Fees. The Association may charge a reasonable fee in connection with the approval process in an amount reasonably calculated to cover the administrative costs and expenses of the Association in considering the proposed transfer. Such fees shall be established from time to time by the Board and shall not exceed the allowable limit as established by Florida Statutes.

18.9 Gift, Devise, Inheritance, and Other Transfers. If any Unit Owner shall acquire title by gift, devise, inheritance or by any manner not heretofore considered, the continuance of ownership of the Unit, shall be subject to the approval of the Association. A Unit Owner who has so obtained title shall give to the Association notice of the acquiring of title, together with such information concerning the Unit Owner as the Association may reasonably require and a certified copy of the instrument evidencing the Owner's title. Within ten (10) days after receipt of such notice and information, the Association must either approve or disapprove the continuance of the Unit Owner's ownership of the Unit. If the notice to the Association herein required is not given, then at

any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Association, at its election and without notice, may approve or disapprove the continuance of the Unit Owner's ownership of the Unit.

(a) **Approval.** If approved, the approval shall be stated in a certificate executed by an officer of the Association, in recordable form, and shall be delivered to the Unit Owner and shall be recorded in the Public Records of St. Lucie County, Florida, at the expense of the Unit Owner.

(b) **Disapproval.** If the Association shall disapprove, the Association shall deliver or mail by certified mail, return receipt requested, to the Unit Owner, an agreement to purchase by the Association or by a purchaser approved by the Association who will purchase, and to whom the Unit Owner must sell the Unit upon the following terms:

(i) **Price.** The purchase price shall be the fair market value determined by agreement between the Unit Owner and the Association's designated purchaser. In the absence of such agreement, by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(ii) **Closing.** The purchase price shall be paid in cash or its equivalent. The sale shall close within thirty (30) days following the determination of the purchase price. A certificate executed by an officer of the Association, in recordable form, shall be delivered to the purchaser and shall be recorded in the Public Records of St. Lucie County, Florida, at the expense of the purchaser.

(c) **Failure to Act or Provide Purchaser.** If (i) the Association shall fail to approve or disapprove continued ownership by the Unit Owner within ten (10) days after receipt of notice and additional information from the Unit Owner, (ii) the Association shall fail to provide a purchaser as herein required, or (iii) a purchaser furnished by the Association shall default in his agreement to purchase, then continued ownership by the Unit Owner shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the Public Records of St. Lucie County, Florida, at the expense of the Unit Owner.

18.10 Institutional First Mortgagee Notwithstanding anything contained in this Article XVIII to the contrary, should any Unit at any time become subject to an Institutional First Mortgage, the holder thereof, upon becoming the Owner of said Unit through foreclosure, deed-in-lieu of foreclosure, or other means, and its immediate grantee shall have the unqualified right to sell, lease or otherwise transfer said Unit, including ownership thereof, without prior offer to the Board.

18.11 Developer Exception. This Article XVIII shall not be applicable to the Developer which irrevocably empowered to sell, lease or rent Units owned by the Developer to any lessees or purchasers. The Developer shall have the right to transact any business necessary to consummate sales, rental or lease of said Units, including, but not limited to, the right to maintain model Units, erect signs, have staff employees, use the Common Elements and show Units and unassigned parking facilities. Sales office signs and all items pertaining to sales shall not be considered Common Elements and shall remain the property of the Developer.

Article XIX
AMENDMENTS

Except as elsewhere provided herein (including without limitation the provisions of Article III of this Declaration giving the Developer the authority to amend this Declaration to add Phase II and Phase III) and subject to the rights of the Developer to amend this Declaration as provided by Florida Statutes, Chapter 718, this Declaration may be amended in the following manner.

19.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

19.2 Resolution of Adoption A resolution adopting a proposed amendment may be proposed by either the Board or by the Members. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing. Except as elsewhere provided, such approvals must be either by:

(a) Not less than a two-thirds (2/3) vote of the entire membership of the Board and by not less than two-thirds (2/3) of the votes of the entire membership of the Association;
or

(b) Not less than seventy-five percent (75%) of the votes of the entire membership of the Association.

19.3 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, permit timeshare estates, or change the percentage share by which the Unit Owner shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), except upon vote of not less than seventy-five percent (75%) of the entire membership of the Board and seventy-five percent (75%) of the votes of the entire membership of the Association. The acquisition of property by the Association, material alterations or substantial additions to such acquired property or the Common Elements by the Association and the installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not constitute a Material Amendment.

19.4 Amendments Correcting Errors or Omissions. Unless the proposed amendment will materially and adversely affect the property rights of one or more Unit Owners, amendments for the purpose of correcting an error or omission in this Declaration, or any Exhibit attached hereto, or

amendment hereto, shall require a majority of the votes of the entire membership of the Board and a majority of the votes of the entire membership of the Association.

19.5 Mortgagee's Consent No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of said mortgagees in each instance; nor shall an amendment make any change in the Articles hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless a Majority of Institutional First Mortgagees shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.

19.6 By The Developer Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board, this Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment to effect a "Material Amendment" which must be approved, if at all, in the manner set forth in Paragraph 19.3 above. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance.

19.6 Execution and Recording An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board, which shall include recording data identifying this Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of this Declaration is effective when the applicable certificate is properly recorded in the Public Records of St. Lucie County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended. The new words shall be inserted in the text underlined (e.g. underlined), and words to be deleted shall be lined through (e.g. ~~lined through~~). However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and strike-through as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

Article XX **COMPLIANCE AND DEFAULT**

The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner shall be governed by and shall comply with the terms of this Declaration, the By-Laws, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all such documents shall be deemed incorporated into any lease

of a Unit whether or not expressly stated in such lease. The Association or any Unit Owner adversely affected by a default or breach shall be entitled to seek relief and enforcement of the said terms.

20.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the Unit Owner's act, neglect or carelessness or by that of any Occupant, tenant, guest, invitee or employee of the Unit or the Unit Owner. The Board may levy an Individual Charge against the Unit Owner for such expense and a Fine (in accordance with the provisions of the By-Laws and subject to the limitations of the Act) if not remedied within thirty (30) days after notice by the Association to effect the maintenance, repair or replacement.

20.2 Breach. If a Unit Owner, or any other Occupant of a Unit, shall fail to comply with the terms of this Declaration, the By-Laws, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time, and such violation shall continue for a period of thirty (30) days from the date of notice of such violation by the Association, then the Association shall have the right to treat the violation as an intentional and material breach of the provision cited in the notice and levy a Fine against the Unit Owner and Occupant (in accordance with the provisions of the By-Laws and subject to the limitations of the Act).

20.3 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of this Declaration, the By-laws and/or the Rules and Regulations adopted pursuant thereto, and said documents and 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, including on appeal.

20.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce a covenant, restriction or other provision of the Act, this Declaration or the By-Laws shall not constitute a waiver of the right to do so thereafter.

Article XXI **TERMINATION**

21.1 Termination of Condominium. The Condominium shall continue until (a) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (b) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized in writing by eighty percent (80%) of all Unit Owners and by the Majority of Institutional First Mortgagees. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of the partition sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements. Provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens (including Assessments) on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the Public Records of St. Lucie County. This Article XXII may not be amended without the consent of the Majority of Institutional First Mortgagee and the Developer as long as it owns any Unit.

Article XXII
DEVELOPER'S RIGHTS AND PRIVILEGES

22.1 The Developer. The Developer is entitled to control the Association by designation and selection of the members of the Board until such time as (a) the Developer no longer holds one or more Units for sale in the ordinary course of business, or (b) the Developer has voluntarily relinquished control of the Association. Provided, however, Developer's control of the Association is subject to the following statutory provisions. To wit:

(a) **One-Third.** When Unit Owners other than the Developer own 15% or more of the Units that will be operated ultimately by the Association, they shall be entitled to elect no less than one-third of the Members of the Board of Directors.

(b) **Majority.** Unit Owners other than the Developer are entitled to elect not less than a majority of the Members of the Board of Directors at the earliest of:

(i) three years after 50% of the Units that will be operated ultimately by the Association have been conveyed to purchasers; or

(ii) three months after 90% of the Units that will be operated ultimately by the Association have been conveyed to purchasers; or

(iii) when all the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers and none of the others are being offered for sale by the Developer in the ordinary course of business; or

(iv) when some of the Units have been conveyed to purchasers and none of the others are to be constructed or offered for sale by the Developer in the ordinary course of business.

(v) seven years after recordation of the Declaration creating Phase I of the Condominium.

Whenever the Developer shall be entitled to designate and select any person to serve on the Board, the manner in which such person shall be designated shall be as provided in the Articles of Incorporation and/or By-laws, and Developer shall have the right to remove any person selected by it to act and serve on said Board and to replace such person with another person to act and serve in the place of any Director so removed for the remainder of the unexpired term of any Director so removed. Any Director designated and selected by Developer need not be a Unit Owner or resident of the Condominium.

Any representative of Developer and/or its successors in interest, serving on the Board, shall not be required to disqualify himself upon any vote upon any contract, lease or other agreement, wherein the Developer and/or its successors in interest may have a pecuniary or other interest. Similarly, Developer and/or its successors in interest, as a member of the Association, shall

not be required to disqualify itself in any vote which may come before the membership of the Association upon any contract, lease or other agreement wherein Developer and/or its successors in interest may have a pecuniary or other interest.

22.2 Developer's Units. If the Developer holds one or more Units for sale in the ordinary course of business, then none of the following actions may be taken without approval in writing of the Developer:

(a) The levying of a Special Assessment, Individual Charge or Fine against the Developer or any Unit owned by the Developer and held for sale in the ordinary course of business.

(b) Any action by the Association that would be detrimental to the sale of Units and/or assignment of parking spaces by the Developer, however an increase in Annual Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sale of Units.

22.3 Right of Developer to Freely Sell, Purchase or Transfer by Gift any Units Owned by Developer. The Developer, at the time of filing of this Declaration, is the owner of all of the real property, individual Units and appurtenances comprising the Condominium Property. The Developer retains the right to be the owner of all unsold Units. The Developer, until all of the Units have been sold and closed, shall be irrevocably empowered, notwithstanding anything herein to the contrary, with the unrestricted right to sell or otherwise transfer Developer owned Units to any person approved by the Developer, no notice to and no approval by the Association being required. Developer shall have the right to transact upon the Condominium Property any business necessary to consummate the sale or other transfer of Units, including, but not limited to, the right to maintain models, have signs, staff employees, maintain offices, use the Common Elements and show Units. Any sales office, signs, fixtures or furnishings or other tangible personal property belonging to the Developer shall not be considered Common Elements and shall remain the property of the Developer.

22.4 Right to Complete Construction and Restrict Access to Construction Site. The Developer retains the right to complete construction of Improvements and additions to the Common Elements in compliance with its plans and specifications for the Condominium Property. During such time as the Developer, its successors or assigns, is in the process of construction on any portion of the Condominium Property, the Developer, its successors or assigns, reserves the right to prohibit access to any portion of the Common Elements to any of the Unit Owners or Occupants, their family members, guests, invitees or employees, and to utilize various portions of the Common Elements in connection with such construction. Thereafter, during such time as the Developer, its successors or assigns, owns any Units and is carrying on any business in connection therewith, including the selling, renting or leasing of such Units, the Unit Owners or Occupants, their family members, guests, invitees or employees shall in no way interfere with such activities or prevent access to such Units by the Developer, its successors or assigns.

22.5 Right to Change Unit Interior. Developer reserves the right to change the interior design and arrangement of any or all Units and combine contiguous Units so long as the alteration does not change the configuration or size of any Unit in any material fashion or change the percentage

share of ownership and voting rights of the Unit Owners and the total number of Units, provided Developer owns the Unit so changed and such change is contained in an amendment of this Declaration. The amendment for such purpose need be executed and acknowledged only by the Developer and need not be approved by the Association or by the Unit Owners, whether or not elsewhere required for an amendment to this Declaration.

22.6 Right to Expand or Add Recreational Facilities. The Developer retains the right to expand or add recreational facilities without the consent of the Unit Owners or the Association.

22.7 Right to Approval of Amendments. Notwithstanding anything in this Declaration to the contrary, no provision of this Declaration granting or reserving to the Developer any rights, powers, authorities, usages or dispensations may be modified or amended in any way which will impair or restrict those rights, powers, authorities, usages or dispensations without the written approval of the Developer so long as the Developer or any successor and/or assign shall hold one or more Units for sale in the ordinary course of business.

22.8 Construction Lenders' Rights to Succeed to Developer's Rights and Privileges. All rights, benefits and privileges in favor of the Developer as set forth in this Declaration, the Articles and By-laws, or any of the other condominium documents, shall inure to the benefit of the holder of the construction mortgage encumbering the Condominium Property or a receiver or third party purchaser at a foreclosure sale or deed given in lieu of foreclosure, in the event it succeeds to the Developers interest.

Article XXIII

ADDITIONAL RIGHTS OF MORTGAGEES AND OTHERS

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

23.2 Amendments. Subject to the other provisions of this Declaration and except as provided elsewhere to the contrary, an amendment directly affecting any of the following shall require the approval of a Majority of Institutional First Mortgagees: (a) voting rights; (b) Assessments, Assessment liens or the priority of Assessment liens; (c) reserves for maintenance, repair and replacement of Common Elements and/or Association Property; (d) responsibility for maintenance and repairs; (e) reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; (f) redefinition of Unit boundaries; (g) conversion of Units into Common Elements or Common Elements into Units; (h) expansion or contraction of the Condominium; (i) insurance or fidelity bonds; (j) leasing of Units; (k) imposition of restrictions on the selling or transferring of title to Units; (l) restoration or repair of the Condominium after a casualty or partial condemnation; and (n) any provision that expressly benefits mortgage holders, insurers or guarantors as a class.