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**AMENDED AND RESTATED
DECLARATION
FOR
SEAWARD AT ATLANTIC VIEW, A CONDOMINIUM**

This Amended and Restated Declaration of Seaward at Atlantic View, a Condominium, was approved by the unit owners and members at a duly called meeting of the members held on the 8th day of March, 2001, in St. Lucie County, Florida. By virtue of adoption of this Amended and Restated Declaration, the unit owners hereby declare:

1. Introduction and Submission.

- 1.1. The Land. The unit owners are all the fee title owners of certain land located in St. Lucie County, Florida, as more particularly described in Exhibit "1" attached hereto (the "Land").
- 1.2. Resubmission Statement. By the recording of this Amended and Restated Declaration, the unit owners hereby resubmit the Land and all improvements erected thereon and all other property, real, personal or mixed and all access easement rights and benefits, now or hereafter situated on or within, or benefiting, the Land – but excluding all public or private (e.g. cable television) utility installations therein or thereon – to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association or the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto.
- 1.3. Name. The name by which this condominium is identified is SEAWARD AT ATLANTIC VIEW, A CONDOMINIUM (hereinafter called the "Condominium").

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

- 2.1. "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as may be hereafter renumbered.
- 2.2. "Articles" or "Articles of incorporation" means the Articles of Incorporation of the Association, as amended from time to time.
- 2.3. "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.
- 2.4. "Association" or "Condominium Association" means SEAWARD AT ATLANTIC VIEW CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.
- 2.5. "Association Property" means the property, real and personal, in which title or ownership is vested in the Association for the use and benefit of its members.
- 2.6. "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.
- 2.7. "By-Laws" mean the By-Laws of the Association, as amended from time to time.

- 2.8. "Common Elements" mean and include:
- (a) The portions of the Condominium Property that are not included within the Units.
 - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility, wastewater treatment and other services to Units and the Common Elements.
 - (c) An easement of support in every portion of a Unit that contributes to the support of the Building.
 - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements, provided that such property and installations are located within the Condominium Property.
 - (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.
- 2.9. "Common Expenses" mean all expenses incurred by the Association for the Condominium and charges assessed or imposed against Units in the Condominium by the Association. If approved by the Board of Directors, "Common Expense" shall also include the cost of mangrove trimming and the cost of a master antenna system or duly franchised cable television service obtained pursuant to a bulk contract. For all purposes of this Declaration, "Common Expense" shall also include all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended, but shall not include any separate obligations of individual Unit Owners
- 2.10. "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.
- 2.11. "Community Association" means Atlantic View Beach Club Community Association, Inc., a Florida corporation not for profit, being the entity responsible for the administration of the Master Declaration.
- 2.12. "Condominium Parcel" means a Unit together with the undivided share in the Common Elements, which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.13. "Condominium Property" means the land, improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- 2.14. "County" means the County of St. Lucie, State of Florida.
- 2.15. "Amended and Restated Declaration", "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.
- 2.16. "Garage Unit" means a Unit used as a garage for a vehicle (which shall be of a type permitted hereunder), the Unit number of which has a "G" prefix. The term "Unit" as used in this Declaration shall include Garage Units, except where the context would otherwise suggest or prohibit.

- 2.17. "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property, including, but not limited to, the Building.
- 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") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.19. "Limited Common Elements" mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.20. "Master Declaration" means the Declaration of Master Covenants for Atlantic View Beach Club recorded in the Public Records of St. Lucie County, Florida, which Declaration encumbers, inter alia, the Condominium Property, and when the context permits, shall also mean the Articles of Incorporation and By-Laws of the Community Association, all as now or hereafter amended, modified or supplemented.
- 2.21. "Primary Institutional First Mortgagee" means the Institutional First Mortgagee that owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.22. "Unit" means a part of the Condominium Property that is subject to exclusive ownership.
- 2.23. "Unit Owner" or "Owner of a Unit" or "Owner" means the Owner of a Condominium Parcel according to the Public Records of the County.

Unless the context otherwise requires, any capitalized term not defined but used herein which is defined in the Master Declaration shall have the meaning given to such word or words in such documents.

3. Description of Condominium.

- 3.1. Identification of Units. The Land has constructed thereon the Building containing 106 Units as well as 56 Garage Units. Each such Unit is identified by a separate numerical designation, with Garage Units having a "G" prefix. The designation of each of such Units is set forth on Exhibit "2" attached hereto. Exhibit "2" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit "2", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions.

There shall pass with a Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the 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 or the Act.

- 3.2. Unit Boundaries. Each Unit shall include that part of the Condominium Property 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 of the Unit; provided that the upper boundary of a Garage Unit shall be the underside of its roof.
 - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.
 - (iii) Interior Divisions. Except as provided in subsections (i) and (ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the two-floors or nonstructural interior walls shall be considered a boundary of the Unit.
 - (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
 - (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks thereof; provided, however, that exterior surfaces of the windows and doors (excluding glass and screens) shall not be included in the boundaries of the Unit and shall therefore be Common Elements.
 - (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "2" hereto shall control in determining the boundaries of a Unit, except that the provisions of Section 3.2(c) above shall control unless specifically depicted otherwise on such survey.
- 3.3. Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:
- (a) Balconies and Terraces. Any balcony or terrace (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s).
 - (b) Storage Areas. The storage areas adjacent to each parking space shown on Exhibit "2" as being within the "garage" portion of the main structure of the Condominium shall be a Limited Common Element of the Unit to which the adjacent parking space is assigned. Other storage spaces shown on Exhibit "2" consist of open locker-type spaces and beach lockers, all of which are available for assignment and will be Limited Common Elements to which they are assigned.
 - (c) Parking Spaces. Any parking space located within the Condominium Property which has been assigned to a Unit by the Developer or the Association pursuant to the provisions of Section 3.6 of this Declaration shall be a Limited Common Element of such Unit(s), but shall be the maintenance responsibility of the Association as provided in

Section 7.1 of this Declaration. All persons should refer to Section 3.5, below, for further provisions regarding parking spaces.

- (d) Miscellaneous Areas, Equipment. Any fixtures or equipment (e.g., an air conditioning unit located adjacent to the Unit and related lines and equipment) serving a Unit or Units exclusively and any area upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s).

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

- (a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.
- (b) Utility and Other Services, Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, and other services and drainage in order to serve the Condominium.
- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association, or (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 the same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.
- (e) Additional Easements. The Association, by and through the Board of Directors on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Association shall deem necessary or desirable, 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.

(f) All easements and rights provided for in the Master Declaration in favor of the Community Association and its members are hereby granted to said Association and its members.

3.5. Parking Spaces. Each Unit shall have one (1) parking space assigned to it as a Limited Common Element, provided that when the Owner of the Unit also owns a Garage Unit such Owner's residential Unit need not have a parking space assigned thereto. Other parking spaces for the use of Unit Owners, guests and other authorized persons are available but not assigned.

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

4.1. Percentage Ownership and Shares. The undivided interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses, appurtenant to each Unit, is as set forth on Exhibit "3" attached hereto and made a part hereof.

4.2. Voting. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association; provided that a Garage Unit shall only have a vote equal to one-hundredth (1/100) of a residential Unit's vote.

5. Ruling Authority of Documents. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable Rules and Regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable Rules and Regulations; and the By-Laws shall take precedence over applicable Rules and Regulations; all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits, if any, to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

6. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:

6.1. By The Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one third (1/3) of the members of the Association. Except as elsewhere provided, approvals of proposed amendments must be by affirmative vote of Unit Owners owning in excess of 66 2/3% of the Units. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting.

6.2. Execution and Recording. An amendment shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County.

6.3. Proviso. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) thereof, all record owners of mortgages or other liens thereon and the Owners of a majority of all other Units, shall join in the execution of the amendment. 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 or mortgagees of Units without the consent of said Developer and mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment, such joinder not to be unreasonably withheld. The provisions of this Section 6.3 may not be amended in any manner.

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

7. Maintenance and Repairs.

7.1. By Unit Owner. Except as otherwise expressly provided to the contrary herein, each Unit Owner shall be responsible for the maintenance, repair and replacement of the entire interior of the Unit lying within the boundaries of the Unit and/or the Limited Common Elements (or dividing a Unit from its Limited Common Elements) or other property as defined herein or in the Declaration, whether located outside or inside of the Unit, the cost of which shall be at the Unit Owner's sole cost and expense.

(a) Interior of Unit or Limited Common Element. The entire interior within the boundaries of the Unit or Limited Common Element including, but not limited to, interior partition walls/studs, screens, windows, doors, electrical (including fixtures, outlets, and wiring), hot water heater, plumbing (including fixtures, enclosures, and connections), air-conditioning/heating equipment, built-in cabinets, counter tops, floor/wall/ceiling surface finishes/coverings, all appliances (whether built-in or not), TV cables/fixtures, phone wires/fixtures, etc. except that the Association shall be responsible for the maintenance and repair of the exterior surfaces (excluding glass and screens) of windows, sliding doors, and entry door/frame and the replacement of entry door/frame.

(b) Other Property. All Owner or previous Owner Additions/Alterations/Improvements, perimeter wall sheetrock, drop ceiling sheetrock, and air-conditioning/heating ducts.

(c) Other Owner Maintenance Responsibility. Each Owner shall periodically clean windows, sliding doors, screens, balconies (including fixtures and railings), and (if any) hurricane shutters that serve the Owner's Unit or Limited Common Element. Additionally, any storage areas assigned to a Unit Owner as a Limited Common Element shall be maintained in a clean, orderly, and sanitary condition.

7.2. By Association. Except as otherwise expressly provided to the contrary herein, the Association shall be responsible for the maintenance, repair and replacement of all of the Common Elements (including the Limited Common Elements) as defined herein or in the Declaration, whether located outside or inside of the Units, the cost of which shall be charged to all Unit Owners as a Common Expense. Each Unit Owner shall promptly report to the Manager or (if no Manager) the Board of Directors any defect or need for repairs for which the Association is responsible.

- (a) Common Elements. All Common Elements and Additions/Alterations/Improvements thereto, including, but not limited to, the Gazebo, beach lockers, carports, Residents' Club, lobby, foundations, elevators, mechanical equipment, cooling tower, building exterior, roofs, doors, windows, decks, balconies/railings, exterior/interior staircases, private streets, pavement, pavement markings, traffic and street signs, fire alarm/sprinkler system, trash collection areas, walkways, parking spaces, recreational facilities, Common Area lighting, landscaping, irrigation system, etc.
- (b) Within a Unit or Limited Common Element. Unless otherwise deemed to be the owners responsibility in section 7.1, all portions of a Unit or Limited Common Element contributing to the support of the building, as well as windows and doors as set forth in 7.1(a) Garage Unit rafters, fire alarm/sprinkler systems, and all pipes, ducts, wires, conduits and other facilities running through any wall or partition for the furnishing of utility or cooling tower services to the Unit (up to the Unit electrical panel or main shut off valves) or to the Common Elements.
- (c) Unit Owner Negligence. If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, or pets, the Association shall charge the cost to the Owner of the Unit responsible and may levy a reimbursement assessment.
- 7.3. Chart of Maintenance Responsibilities. Notwithstanding the general provisions for maintenance set forth in 7.1 and 7.2 above, specific maintenance responsibilities shall, to the extent set forth thereon, be determined pursuant to the *Maintenance & Casualty Insurance Areas Of Responsibility* attached hereto as Schedule B. The Board of Directors may, from time to time, modify, amend, or add to Schedule B subject to the same conditions as detailed in the Rules and Regulations Section 14 of the By Laws for Schedule A.
8. Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of \$20,000 in the aggregate in any fiscal year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate \$20,000 or less in a fiscal year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this section, "aggregate in any fiscal 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 made beyond that year.
9. Additions Alterations or Improvements by Unit Owner. No Unit Owner shall make any addition, alteration or improvement in or to: (i) the Common Elements, (ii) any Limited Common Element, (iii) his Unit if substantial in nature, or (iv) his Unit that might have an effect on the Common Elements, any Limited Common Element, any other Unit, or the structural integrity of the building, without the prior written consent of the Board of Directors, provided that the installation of hurricane shutters shall be governed by Section 16.9 hereof. The request of the Unit Owner shall be in writing to the Board of Directors and include drawings and specifications defining the proposed addition, alteration or improvement. The Board may require that an architect and/or a licensed engineer prepare the drawings and specifications. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within forty-five (45) 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. Once the Unit owner has obtained the Board's consent, such consent for additions, alterations or improvements affecting the Common Elements or Limited Common Elements visible from the exterior of the building must be forwarded to the Architectural Control Committee of the Community Association, together with the requested addition, alteration and improvement and any additional information, for review by the Architectural Control Committee as provided in the Master Declaration. 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, liens protection or otherwise. Once approved by the Architectural Control Committee, 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 and its Board of Directors, the Community Association, members of the Architectural Control Committee and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association.

10. Operation of the Condominium by the Association.

10.1. Powers and Authority. The Association shall be the entity responsible for the operation of the Condominium. The duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association, as amended from time to time. In addition, the Association shall have all the powers and authority specifically set forth in the Articles of Incorporation, the By-Laws and in the Act, as well as those granted to or imposed upon it by this Declaration, including those incidental thereto, and which a corporation not for profit in the State of Florida may exercise. Such powers and authority shall include, without limitation (except as limited elsewhere herein), the following:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein or elsewhere, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.
- (b) The power to make and collect Assessments and other charges against Unit Owners and to use the proceeds thereof to fulfill its obligations.
- (c) The power to enforce obligations of the Unit Owners, allocate revenue and expenses and take actions as shall be deemed necessary and proper for the sound management of the Condominium.
- (d) The authority to maintain, repair, replace, reconstruct, improve, alter, add to and operate the Association Property and other property acquired or leased by the Association.
- (e) The power to contract for the management and maintenance of the Condominium Property and to authorize a duly licensed management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers

shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act.

- (f) The authority to employ and dismiss personnel to perform the services required for the proper operation of the Condominium.
- (g) The authority to purchase or lease Units for use by resident managers or superintendents and other similar persons.
- (h) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and at least two-thirds of the Units represented at a meeting at which a quorum has been attained. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph is not repaid by the Association, a Unit owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Owner's Unit.
- (i) The power to purchase, lease or otherwise acquire title to, or an interest in, property in the name of the Association, or its designee, for the use and benefit of its members. The power to acquire personal property shall be exercised by the Board. The power to acquire real property shall be exercised with the affirmative vote of Unit Owners owning in excess of 66 2/3% of the Units, except in the case of a foreclosure sale as authorized in Section 12.2.
- (j) The power to sell, lease, mortgage or otherwise deal with Units acquired, and sublease Units leased by the Association or its designee.
- (k) The power to organize corporations and appoint persons to act as designees of the Association to acquire title to or lease Units or other property.
- (l) The power to authorize Unit Owners or tenants to use portions of the Common Elements or Association Property for private parties and gatherings and to impose a reasonable fee for such private use.
- (m) The power to adopt and amend policies and rules and regulations concerning the details of the operation and use of the Condominium Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 14 of the By-Laws.
- (n) The authority to levy fines against appropriate Unit Owners for violations of the By-laws, policies and rules and regulations established by the Association to govern the conduct of such Unit Owners. No fine shall be levied except after giving reasonable notice and opportunity for a hearing to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. No fine may exceed \$100 per violation, however, a fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing, provided however, that no such fine shall in the aggregate exceed \$1,000. No fine shall become a lien upon a Unit.
- (o) The power to appoint its President, or such other member as may be elected by the members of the Association, as its Voting Member to cast the votes of Association

Members in Community Association matters, as provided in the Master Declaration and Articles of Incorporation and By-Laws of the Community Association.

- (p) The authority to contract with and create or join in the creation of special taxing districts, joint councils and the like.

- 10.2. Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9 hereof.
- 10.3. Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 11. Determination of Common Expenses and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by law and not lawfully waived) the operation, maintenance, repair and replacement of the Common Elements, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, 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 in a manner consistent with the provisions of the By-Laws.
- 12. Collection of Assessments.
 - 12.1. 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 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 for his share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
 - 12.2. Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the date due until paid. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest and for

reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien is effective as of the date of the recording of this Declaration and shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, and costs and attorneys fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgement for the unpaid Assessments without waiving any claim of lien. The right to bring an action includes the right to purchase the unit at a foreclosure sale, by decision of the Board of Directors.

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, the Association may declare the next twelve (12) months of Assessment installments to be accelerated and shall be due and payable upon the recording of the claim of lien for same. In the event that the amount of such installments changes during the twelve (12) month period, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 12.3. Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 12.4. Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.
- 12.5. First Mortgagee. In the event a first mortgagee or other purchaser shall obtain title to a Unit as a result of foreclosure of a mortgage thereon, or as a result of a deed given in lieu of foreclosure or in satisfaction of debt, such first mortgagee shall be liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure or in satisfaction of debt. However, the first mortgagee's liability as aforesaid shall be limited to assessments coming due during the period ending with the acquisition of title as aforesaid and commencing thirty (30) days after the date the first mortgagee received the last

payment of principal or interest on the debt secured by the mortgage and, further, in no event shall such liability exceed (i) assessments for a period of more than six (6) months prior to acquisition of title or (ii) one percent (1%) of the original mortgage debt, whichever is less.

Any assessments that cannot be collected by virtue of the foregoing paragraph shall be deemed a Common Expense payable by all of the Unit Owners.

- 12.6. Certificate of Unpaid Assessments. Within fifteen (15) days after 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.
- 12.7. Installments. Regular Assessments shall be collected monthly or quarterly (as determined by the Board of Directors), in advance.
13. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 13.1. Purchase, Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida. In order to effect economies of scale, the Board of Directors may enter into an arrangement with the Community Association and other condominium and similar associations for property subject to the Master Declaration whereunder such associations obtain insurance on a group basis, provided that all such insurance so obtained meets the requirements of this Declaration. In the event that the Board of Directors enters into the foregoing arrangement, then the Community Association shall be deemed to have automatically been delegated all claims adjustment authority of the Board as to all claims affecting more than just the Association or the Condominium.
 - (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.
 - (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds. The Community Association shall be an additional named insured for so long as its Assessments are being collected and remitted by the Association.
 - (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 expense and for any other risks not otherwise insured in accordance herewith.

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

- (a) Casualty. The Buildings, including all fixtures, installations or additions comprising that part of the Buildings within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), but excluding the items listed in the second sentence of this paragraph, and all Improvements located on the Common Elements from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or owned by the Association (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, if reasonably available, excluding foundation and excavation costs. Casualty insurance shall not be required to insure unit floor, wall or ceiling coverings or the following equipment if it is: (i) located within a Unit and (ii) the repair and replacement obligation of the Unit Owner for electrical fixtures, appliances, air conditioning/heating equipment, water heaters or built-in cabinets. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:
 - (i) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement;
 - (ii) Reconstruction expenses caused by intervening changes in laws, codes, ordinances or regulations; and
 - (iii) Such Other Risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 per occurrence with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa, if reasonable available.
- (c) Worker's Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance if required by the Primary Institutional First Mortgagee or FNMA/FHLMC or if the Association so elects.
- (e) Fidelity Insurance if required by the Act or FNMA/FHLMC, covering all persons who collect, control or disburse Association funds (or Community Association funds, if the Association is acting as collecting agent for the Community Association), such insurance

to be in an amount sufficient to cover the maximum funds (both operating and reserve) in the custody of the Association or the Management Company at any time as required by the Florida Statutes.

- (f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (g) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, a committee of the Board of Directors or members of any such committee, one or more Unit Owners or as a result of contractual undertakings (including duties performed in connection with the Association's obligations to the Community Association as set forth in the Master Declaration). 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 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.

- 13.3. 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 of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 13.4. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 13.5. 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 of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida or one or more of the Directors or Officers of the Community Association. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.
- (b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
- (c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.
- 13.6. 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 that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 13.5 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.
- 13.7. 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.

- 13.8. 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.
- 13.9. Benefit of Mortgagees. Certain provisions in this Section 13 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 13.10. Board Acting as Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 13.11. 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.
14. Reconstruction or Repair After Fire or Other Casualty.
- 14.1. Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

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

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety

(90) days after the Insurance Trustee (if appointed) notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

- 14.2. Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.
- 14.3. Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.
- 14.4. 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:
- (a) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
 - (b) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
 - (c) 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 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.

- (d) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (e) Certificate. Notwithstanding the provisions herein, the Insurance Trustee (if appointed) shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee (if appointed) 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.

14.5. Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements.

14.6. Benefit of Mortgagees. Certain provisions in this Section 14 are for the benefit of mortgagees of Units and may be enforced by any of them.

15. Condemnation.

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

- 15.2. 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.
- 15.3. Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 15 specifically provided.
- 15.4. 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 payable by the Owner of the Unit.
 - (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
 - (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:
 - (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
 - (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.
- The result of such division for each Unit shall be the adjusted percentage for such Unit.
- 15.5. Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:
- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid

Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.

- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefore shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
 - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 15.4(c) hereof (the "Percentage Balance"); and
 - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 15.4(c) hereof, by the Percentage Balance.

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

- (d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Units Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

- 15.6. Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the

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

- 15.7. Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.
16. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

- 16.1. Occupancy. Each Unit shall be used as a residence only, except as otherwise herein expressly provided. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families, provided that the Unit Owner or other permitted occupant must reside with his/her family: (i) the individual Unit Owner, (ii) an officer, director, stockholder, employee or designee of such corporation, (iii) a partner, employee or designee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of the Unit (as described below), as the case may be. Occupants of an approved leased or subleased Unit must be the following persons, and such persons' families who reside with them: (i) an individual lessee or sub-lessee, (ii) an officer, director, stockholder, employee or designee of a corporate lessee or sub-lessee, (iii) a partner, employee or designee of a partnership lessee or sub-lessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sub-lessee. In no event shall occupancy of a Unit (except for occupancy by guests visiting the owner for not more than fifteen (15) days) exceed two (2) adults or three (3) children per bedroom or den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms and the like).

As used herein, "family" or words of similar import shall be deemed to include all persons permanently cohabiting the Condominium Unit as or together with the Owner or permitted occupant thereof. As used herein, "guest" or words of similar import shall include only those persons who have a principal residence other than the Condominium Unit. Unless otherwise determined by the Board of Directors of the Association, a person(s) occupying a Condominium Unit for more than sixty (60) days shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this Declaration (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to lessees. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Section 16 and the Board of Directors of the Association shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

Garage Units shall be used only for automobile storage and the storage of other property of the Owner thereof (provided that the storage of such other property cannot prevent the use of the Garage Unit for automobile parking simultaneously).

- 16.2. Children. Children shall be permitted to reside in Units, subject to the provisions of Subsection 16.1, above.

- 16.3. Pets. Each Unit Owner or occupant (regardless of the number of joint owners or occupants) may maintain one (1) household pet in his Unit, to be limited to a dog or cat (or other household pet defined as such and specifically permitted by the Association) weighing not more than thirty-five (35) pounds at maturity, provided it is not kept, bred or maintained for any commercial purpose, does not become a nuisance or annoyance to neighbors and is first registered with the Association. No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). Unit Owners must pick-up all solid wastes of their pets and dispose of such wastes appropriately. All pets must be kept on a leash at all times when outside the Unit and shall not be permitted on outdoor recreational areas (e.g., pool decks). No pets may be kept on balconies when the Owner is not in the Unit. Without limiting the generality of Section 18 hereof, a violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners and/or to require any pet to be permanently removed from the Condominium Property. This Section 16.3 shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that a bird(s) is not kept on Limited Common Elements and does not become a nuisance or annoyance to neighbors.
- 16.4. Alterations. Without limiting the generality of Section 10 hereof, but subject to the proviso contained therein as to hurricane shutters, no Unit Owner shall cause or allow improvements or changes to any Unit Limited Common Elements appurtenant thereto or Common Elements, including, but not limited to, painting or other decorating of any nature (other than to the interior of the Unit), installing any television antenna, satellite dish, machinery, or air-conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Association (in the manner specified in section 10 hereof).
- 16.5. Use of Common Elements. The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.
- 16.6. Nuisances. No nuisances (as reasonably determined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance.
- 16.7. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 16.7. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.
- 16.8. Floor Coverings. Without limiting the generality of the approval requirements set forth in Section 10 of this Declaration, no hard-surfaced floor coverings shall be installed in any bedroom, living room or dining room of a Unit or its appurtenant Limited Common Elements unless same is installed with sound-absorbing backing meeting the requirements of the Association.
- 16.9. Hurricane Protection. No type of hurricane protection may be installed in or around the Units other than hurricane shutters meeting the specifications (including as to location) adopted by the

Board of Directors as required by the Act. No hurricane shutters shall be installed or affixed across the entrance door of any Unit.

- 16.10. Exterior Improvements. Without limiting the generality of sections 10 or 16.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung or displayed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association.
- 16.11. Commercial/Recreational Vehicles and Trailers. Except as permitted below, no trucks, other commercial vehicles, campers, mobile homes, recreational vehicles, boats, boat trailers or other trailers shall be kept on the Condominium Property. For purposes of the foregoing, "commercial vehicles" shall mean those not designed or used for customary personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether same is a commercial vehicle. The foregoing shall not prohibit, however, (i) the parking of otherwise prohibited vehicles on the Condominium Property in the course of providing services to the Condominium Property, the occupants thereof or the Association, (ii) unmarked pick-up trucks of less than a three-quarter (3/4) ton capacity or (iii) vans with windows which contain seating for at least four (4) persons, provided that such vans and trucks shall not bear commercial-type lettering or graphics. All vehicles kept on the Condominium Property shall be operational and in good condition. In the event of doubt or dispute as to whether a vehicle is prohibited by this Section, the good-faith determination of the Board of Directors shall be binding and conclusive.
- 16.12. Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 16 for good cause shown.
- 16.13. Changes in Permitted Uses. No amendments to this Section 16, any other provision of this Declaration governing the use of Units or the Common Elements or to any Rules and Regulations of the Association shall operate to prohibit the keeping of a pet, parking of a vehicle or leasing or occupancy of a Unit where same was: (i) permitted prior to the effectiveness of the amendment, (ii) being conducted in reliance on such permissibility and (iii) is continuing with the same pet, vehicle, lessee or occupant as existed prior to the effectiveness of the amendment. Likewise, no improvement made to or about any Unit (e.g., the installation of hurricane shutters) which was permitted at the time of its making shall be required to be removed by virtue of a change in the permissibility of such types of improvements.
17. Selling, Leasing, Transferring and Mortgaging of Units and Common Elements. Units may be made subject to mortgages without restrictions, but sales, transfers and leases thereof shall be subject to the provisions of this Section 17.
- 17.1. Sales. No conveyance of a Unit, by parties other than the Institutional Mortgagees, shall be valid unless a certificate executed and acknowledged by an officer of the Association, stating that all Assessments levied against such Unit have been paid in full, is recorded together with the instrument of conveyance. The Board of Directors shall furnish such certificate upon receipt from the Unit Owner of a request form (which will be prepared by the Association) setting forth the proposed purchaser's name, notice address and date of closing. The new Owner may not take occupancy of the Unit until he has delivered or caused to be delivered a copy of his deed to the Unit to the Association.

- 17.2. Leases. No portion of a Unit (other than an entire Unit) may be rented. All leases shall be in writing, be approved by the Association and shall provide (or be automatically deemed to provide, absent an express statement) that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, applicable rules and regulations of the Association or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. Leasing of Units shall also be subject to the prior written approval of the Association and the Association may deny permission to lease any Unit on any reasonable grounds the Association may find. Any written request for approval of a lease must be responded to within thirty (30) days, absent such response the lease to be deemed automatically approved. No lease shall be valid or approved for a term of less than sixty (60) consecutive days. Regardless of whether or not expressed in the applicable lease, the Unit Owner shall be jointly and severally liable to the Association for the acts and omissions of his tenant(s) which constitute a violation of, or non-compliance with, the provisions of this Declaration and of any and all rules and regulations of the Association. This Section shall also apply to subleases and assignments and renewals of leases. The Association may also require a deposit to be placed with the Association and held by it as security against a tenant's damaging the Common Elements. The security deposit shall not exceed one (1) months rent, shall be held in an escrow account maintained by the Association for such deposits and shall be refunded to the tenant, or the Association shall give the tenant written notice of a claim against the deposit, within fifteen (15) days after the tenant vacates the applicable Unit. Any disputes relating to security deposits shall be handled in the same fashion as disputes concerning security deposits under Florida Statutes.
- 17.3. No Severance of Ownership. The undivided share in the Common Elements and Common Surplus that 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 provided to the contrary in Section 17.6, 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.
- 17.4. Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 17.
- 17.5. Garage Units. No Garage Unit shall be sold or conveyed to a person or entity who/which is not also an owner of a residential unit in the property subject to this Declaration. Further, no Garage Unit shall be leased to a person or entity who/which is not a tenant or owner of a residential unit subject to this Declaration.
- 17.6. Transfer of Limited Common Elements. Unit Owners may exchange assigned parking spaces, beach lockers and storage lockers between their Units by written notice to the Association, signed by both Owners. Transfer of assigned parking spaces must comply with Section 3.5. Upon receipt of such notice, the roster of Limited Common Elements will be changed accordingly.
- 17.7. Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

18. Compliance and Default. Each Unit owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 18.1. Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees.
- 18.2. Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable policies, and/or rules and regulations, the Master Declaration, or any other agreement, document or instrument affecting the Condominium Property or administered by the Community Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines or to sue in a court of law for damages.
- 18.3. Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the policies and/or rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).
- 18.4. No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
19. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the applicable interests in the Common Elements and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County.

This Section may not be amended without the consent of the Primary Institutional First Mortgagee, which consent shall not be unreasonably withheld.

20. Additional Rights of Mortgagees and Others.
- 20.1. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (i) examine the Condominium documents and the Association's books and records, (ii) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (iii)

receive notices of and attend Association meetings, (iv) receive notice of an alleged default in any obligations hereunder by any Unit Owner, on whose Unit such Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to the Unit Owner, and (v) receive notice of any substantial damage or loss to any portion of the Condominium Property.

- 20.2. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of: (i) any condemnation or casualty loss affecting a material portion of the Condominium Property or the affected mortgaged Unit, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (iv) any proposed termination of the Condominium, and (v) any proposed action which requires the consent of a specified number of mortgage holders.
- 20.3. The approval of a majority of Institutional First Mortgagees shall be required to effect an amendment to the Declaration which materially alters, or adds, a provision relating to: (i) assessments and lien rights; (ii) insurance or fidelity bonds; (iii) maintenance responsibilities for the various portions of the Condominium Property; (iv) boundaries of any Unit; (v) convertibility of Units into Common Elements or Common Elements into Units; (vi) leasing of Units; and (vii) restrictions on Owners' rights to sell or lease Units. Such approval shall not be unreasonably withheld.
21. The Community Association. Atlantic View Beach Club Community Association, Inc. (same being defined herein as the "Community Association") has been created to administer the Master Declaration and, generally, to operate, administer, regulate the use of, and maintain and repair the "Common Areas" under the Master Declaration. In addition to Unit Owners, owners of other residential units (and other parties) will be members of the Community Association and, as such, shall have the right of access to and use of the Common Areas. The following provisions have been included herein, and shall be interpreted and enforced, in order to further the purposes of the Community Association and the Master Declaration:
- 21.1. Assessments and Collection. Assessments levied by the Community Association shall be the responsibility of the Unit Owners individually and not Common Expenses hereunder. However, the Association may enter into an agreement with the Community Association whereunder the Association may collect the assessments of the Community Association for Unit Owners, or vice versa.
- 21.2. Amendments. Notwithstanding anything contained in this Declaration or the Articles of Incorporation, By-Laws or Rules and Regulations of the Association to the contrary, no amendment to any of said documents shall be effective if same alters, impairs or prohibits the rights of the Community Association or its members unless the Community Association consents thereto.
- 21.3. Non-Discrimination. Neither the provisions of this Declaration nor those of the Articles of Incorporation, By-Laws or Rules and Regulations of the Association shall be interpreted or enforced in a manner which discriminates against the Community Association or its members.
22. Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, as well as the Master Declaration, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the present and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit

Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, as well as the Master Declaration, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as well as the Master Declaration as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

23. Garage Units. Neither this Declaration nor the Articles of Incorporation, By-Laws or Rules and Regulations of the Association shall be amended, interpreted or enforced in such a manner as to discriminate against, or alter, waive or impair the rights of, the Owners of Garage Units as such without the consent of a majority of such class of Owners; provided, however, that any such amendment, interpretation or enforcement which is equally applicable to all Unit Owners or only to Owners of residential Units shall not require the aforesaid consent.

24. Additional Provisions.

24.1. Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

24.2. Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

24.3. Mortgagees. Anything herein to the contrary notwithstanding (except as provided in Section 12.5 hereof), the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.

24.4. Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.

24.5. Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

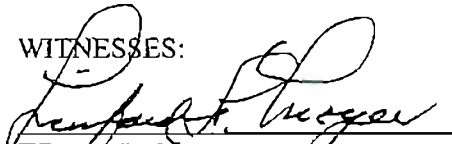
24.6. Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable

rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

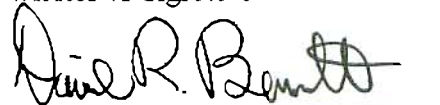
- 24.7. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 24.8. Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 24.9. Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 24.10. Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 24.11. Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

The undersigned, SEAWARD AT ATLANTIC VIEW CONDOMINIUM ASSOCIATION, INC., hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Amended and Restated Declaration of Condominium.

WITNESSES:

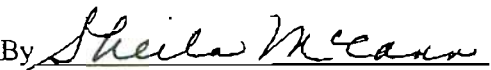

Witness #1 Signature

Linford F. Moyer
Witness #1 Signature


Witness #2 Signature

DAVID R. BENNETT
Witness #2 Printed Name

SEAWARD AT ATLANTIC VIEW
CONDOMINIUM ASSOCIATION, INC.

By 
Sheila McCann, Its Vice President

Linford F. Moyer
Witness #1 Signature

Linford F. Moyer
Witness #1 Printed Name

David R. Bennett
Witness #2 Signature

DAVID R. BENNETT
Witness #2 Printed Name

By Mary Adelia McLeod
Mary Adelia McLeod, Its Secretary



STATE OF FLORIDA
COUNTY OF ST. LUCIE

The foregoing instrument was acknowledged before me on October 2, 2001 by Sheila McCann, as Vice President of Seaward at Atlantic View Condominium Association, Inc., who is personally known to me, or [] who produced _____ as identification.

Notarial Seal



Craig Merrill
NOTARY PUBLIC
Printed Name: Craig Merrill

STATE OF FLORIDA
COUNTY OF ST. LUCIE

The foregoing instrument was acknowledged before me on October 2, 2001 by Mary Adelia McLeod, as Secretary of Seaward at Atlantic View Condominium Association, Inc., who is personally known to me, or [] who produced _____ as identification.

Notarial Seal



Craig Merrill
NOTARY PUBLIC
Printed Name: Craig Merrill

BOOK 1451 PAGE 929

SCHEDULE "B"

**MAINTENANCE AND CASUALTY
INSURANCE AREAS OF RESPONSIBILITY**

Please see current Schedule
on file with the Association.