

DECLARATION OF CONDOMINIUM

OF

TWIN LAKES PROFESSIONAL CENTER, A CONDOMINIUM

This Instrument Prepared by,  
Record, and Return to:  
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**DECLARATION OF CONDOMINIUM  
OF  
TWIN LAKES PROFESSIONAL CENTER, A CONDOMINIUM**

**(A Non-Residential Conversion Condominium)**

BOCA RATON PROPERTY, INC., a Florida corporation (hereinafter called the "Developer"), does hereby declare as follows:

1. **Introduction, Submission and Phasing Plan.**

- 1.1 **The Land.** Developer owns the fee title to that certain land located in Palm Beach County, Florida, as more particularly described in **Exhibit "1"** annexed hereto and made a part hereof (the "Land").
- 1.2 **Submission Statement.** Developer hereby submits the Land and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, 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.
- 1.3 **Name.** The name by which this condominium is to be identified is TWIN LAKES PROFESSIONAL CENTER, A CONDOMINIUM (hereinafter called the "Condominium").

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

- 2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof.

- 2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association appended hereto as **Exhibit "2"** and made a part hereof, as amended from time to time.
- 2.3 "Assessment" means a share of the funds which are required for the payment of Common Expenses which from time to time is assessed against the Unit Owners. Assessments shall also include Special Assessments when such Special Assessments are duly adopted by the Board of Directors of the Association.
- 2.4 "Association" or "Condominium Association" means Twin Lakes Professional Center Condominium Association, Inc., a Florida corporation not-for-profit, the sole entity responsible for the operation of the Condominium, in accordance with the terms of this Declaration and the Act.
- 2.5 "Association Property" means the property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.6 "Board" or "Board of Directors" means the board of directors, from time to time, of the Association, referred to in the Act as the "board of administration," which is responsible for the administration of the Association.
- 2.7 "Building" means the structure or structures located in or on the Land (or on any of the property hereafter made part of the Condominium) and in which the Units, Common Elements and Limited Common Elements are located, irrespective of the number of such structures.
- 2.8 "By-Laws" mean the By-Laws of the Association, appended hereto as **Exhibit "3"** and made a part hereof, as amended from time to time.
- 2.9 "Common Elements" means and includes the portions of the Condominium Property which are not included in the Units, including, without limitation, the following items:
- (a) Easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of Utility Services and/or heating, cooling, ventilation or other services to Units or to the Common Elements, together with related property and installations;
  - (b) An easement of support in every portion of a Unit which contributes to the support of a Building, other Units and/or any part of the Common Elements;
  - (c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements; and

(d) Any other parts of the Condominium Property designated as Common Elements in this Declaration or the Act.

- 2.10 "Common Expenses" means all expenses properly incurred by the Association in performance of its duties for the Condominium, including, but not limited to: (1) expenses of maintenance, operation, protection, repair or replacement of the Common Elements and Association Property; and (2) expenses declared Common Expenses by the provisions of this Declaration or by the Articles, By-Laws or by the Act. Common Expenses also include insurance for directors and officers, parking areas and road maintenance and operation expenses, in-house communications, and security services, if any, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or property of the Condominium, and the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract. Common Expenses shall not include any separate obligations of individual Unit Owners.
- 2.11 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.
- 2.12 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.13 "Condominium Property" means the Land, Improvements and personal property that are subjected to condominium ownership under this Declaration, all easements and rights appurtenant thereto intended for use in connection with the Condominium and all other property, real, personal and mixed, which may subsequently be made subject to this Declaration as hereinafter described.
- 2.14 "County" means the County of Palm Beach, State of Florida.
- 2.15 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as same may be amended from time to time.
- 2.16 "Developer" means Boca Raton Property, Inc., a Florida corporation, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned by an instrument executed and recorded by Developer. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium Property. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association and, accordingly, shall not be

deemed waived, transferred or assigned to the Unit Owners, the Board, or the Association upon the transfer of control of the Association.

- 2.17 "Division" means the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation.
- 2.18 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on or are to be constructed on the Condominium Property, including, but not limited to, all Buildings.
- 2.19 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, 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-type 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 encumbered.
- 2.20 "Limited Common Elements" means those Common Elements the use of which are 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.
- 2.21 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at any time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.22 "Special Assessment" means any Assessment levied against Unit Owners other than the regular Assessment required by a budget adopted annually.
- 2.23 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- 2.24 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.
- 2.25 "Utility Service" means and is intended to include, but is not limited to, electric power, gas, telephone, hot and cold water, heating, air conditioning ventilation systems, garbage and sewage disposal.

### 3. **Description of Condominium.**

- 3.1 **Identification of Units.** THE CONDOMINIUM WILL BE CREATED BY THE CONVERSION OF EXISTING IMPROVEMENTS. The existing

Building contains twenty-three (23) Units but Developer reserves the absolute and unconditional right, without any obligation, for up to two (2) years after this Declaration is recorded, to subdivide: Unit 105 to up to two (2) Units, Unit 200 to up to two (2) Units, and Unit 243 to up to four (4) Units, or any of them, so that the Condominium will ultimately contain a minimum of twenty-three (23) Units and a maximum of twenty-eight (28) Units. The addition of Units to the Condominium may reduce the share of Common Elements, Common Surplus and Common Expenses attributable to each previously created Unit and the voting share of each Unit Owner. If Developer adds additional Units, as described above, an amendment to this Declaration shall be recorded by Developer in accordance with subsection 8.3 below. If Developer decides not to subdivide Units 105, 200 and 243, or any of them, as described above, the number of Units in the Condominium will remain twenty-three (23) and the Owners thereof shall comprise the entire membership of the Condominium Association and thereby be entitled to cast 100% of the votes of the Condominium Association and own 100% of the Common Elements. Each Unit is identified by a separate numerical designation. The designation of each Unit is set forth on **Exhibit "4"** attached hereto and made a part hereof. Exhibit "4" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the existing Building in which the Units are located, and a plot plan thereof. Said Exhibit "4", together with this Declaration, are sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate 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.

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

- (a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
  - (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the underside of the ceiling slab excluding bar joists, steel beams and vertical structural columns which shall be Common Elements.
  - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor.

- (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, except as provided in subsection 3.2(d) below or if subsection 3.4(j) hereof is applicable.
- (c) Apertures. Where there are apertures in any boundary, including but not limited to, windows and doors, the Unit's boundaries shall be extended to include the interior unfinished surfaces of such apertures, including all frameworks, window casings and weather stripping thereof. (Exterior surfaces made of glass or other transparent material, and all framing and casings therefor, shall not be included in the boundaries of the Unit and therefore shall be Common Elements.)
- (d) Exceptions. In cases not specifically covered above, or in any case of a conflict or ambiguity, the survey of the Units set forth as Exhibit "4" hereto shall control in determining the boundaries of a Unit, except that the provisions of subsection 3.2(c) above shall control unless specifically depicted and labeled otherwise on such survey.

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 Patios. The balconies (and railings) and patios which are for the exclusive use of any particular Unit or Units shall be a Limited Common Element of such Unit(s).
- (b) Miscellaneous Areas, Equipment. Any area upon which is located equipment or fixtures (including air conditioning compressors) which are for the exclusive use of any particular Unit or Units and the equipment or fixtures themselves shall be Limited Common Elements of such Unit(s).
- (c) Parking Spaces. The Developer, in its sole discretion, reserves the right to designate and assign, for so long as Developer holds any Unit for sale in the ordinary course of business, with or without consideration, all automobile parking spaces (both covered and uncovered) situated on the Condominium Property, as shown on Exhibit "4" hereof. No Unit Owner shall have or acquire any fee simple title to any parking space at any time except as part of the Unit Owner's undivided share in the Common Elements. If parking spaces are assigned by Developer, such parking spaces shall become Limited Common Elements of that designated Unit. If parking spaces are assigned, such assignments shall be made by a non-recordable instrument in writing ("Parking Space Assignment"); the Association shall maintain a book (the "Association Book") for purposes of recording the current assignee of each parking space; the Developer will cause the Association to record each such Parking Space Assignment

in the Association Book and the Unit Owner to which such use is assigned shall have the exclusive right to use thereof; all fees collected by Developer for assigning parking spaces shall be retained by Developer and shall not constitute income or revenue of the Association; Parking Space Assignments shall be executed by Developer alone, the President of the Association alone, or by any two (2) officers of the Association; and there shall be no recordation in the County of the assignment or transfer of a parking space. No assignment or transfer of title in any manner whatsoever to use a parking space constituting Limited Common Elements may be made or accomplished separately from the passing of title to the Unit to which it is appurtenant, except that the same may be separately assigned by the Developer to the Condominium Association and thereafter maintained as part of the Common Elements or reassigned by the Condominium Association, in its sole discretion, to another Unit Owner as a Limited Common Element. Notwithstanding Developer's reservation of the right to designate and assign parking spaces on the Condominium Property, as described above, it is Developer's intention that parking on the Condominium Property will be made available to all Unit Owners and other permitted users on a first come, first served basis without any assignment being exercised by Developer except that certain spaces in the parking areas may be designated for the sole use of a particular Unit, at any time and from time to time, at the sole discretion of Developer for so long as Developer owns a Unit in the Condominium. After the date when Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board ("Turnover Date"), the Association, with the joinder and consent of the Developer (for so long as Developer owns a Unit in the Condominium) and not less than 85% of the Units in the Condominium, may modify, amend, limit, change or terminate any parking space assignments and designations previously made by Developer.

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act and any easements affecting the Condominium Property and recorded in the Public Records of the County):

- (a) Support. Each Unit, Building and the Improvements 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. Non-exclusive easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, telecommunication and security systems, if any, and other services and drainage in order to serve the Condominium and each Unit. A Unit Owner shall do nothing within or outside their Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television,

reasonable access to the public ways. 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) Construction; Maintenance. The Developer (including its affiliates, and its or their designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any addition or renovation thereto, or any Improvements or Units located or to be located thereon, and to repair, replace and maintain, without any obligation, the Condominium Property or any part thereof when the Developer, in its sole discretion, determines that it is required or desires to do so, or when the Association fails to do so.
- (f) Sales Activity. For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property for model, sales, leasing, management, resales and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units, to erect on the Condominium Property or Association Property signs and other promotional material to advertise Units for sale or lease, to be exempt from any restrictions on the type of vehicle allowed to park on Condominium Property if the vehicle is engaged in any activity relating to construction, maintenance, or marketing of Units, and to take any and all actions which, in the Developer's opinion, may be helpful for selling or leasing Units or for promoting the Condominium and its operations generally.
- (g) Additional Easements. The Developer (as long as it owns any Unit) and the Association, by and through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as its or their attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, if any, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners, or for the purpose of

carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for the permitted purposes described in this Declaration. In addition, the Board of Directors has the authority, without the joinder of any Unit Owner, to grant, modify, or move any easement if the easement constitutes part of or crosses the Common Elements or Association Property subject to Developer's rights and powers under this Declaration.

- (h) Easement for Services. The Developer (as long as it owns any Unit) and the Association, and its or their agents, contractors, designees, employees, successors and assigns shall have (i) a non-exclusive easement for access and use of all the Common Elements, including, but not limited to, those customarily used for pedestrian and vehicular traffic and also including driveways, parking ramps, walkways, lobby areas, elevators, stairways, halls and corridors, balconies, patios, terraces, janitorial closets, mechanical/electrical rooms, trash rooms, and storage rooms for the purpose of cleaning, repairing, maintaining and improving all Buildings or for such other purposes as set forth in this Declaration including, but not limited to, cleaning the exterior side of the windows on any Building; and (ii) an irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association or a Unit Owner pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.
- (i) Easements Reserved by the Developer. For as long as Developer remains liable under any warranty, if any, whether statutory, express or implied, for any act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its successors, assigns, contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time, to enter the Condominium Property for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. Failure of the Association or any Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. **Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in Section 21 below.**
- (j) Divider Walls. The wall separating the Unit of one Owner from the Unit of a horizontally adjoining Owner shall be referred to as a "divider wall." A divider wall shall not be removed or constructed by an Owner, except as provided in this subsection 3.4(j). In the event a Unit Owner acquires an adjacent Unit and a divider wall is no longer intended to completely

separate the adjoining Units, the Owner may remove the divider wall or construct or cause to be constructed a doorway or passageway between the adjoining Units (and an easement is hereby reserved and granted for such purpose) but only after having obtained all required governmental approvals and approval of the Association. The removal of the divider wall or the construction of such doorway or passageway shall be at the sole cost and expense of the Owner performing same and such removal or construction shall not diminish, or in any way impair, the structural integrity or soundness of the Building, or any utility services or related easements for such services within the Building. When title to adjoining Units (which do not then share a complete divider wall) shall vest in two different individuals or entities who thereupon become horizontally adjoining Unit Owners, then the Unit Owner who removed a divider wall must construct, at its sole expense, a new divider wall to completely separate said adjoining Units. A divider wall may not be constructed or erected, however, until a Unit Owner has its plans and specifications for the divider wall reviewed and approved, in writing, by the Association and has also obtained all approvals from any governmental agency having jurisdiction. Any such construction shall be effected at the expense of the Owner performing same and in accordance with the plans and specifications for construction and all applicable building and fire safety codes of any governmental agency having jurisdiction. In no event may a divider wall be constructed if the structural soundness of the Building may in any way be affected thereby or that would impair any utility services or related easements for such services within the Building. That part of the divider wall located within the boundary of the Unit shall be part of the Unit. Adjoining Units which share a divider wall shall have a cross-easement of support in the portion of the divider wall not located within the boundary of the Unit. Maintenance and repair of the divider wall shall be accomplished by the appropriate Owners. Each Owner shall be responsible for any damage caused to a divider wall by its negligent or intentional acts or the negligent or intentional acts of its employees, contractors or agents, and the cost of said repair shall be the specific obligation of that Owner.

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

telecommunication and security systems, if any, or other service or drainage facilities or the use of these easements. The Association (and its designees, which may include, but are not limited to Unit Owners) shall have an irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any of the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, telecommunication and security systems, if any, service and drainage facilities which are Common Elements and any other Common Elements or Limited Common Elements contained in the Unit or elsewhere in the Condominium Property, or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements, Limited Common Elements, or to a Unit or Units, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day's notice, which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted.

- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit (or Limited Common Element appurtenant thereto); (b) any Unit (or Limited Common Element appurtenant thereto) 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 prior written consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement for ingress and egress in favor of each Unit Owner and its guests, lessees, invitees and mortgagees, shall exist for pedestrian traffic on, over, through and across, sidewalks, accessways, streets, hallways, paths, walks, stairways, elevators and other portions of the Common Elements (not including Limited Common Elements, unless otherwise specifically provided elsewhere in this Declaration) and Association Property as from time to time may be intended and designated for such purpose and use and as may be necessary to provide reasonable access to the public ways; and for vehicular and pedestrian traffic on, over, through and across, and parking on, such portions of the Common Elements as from time to time may be paved and intended for such purpose and use and as may be necessary to provide

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

5.1 **Fractional Ownership and Shares.** The undivided fractional ownership interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses, appurtenant to each Unit, is described herein and set forth on **Exhibit "5"** attached to this Declaration and made a part hereof. Such undivided shares are stated as percentages and are based on the total gross square footage of each Unit in uniform relationship to the total gross square footage of all of the Units in the Condominium. Each Unit Owner's share of the Common Expenses and Common Surplus of the Association shall be the same as the Unit's appurtenant ownership interest in the Common Elements. This ownership, however, does not include the right to withdraw or require payment or distribution of said Common Surplus.

5.2 **Voting.** Each Unit Owner shall be a member of the Association and shall be entitled to vote equal to its undivided fractional ownership interest in the Common Elements as set forth on Exhibit "5" attached hereto.

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 a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the Unit Owners of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval or disapproval in writing, provided that such approval or disapproval is delivered to the Secretary of the Association at or prior to the meeting. Except as elsewhere provided, approvals must be by an affirmative vote of (a) Unit Owners of not less than 66-2/3% of the Units in the Condominium and by not less than 66-2/3% of the Board of Directors of the Association; or (b) Unit Owners of not less than 75% of the Units in the Condominium.

6.2 **By the Developer.** The Developer, during the time it is in control of the Board of Directors of the Association, may amend the Declaration (or its Exhibits), Articles of Incorporation or the By-Laws of the Association, to correct an omission or error, resolve an ambiguity, or for any other purpose, except that this procedure for amendment may not be used if such an amendment would, in Developer's reasonable opinion, materially adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing to the amendment. The execution and recording of any amendment by the Developer pursuant to this subsection 6.2 shall be conclusive evidence that the amendment does not materially adversely affect substantial property rights of Unit Owners who did not

join in or consent to such execution, and any such amendment shall be effective as provided below, unless subsequently revoked.

- 6.3 Proviso. Except as otherwise specifically provided in subsection 8.3 below or elsewhere in this Declaration to the contrary, 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 proportion or 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) of the Unit(s) so affected, and all record owners of liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by not less than 75% of the voting interests of Unit Owners in the Condominium, unless otherwise required by any governmental entity. No amendment may be adopted which would terminate, limit, 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 prior written 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. Whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld or delayed. The provisions of subsections 3.4(g), 3.4 (h), 3.4(i), 6.2, 8.2(b), 8.3, 8.4, 9.6, 15.1, 15.6, 15.16, 16.6, 16.8, 21, 22.6, 22.14, 22.15, 22.16 and 22.17 of this Declaration may not be amended in any manner without the prior written consent of Developer, whose consent may be arbitrarily withheld.
- 6.4 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors 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. 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 and 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." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

7. **Maintenance and Repairs.**

7.1 **Units.** Except as otherwise expressly provided to the contrary herein, all maintenance, repairs and replacements of, in or to any Unit, whether ordinary or extraordinary, foreseen or unforeseen, shall be performed (or caused to be performed) by the Owner of such Unit at the Unit Owner's sole cost and expense, including, without limitation, maintenance, repair and replacement of: all interior doors, the interior side of the exterior door of the Unit (the Unit Owner's responsibility shall be limited to maintenance and repair, and not the replacement thereof, but the Unit Owner will also be responsible for such replacement if that door is damaged by the Unit Owner or its tenants, invitees or agents), and all keys, locks and hardware; signage installed on the exterior walls including re-lamping and cleaning, and the repair of damaged exterior wall surfaces caused by the installation, removal, or repair and maintenance of such signage; all roof mounted equipment serving the Unit including air-conditioning compressor, freon lines, and insulation, and satellite dishes; electrical lines, service outlets, and connections to air conditioning equipment – all powered from the Unit panel; roof mounted exhaust and ventilator fans; satellite and/or communications cables, dishes, and other equipment permitted by the Association and installed (or caused to be installed) by the Unit Owner; exterior light fixtures and lamps powered from the Unit electrical panel; all interior improvements and equipment exclusively serving the Unit such as the heating and air-conditioning system including thermostat, ductwork, condensate drain pan and lines including condensate drain structures outside the Building, and air handler machinery and filters; all plumbing fixtures and connections, hardware, and appliances; all air and plumbing vents, exhaust fans and ductwork; and all water lines and waste drain lines from plumbing fixtures to cleanout line connection immediately outside the Unit; electrical panel, circuit breakers, conduits and wiring, convenience outlets, switches, and all interior light fixtures and lamping; all fire alarm equipment exclusively serving the Unit including smoke detectors, horns, and pull stations (if any); all interior nonstructural walls, partitions and finishes, doors, hardware, ceiling grid and tiles, floor coverings, carpet, casework, cabinetry; removing all mold, mildew, fungi and other mycotoxins from the Unit or Limited Common Elements, and performing regular preventive maintenance measures; and personal property, furnishings, and equipment; windows (interior side), window coverings, and all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit and all other property belonging to the Unit Owner.

7.2 **Common Elements and Association Property.** Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect by specific Unit Owners, in which case such cost shall be paid solely by such Unit Owners.

- 7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any equipment and fixtures or other items of personal property which service a particular Unit or Units, or are contained within a particular Unit or Units, and Limited Common Elements appurtenant thereto, shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Unit.
- 7.4 Hurricane Protection. The Board of Directors shall, from time to time, establish hurricane shutter specifications which comply with applicable building code, and establish permitted colors, styles and materials for hurricane shutters. All hurricane shutters shall be first approved, in writing, by the Association before any installation thereof. Unit Owners shall submit written requests to the Association for the approval of the installation of hurricane shutters, together with such specifications as the Association requires. If hurricane shutters are installed for a Unit, such shutters shall become a part of that Unit and shall not constitute a Common Element, Limited Common Element or Association Property. The Unit Owner installing a hurricane shutter shall hold harmless and indemnify the Association and all other Unit Owners for all damages, expenses, court costs and attorneys' fees incurred by the Association and all other Unit Owners for repairing any damage to the Building, Common Elements or Limited Common Elements as a result of such installation. Hurricane shutters, if installed, shall remain open unless and until a storm watch or storm warning is announced by the National Hurricane Center or other recognized weather forecaster, and then they must be reopened within the time frame as determined by the Board but in no event later than twenty-four hours after the storm watch or warning has been lifted. Developer shall not be liable or responsible in any manner for the types of hurricane shutters approved by the Association.
- 7.5 Definition of "Maintenance". When used in this Section 7, unless the context requires otherwise, the term "maintenance" and its correlatives shall be read to mean keeping the item to be maintained in a clean and orderly condition and painting, repairing and replacing it when reasonably necessary.

8. Additions, Alterations or Improvements.

- 8.1 By the Association. Whenever in the judgment of the Board of Directors, the Common Elements or the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of 5% of the then annual budget of the Association, 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 capital additions, alterations or improvements to such Common Elements or the Association Property, or any part of either, costing less than 5% of the then annual budget of the Association 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.

8.2 By the Unit Owner.

- (a) Consents and Permits. No Unit Owner shall make any addition, alteration or improvement in or to the Units, the Common Elements, the Association Property, or any Limited Common Elements, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer, in writing, any written request by such a Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received (but any written requests pertaining to weight and sound restrictions shall afford the Board a ninety (90) day investigative and determination period), and the failure to do so within the stipulated time shall constitute the Board's consent. The Owner shall pay the Association a reasonable plan review fee for the services of the Board and any other consultants retained by the Board to perform such services. The Board may condition the approval in any manner, including without limitation, retaining approval rights of the contractor to perform the work. No Unit Owner shall make any addition, alteration or improvement in or to the interior of the Unit without obtaining all appropriate governmental permits which are necessary for such work and provided that such alteration, addition or improvement will not adversely affect the structural integrity of the Building or cause any damage to or adversely affect the Common Elements, Limited Common Elements or other Units and/or the Condominium Property. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. 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, tenants, partners, members, employees, officers, directors, shareholders, legal representatives, successors and assigns, as appropriate, to hold the Developer, the Association, and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof as may be required by the Association. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer nor the Association, nor any of its or their officers, directors, partners, employees, shareholders, successors, assigns, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any

plans or other submissions, negligence, or any other misfeasance, malfeasance, or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions under this Declaration. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer and the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each such Owner (including its heirs, tenants, partners, members, employees, officers, directors, shareholders, legal representatives, successors and assigns) having plans reviewed hereunder agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels) arising out of any review of plans by the Association hereunder.

- (b) Weight and Sound Restrictions. Unless installed by the Developer or otherwise first approved by the Board, hard and/or heavy surface floor coverings, such as tile, marble, wood and the like must be submitted to and approved, in writing, by the Board of Directors, which approval may be conditioned upon the use of appropriate soundproofing materials under such floor coverings, and must meet applicable structural requirements. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building. The Board of Directors may require a structural engineer or other appropriately qualified consultant to review certain of the proposed improvements, with such review to be at the Owner's sole expense. The Board will have the right to specify the exact material to be used on any exterior modifications. These use guidelines are consistent with good design practices for waterproofing and structural design. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. **APPLICABLE WARRANTIES OF THE DEVELOPER, IF ANY, SHALL BE VOIDED BY VIOLATIONS OF THESE RESTRICTIONS AND REQUIREMENTS. EACH OWNER, BY ACQUIRING TITLE TO A UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND TRANSMISSION IN ANY UNIT OR BUILDING WITHIN THE CONDOMINIUM PROPERTY IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY UNITS AND/OR MECHANICAL EQUIPMENT MAY BE HEARD IN ANOTHER UNIT. THE DEVELOPER DOES NOT**

**MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND TRANSMISSION BETWEEN AND AMONG UNITS AND IN OTHER PORTIONS OF THE CONDOMINIUM PROPERTY, AND EACH UNIT OWNER HEREBY WAIVES AND EXPRESSLY RELEASES DEVELOPER AND ITS SUCCESSORS, ASSIGNS, OFFICERS, SHAREHOLDERS, DIRECTORS, PARTNERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY WARRANTY OR CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND TRANSMISSION.**

- 8.3 By the Developer. Notwithstanding any other provision in this Declaration to the contrary, the Developer shall have the absolute and unconditional right, without the consent or approval of the Board of Directors or any Unit Owners, (i) to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and the Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements); (ii) change the layout or number of rooms in any Developer-owned Units; (iii) change the size of Developer-owned Units by combining separate Developer-owned Units into one (1) or more Units; and (iv) to subdivide Units 105, 200 and 243, or any of them, as provided in subsection 3.1 above; provided, however, that all such alterations, additions or improvements shall be done in accordance with all applicable building codes and governmental regulations. If the Developer shall make any changes in Units, as provided in this subsection, such changes shall be reflected by an amendment to this Declaration with a survey attached reflecting such authorized alteration of those Units and a modified Exhibit "5" shall replace and supersede the one attached hereto and any subsequent one, and said amendment need only be executed and acknowledged by the Developer and any holders of institutional mortgages encumbering the said altered Units. The survey shall be certified in the manner required by the Act.
- 8.4 Not Applicable to Developer. The restrictions and limitations set forth in this Section 8 shall not apply to the Developer, its designees, successors and assigns, or to Units owned by or leased to the Developer.

9. **Operation of the Condominium by the Association; Powers and Duties.**

- 9.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and By-Laws of the Association (respectively, Exhibits "2" and "3" annexed hereto and made a part hereof), as amended from time to time. In addition, the Association shall have (i) all the common law and statutory powers of a corporation not for profit and for profit under the laws of Florida that are not in conflict with the provisions of the Articles, the Declaration, the By-Laws or the Act; (ii) the powers and duties set forth in the Act, and (iii) all powers and duties granted to or imposed upon it by this Declaration, including without limitation:

- (a) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, and the 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 Articles, the By-Laws, and this Declaration and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (b) The power to adopt and amend Rules and Regulations concerning the details of the operation and use of the Units and the Condominium Property.
- (c) The power to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit Owner by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.

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

9.3 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property to be maintained and repaired by the Association, or caused by the elements, other Unit Owners or third parties. 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. The Association shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where (i) such insurance is not required hereby or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

- 9.4 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 the Unit.
- 9.5 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.
- 9.6 Effect on Developer. If the Developer holds a Unit for sale in the ordinary course of business, the following action may not be taken without the prior written approval of the Developer: any action by the Association that would be detrimental to the sales of Units by the Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.
- 9.7 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable Rules and Regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

**NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY INCLUDING, WITHOUT LIMITATION, UNIT**

**OWNERS AND THEIR EMPLOYEES, FAMILIES, GUESTS, INVITEES, AGENTS, OFFICERS, DIRECTORS, PARTNERS, MEMBERS, SHAREHOLDERS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:**

**(a) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE CONDOMINIUM PROPERTY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF;**

**(b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, THE COUNTY AND MUNICIPALITY IN WHICH THE CONDOMINIUM PROPERTY IS LOCATED, AND/OR ANY OTHER JURISDICTION, OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND**

**(c) ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.**

**EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.**

**AS USED IN THIS SUBSECTION 9.7, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, MANAGERS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS CONTAINED IN THIS SUBSECTION 9.7 SHALL ALSO INURE TO THE**

**BENEFIT OF THE DEVELOPER, ITS SUCCESSORS AND ASSIGNS, WHO SHALL ALL BE FULLY PROTECTED HEREBY.**

10. **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 a reserve (only if required by law) for the operation, maintenance, repair and replacement of the Common Elements, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract, 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, Rules and Regulations or by the Association. Working capital contributions may be used to reimburse the Developer for start-up expenses and otherwise as the Board shall determine from time to time and need not be restricted or accumulated. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts (only if required by law), or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws.

11. **Collection of Assessments.**

- 11.1 **Liability for Assessments.** A Unit Owner, regardless of how title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while that person is the Unit Owner. In addition, a Unit Owner shall be jointly and severally liable with the previous owner for all unpaid Assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the Owner may have to recover from the previous owner the amounts paid by the Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
- 11.2 **Default in Payment of Assessments for Common Expenses.** Assessments and installments thereof not paid within ten (10) days from the day when they are due shall bear interest at the highest lawful rate from the date due until paid. In addition to the above stated interest, the Association shall charge an administrative late fee in an amount not to exceed the highest amount provided for in the Act (as amended from time to time) on Assessments and installments thereof not paid when due. All payments upon account shall be first applied to

interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection and then to the delinquent Assessment. The foregoing method of applying payments shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The Association has a lien on each Condominium Parcel for any unpaid Assessments or installments thereof, with interest, late fees and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien whether suit be brought or not. The lien is effective from and shall relate back to the last to occur of the recording of this Declaration or amendment thereto creating the Condominium Parcel. However, as to Institutional First Mortgagees holding a first mortgage of record, the lien is effective from and after recording of a claim of lien in the Public Records of the County in which the Condominium Parcel is located, stating the description of the Condominium Parcel, the name of the record Owner, name and address of the Association, the amount due and the due date. The claim of lien must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such claim of lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended by any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Unit Owner or any other person claiming an interest in the Condominium Parcel. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon, and costs and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title as well as interest, and all reasonable costs and attorney's fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid Assessments. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner, the Association may declare the Assessment installments for the next twelve (12) months to be accelerated (or if acceleration to such extent is prohibited by the Act, then the Association may declare Assessments to the maximum extent permitted under the Act to be accelerated) and such amount shall thereupon be due and payable on the date the claim of lien is filed. Such accelerated Assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed. In

the event the amount of such installments changes during the period for which Assessments were accelerated, 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.

11.3 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 attorneys' 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 and the court shall proceed with the foreclosure action and may award attorneys' 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.

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

11.5 Institutional First Mortgagee. An Institutional First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure, or a Deed in Lieu of Foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. The liability of an Institutional First Mortgage, or its successor or assignees, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's acquisition of title is limited to the lesser of:

- (a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
- (b) One percent (1%) of the original mortgage debt.

If any unpaid share or Common Expenses or Assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are Common

Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns. An Institutional First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure or Deed in Lieu of Foreclosure may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. As to a Unit acquired by foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the Institutional First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by that Institutional First Mortgagee.

- 11.6 Certificate of Unpaid Assessments. Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit have been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 11.7 Installments. Regular Assessments may be collected monthly or quarterly, in advance, at the sole option of the Association from time to time. Initially, Assessments will be collected monthly, but the Board reserves the right to change to quarterly installments upon advance written notice to all Unit Owners.
- 11.8 Capital Contribution. All Owners, except the Developer and its successors and assigns (who shall be exempt from the provisions of this subsection 11.8), shall contribute and be charged an initial capital contribution ("Capital Contribution") to the Association in an amount equal to one (1) month of the regular Assessment for each Unit then being purchased, which shall be payable at the time of closing of that Unit. The Capital Contribution shall be a "one time only" payment per Unit made by Owners who purchase Units directly from the Developer, its successors or assigns, and shall not apply to successive sales of the same Unit to succeeding Owners. Capital Contributions may be used for the purposes described in this Declaration or as solely determined by the Board.
12. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 12.1 Purchase, Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property and Association Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.

- (b) Mortgagees. No policy or insurance coverage shall impair the security of the Primary Institutional First Mortgagee without its consent.
- (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.
- (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). If no Insurance Trustee is appointed, the Association will perform directly all obligations imposed upon such Insurance Trustee by this Declaration.
- (e) Copies to Mortgagees. A certificate of insurance on standard insurance company forms showing all coverages including endorsements thereto shall be furnished by the Association upon written request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by said insurance policies. Copies of the actual policies and their endorsements will be provided at a charge determined by the actual cost to reproduce said policies. Certificates of insurance shall be furnished not less than thirty (30) days after the beginning of the term of the policies, or not less than thirty (30) days after the renewal 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 (or within any Limited Common Elements appurtenant thereto), including, but not limited to, their personal property, betterments and improvements, and the liability of their operations, and any loss of income or extra expense from damage to their Units.

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

- (a) Casualty. Any Building (including the Limited Common Elements and the Common Elements) and all installations or additions comprising that part of any Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), and all Improvements located on the Common Elements from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or owned by the Association (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. The Association shall not

maintain insurance coverage for the following: all improvements built or installed in the Unit, furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, all equipment located within a Unit (or on Limited Common Elements appurtenant thereto) and such other equipment as the Unit Owner is required to maintain, repair or replace under this Declaration, all electrical fixtures, appliances, air conditioner or heating equipment, water heaters, built-in cabinets, fixtures, appliances or any and all other items permitted to be excluded from the Condominium Association's insurance policy pursuant to the Act. 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 Hazards covered by a standard "all risk" coverage endorsement; and
  - (ii) Such Other Risk as from time to time are customarily covered with respect to Building and improvements similar to the Insured Property in construction, location and use.
- (b) Commercial General Liability. Coverage for public liability covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, with minimum coverage of \$1,000,000 combined single limits for each accident or occurrence and an aggregate of \$2,000,000 per policy year.
  - (c) Worker's Compensation. The Association shall obtain worker's compensation and other mandatory insurance under the Act.
  - (d) Flood Insurance. The Association shall obtain flood insurance if required by the Primary Institutional First Mortgagee or if the Association so elects.
  - (e) Fidelity Insurance. The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association in an amount not less than the minimum sum required by the Act.
  - (f) Directors and Officers Liability Insurance. The Association shall obtain directors and officers liability insurance coverage for its directors and officers of not less than \$1,000,000 for each occurrence.
  - (g) 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.

- (h) Automobile Liability. The Association shall obtain and maintain automobile liability coverage for any owned, hired or non-owned automobiles used by the Association to perform its duties, services and responsibilities under this Declaration, the Articles, By-Laws, or the Rules and Regulations, of \$1,000,000 per accident or occurrence without an aggregate. This coverage will be provided as an endorsement to the comprehensive general liability policy or provided with a business automobile policy issued to the Association.
- (i) Such Other Insurance. The Board of Directors of the Association shall obtain such other policies of insurance as the Board may 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 co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

- 12.3 Additional Provisions. All policies of insurance shall provide that such policies may not be cancelled 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 a competent appraiser or other duly licensed professional having experience in such matters, 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.
- 12.4 Premiums. Premiums (or allocable shares thereof) upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 12.5 Unit Owner Coverage. Each Unit Owner shall obtain and maintain, at all times, commercial general liability coverage insuring the property lying within the boundaries of its Unit and the liabilities arising from the use and occupation of its

own Unit and other areas of the Common Elements for which it has exclusive use. Each Unit Owner shall provide the Association with a certificate of insurance naming the Association as an additional insured under the liability section. Coverage must be written with an insurance company rated by AM Best A- or higher. The coverage for a Unit Owner must be \$1,000,000 combined single limit per occurrence with a \$2,000,000 per policy year aggregate. This coverage may be increased at the option of the Association from time to time.

12.6 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 Association or to the Insurance Trustee (if one exists) which may, but need not, be designated by the Board of Directors. References herein to the Insurance Trustee shall be deemed to apply to the Board of Directors if it elects to serve such functions pursuant to subsection 12.11 hereof. 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 such 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 and/or Limited Common Elements appurtenant thereto, 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.

12.7 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 subsection 12.6 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.

12.8 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.

12.9 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 (or Limited Common Elements appurtenant thereto), nor casualty or theft loss to the contents of an Owner's Unit or Limited Common Elements appurtenant thereto. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all risks not covered by insurance carried by the Association.

12.10 Benefit of Mortgagees. Certain provisions in this Section 12 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

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

13. Reconstruction or Repair After Fire or Other Casualty.

13.1 Determination to Reconstruct or Repair. Subject to the immediately following sub-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 of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and at least 51% 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 thirty (30) days after the date of issuance of any required building permits from the applicable governmental agencies having jurisdiction over the Condominium Property. 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.

- 13.2 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 are 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.

13.3 Special Responsibilities.

- (a) 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.
- (b) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund

shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

- (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if 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 shall promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee (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 (if appointed), 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.

13.4 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. Costs on account of damage to the Optional Property shall be charged to each Owner in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

13.5 Benefit of Mortgagees. Certain provisions in this Section 13 are for the benefit of mortgagees of Units and may be enforced by any of them.

14. Condemnation.

14.1 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 (if appointed); and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner, or the Board shall have the right to proceed in a court of equity to require performance and/or sue at law for damages.

14.2 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.

- 14.3 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 14 specifically provided.
- 14.4 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 and discretion 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 charged against the Owner of the Unit. The Association shall have the right to collect and enforce such costs and charges as elsewhere provided in accordance with this Declaration, pursuant to subsection 17.2 below and applicable law.
  - (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 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.

14.5 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 and discretion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from 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 14.4(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 14.4(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 Owners 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 thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue to be Owners 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.

14.6 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 are 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.

14.7 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.

15. Occupancy and Use Restrictions. In order to provide for congenial occupancy and use 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:

- 15.1 Use Restriction. All Units shall be occupied and used (whether by ownership, lease, sublease, license or otherwise) solely for an "Approved Business Purpose" (hereinafter defined) and for no other purposes. For purposes hereof, an "Approved Business Purpose" shall mean and refer to a commercial or medical business use that is set forth on the list of approved business uses for a Unit that is on file with the Association and approved by the Developer (and subsequent to Turnover, by the Association). Neither the Developer nor the Association shall approve of any use of a particular unit that would violate any zoning restrictions or parking limitations for the property, including, but not limited to, the limitation of medical uses in excess of the total square footage of medical uses allocated to the Condominium by the City of Boca Raton. Said list of approved business uses for a Unit may be amended at any time and from time to time at the sole discretion of the Developer, subject to the terms herein. Neither the Developer nor the Association shall modify the list of Approved Business Purposes without the consent of any Owner who would be impacted by such change. Upon taking title to a Unit and using a Unit for any Approved Business Purpose, such use shall become vested with respect to the Unit Owner and the Unit. Developer, for so long as it owns a Unit in the Condominium, shall have the right, without obligation, to grant exclusivity as to an Approved Business Purpose to a Unit from time to time. Any use of a Unit, or any portion thereof, other than for the specified uses expressly permitted herein, shall be deemed invalid, void and unenforceable, and Developer and the Association shall each have the unrestricted right to seek and obtain any remedies available at law or in equity (including any rights to injunctive relief) to prevent, prohibit and/or enjoin the unpermitted use or threatened use. Developer shall also have all rights and remedies that are contained in this Declaration to enforce compliance herewith that either the Developer or the Association may have hereunder, including, but not limited to, Section 17 hereof. The foregoing use restrictions are hereby declared, reserved and imposed by the Developer as an equitable servitude and restrictive covenant running with the Land and each Unit, binding upon the Developer and all persons claiming by, through or under Developer, for the benefit of and as a limitation and burden upon the Land, each Unit, Developer, and all future Owners.
- 15.2 Antennas and Aerials. Except as otherwise approved by the Board, in writing, no antenna, satellite dish, or aerial shall be placed by an Owner upon the Common Elements, Building rooftop, or affixed to the exterior of a Unit, and no antenna or aerial placed or affixed within a Unit shall extend or protrude beyond the exterior of a Unit or the planes of such exteriors. After the Turnover Date, the Association, with the joinder and consent of the Developer (for so long as Developer owns a Unit) and not less than 85% of the Units in the Condominium, may subsequently prohibit any of the foregoing items in this subsection 15.2 which were previously permitted by Developer.
- 15.3 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property or Association Property, nor shall any use or practice be allowed which is a source of annoyance to Owners or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium

Property and/or Association Property by its Owners, members, or occupants. The Association in determining whether an act constitutes a "nuisance" herein shall take into account that the Units are in a non-residential conversion Condominium having both medical and other commercial uses permitted to coexist. Smoking on the Condominium Property is limited to only those areas of the Common Elements specifically designated by the Association.

- 15.4 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or Association Property, or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. No Unit Owner, tenant, occupant or guest shall store, use or dispose of any hazardous substances, petroleum products or flammable substances on the Condominium Property, as such terms are defined under federal, state or local laws, rules or regulations. The foregoing sentence shall not apply to the storage or use of petroleum products in automobiles, trucks or other gasoline powered vehicles validly located on the Condominium Property, to the Developer or Association, or its or their agents, designees or contractors, while they are involved in providing services for the construction and/or maintenance of the Condominium Property, or if such products or substances are required for the Approved Business Purpose of a Unit provided the storage, use and disposal of such products and substances are approved, in writing, by the Association. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth.

- 15.5 Signs. No sign, advertisement, notice, sticker, graphic, lettering or descriptive design of any kind, including, but not limited to, "for sale" or "for rent" signs, shall be displayed, inscribed, painted, affixed or placed upon any part of the Condominium Property, except for those installed, used or approved, in writing, by the Developer or the Board of Directors. No unsightly materials may be placed on any window or glass door or be visible through such window or glass door on the Condominium Property. Developer shall require uniform door signage for the Units. The Association shall place directories of the business names of all Unit Owners, both inside and outside a Building, at one or more locations on the Condominium Property, as solely determined by the Board. Every Unit Owner's business name will be listed in those directories in a manner solely determined by the Board. The Association may charge each Unit Owner a reasonable fee, at one-time or on a regular basis, for such listings. The Board shall place a street monument on the Condominium Property that will list the business names of certain Unit Owners. The Board, at its sole discretion, will determine which Unit Owners will have their business names listed on the street monument and the list may change from time to time and a Unit Owner's business name may be removed from that street monument even though that Unit Owner may continue to own a Unit. The business names of all Unit Owners will not be

listed on the street monument. The Association may charge a reasonable fee, at one-time or on a regular basis, to those Unit Owners whose business names are being listed on the street monument. After the Turnover Date, the Association, with the joinder and consent of the Developer (for so long as Developer owns a Unit in the Condominium) and not less than 85% of the Units in the Condominium, may change the business names listed on the street monument.

- 15.6 Mitigation of Dampness and Humidity. No Unit Owner shall install, within its Unit, or upon the Common Elements or Association Property, non-breathable wall-coverings or low-permeable paints. Additionally, any and all built-in casework, furniture, and/or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at 78°F, to minimize humidity in the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds, fungi, mildew or mycotoxins. **The Developer does not make any representations or warranties regarding the existence or development of molds, fungi, mildew or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. DEVELOPER SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGES INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL OR CONSEQUENTIAL DAMAGES, PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE, DIMINUTION OR LOSS IN VALUE OF THE UNIT OR CONDOMINIUM PROPERTY, ECONOMIC DAMAGES AND ADVERSE HEALTH EFFECTS RELATING TO, ARISING FROM, RESULTING FROM OR CAUSED BY MOLD, FUNGI, MILDEW OR MYCOTOXIN ACCUMULATION REGARDLESS OF THE CAUSE OF SAME. EACH UNIT OWNER (AND ITS TENANTS, HEIRS, FAMILY MEMBERS, PARTNERS, MEMBERS, DIRECTORS, SHAREHOLDERS, LEGAL REPRESENTATIVES, EMPLOYEES, INVITEES, CONTRACTORS, AGENTS, SUCCESSORS AND ASSIGNS) RELEASES AND DISCHARGES DEVELOPER FROM AND AGAINST ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITIES, LOSSES, INJURIES AND EXPENSES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR UNFORESEEN, THAT ANY OF THE FOREGOING PERSONS OR ENTITIES HAS OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY, ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH INDOOR AIR QUALITY, MOISTURE OR THE GROWTH, RELEASE, DISCHARGE, DISPERSAL OR PRESENCE OF MOLD AND/OR MILDEW OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM.** In furtherance of the rights of the Association as set forth in

subsection 3.4(h) of the Declaration, in the event that the Association reasonably believes that the provisions of this Section are not being complied with, then, the Association shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Owner or any other party) and to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Owner or any other party) to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Owner to the Association).

- 15.7 Interior Window Decorations. No draperies, blinds, shades, shutters or any other decoration or finishing may be affixed to or placed in the interior of any window to a Unit if such is visible from the exterior of the Unit unless such decoration or finishing has been first approved in writing by the Board, which approval may be withheld by the Board in its sole and absolute discretion, and which approval the Board shall not grant if, in its opinion the effect of any of the foregoing will detract from the exterior aesthetic appearance of the Condominium Property.
- 15.8 Litter. No article of personal property shall be hung or shaken from the doors or windows of any Unit. No Owner shall sweep or throw from his Unit any dirt or any other materials. No garbage, trash, refuse or rubbish shall be deposited, dumped, or kept on any part of the Common Elements except in closed containers deposited in receptacles or placed for pick-up in accordance with Rules and Regulations promulgated by the Board.
- 15.9 Utility Addition. No additional utility fixture or improvement including without limitation, any water, sewage, electrical, air conditioning or heating system, line, duct, conduit, pipe, or wire shall be added to service any Unit without the prior written consent thereto by the Board whose consent may be withheld.
- 15.10 Increase in Insurance Rates. Except as expressly permitted under this Declaration, no Owner shall take any action, without the prior written approval of the Board, which will result in an increase in the rate of any insurance policy or policies covering any part of the Condominium Property.
- 15.11 Exterior Improvements. Without limiting the generality of subsection 8.2 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, windows or any other exterior part of any Buildings (including, but not limited to, awnings, signs ("for sale," "for lease" or of any other type), screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Association. After the Turnover Date, the Association, with the joinder and consent of the Developer and not less than 85% of the Units in the Condominium, may subsequently prohibit an exterior improvement to a Building that was previously permitted by Developer.

- 15.12 Additional Rules and Regulations. The Association may promulgate such other Rules and Regulations as it determines to be in the best interests of the Unit Owners provided they in no way diminish, alter or have a material and adverse effect on the rights and privileges of the Developer or an Owner, including, but not limited to, the right of quiet enjoyment of a Unit by its Owner, and such additional Rules and Regulations shall, as long as they remain in force, be deemed additional covenants and restrictions as to the ownership, use, and occupation of the Condominium Property and are incorporated by reference.
- 15.13 Relief by Association. The Association shall have the right (but not the obligation) to grant relief in particular circumstances from the provisions of the specific restrictions contained in this Section 15 for good cause shown.
- 15.14 Fire and Safety Access/Roof Access. All Owners shall be obligated to maintain a fire and safety access through such Owner's Unit as may be required by the applicable fire and safety codes, during normal business hours or otherwise, as required by such codes. No Unit Owner shall personally access or cause others to access the roof of any Buildings for any reason whatsoever without first complying with the written procedures of the Association for such access. Such procedures shall include the filing of applicable licenses and insurance certificates with the Association for technicians servicing rooftop equipment. All service personnel accessing any roof shall work in a clean and safe manner and shall stay within marked rooftop circulation paths and walkways and within the immediate area of equipment being serviced. **DEVELOPER SHALL NOT BE RESPONSIBLE OR LIABLE, AND APPLICABLE ROOF WARRANTIES SHALL BE NULL AND VOID, IN THE EVENT ROOF ACCESS PROCEDURES ARE NOT STRICTLY FOLLOWED.**
- 15.15 No Timesharing. No portion of the Condominium Property shall ever be used for real estate timesharing or interval ownership of any type, including, but not limited to, under a "timeshare plan," as that term is defined in Chapter 721 of the Florida Statutes on the date of recordation of this Declaration.
- 15.16 Not Applicable to Developer. The restrictions and limitations set forth in this Section 15 shall not apply to the Developer, its designees, successors and assigns, or to Units owned by or leased to the Developer.
16. Selling, Transferring, Leasing and Mortgaging of Units.
- 16.1 General. In order to assure a community of compatible owners and to protect the value of the Units, no Owner may convey, transfer, dispose of, or encumber his Unit, any part thereof, or any interest therein by sale, lease, mortgage or otherwise (except to the extent permitted hereunder) without strict compliance with the terms and provisions of this Section 16.
- 16.2 Sales. The sale and conveyance of a Unit shall be subject to a right of first refusal in favor of the Association as hereinafter described. The Association shall have

fifteen (15) days from the date of its receipt of a written notice from an Owner stating that Owner's intention to sell his Unit on a form prescribed by the Association ("Resale Notice") within which to exercise its right of first refusal to purchase that Unit. The Resale Notice shall include the name and address of the intended purchaser, the proposed purchase price, the terms of the transaction and such other information concerning the intended purchaser as the Association may reasonably require, together with an executed copy of the proposed contract or other transfer instrument. A reasonable administrative fee, as determined by the Association, may be charged by the Association to the Unit Owner, for the purpose of defraying the costs associated with processing of the application for approval, reflecting the proposed transfer in the books and records of the Association and other matters associated with any Board approved transfer. If the required Resale Notice is not given to the Association, then at any time after receiving the knowledge of the transfer of ownership of the Unit, the Association may, without notice, approve or disapprove of the transaction. If the proposed transfer is approved by the Association, such approval shall be evidenced by a certificate of approval executed by the President of the Association, which certificate shall be recorded in the Public Records of the County, at the expense of the seller of the Unit. If the Association should exercise its right to purchase the Unit, the price to be paid to Owner shall be the bona fide price stated in the contract to sell. If a question arises as to whether or not the sale price is bona fide, the question shall be resolved by having the price determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) MAI appraisers appointed by the American Arbitration Association, who shall base their determination upon the average of their appraisals of the Unit. The sale and purchase shall be closed within sixty (60) days after receipt of the sales contract, or within thirty (30) days after the determination of the sale price by arbitration, whichever date is later. In the event the Association fails to exercise its right of first refusal within fifteen (15) days from the date of its receipt of the Resale Notice, then such transaction shall be deemed to have the approval of the Association. Notwithstanding the foregoing provision, all approvals must be evidenced by a certificate of approval as hereinbefore provided. All funds expended by the Association for the repurchase of a Unit pursuant to this Section 16, shall be paid from funds collected by the Association from Assessments against the Owners or by other means approved by the Board. All proceeds from the purchased Unit shall be returned to the general reserves of the Association. Any sale or other transfer not authorized pursuant to the terms of this Section 16, shall be void unless subsequently approved by the Association. In addition, no conveyance of a Unit shall be valid unless there is also recorded in the Public Records of the County a certificate signed by an officer or agent of the Association stating that all Assessments, charges, fines and other monies due to the Association, as of the date of the certificate, are paid in full. The Association shall respond to a request for such a certificate within fifteen (15) days of receipt of same and may charge an administrative fee for the processing thereof.

- 16.3 Exceptions. The foregoing provisions pertaining to the sale or transfer of a Unit shall not apply to the following:
- (a) A transfer to, or purchase by an Institutional First Mortgagee, who acquires title as a result of owning a mortgage upon a Unit, and this shall be so whether title is acquired by deed or other conveyance from the mortgagor, or through judicial foreclosure proceedings; nor shall such provisions apply to a transfer or sale by an Institutional First Mortgagee that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale, or tax sale.
  - (b) A transfer from a trustee to a successor trustee.
  - (c) A transfer by devise or inheritance.
  - (d) A transfer by operation of law.
  - (e) A transfer to a then existing Unit Owner who is (i) in good standing with respect to paying all Assessments and other charges then due to the Association and (ii) not in violation of this Declaration or the Rules and Regulations.
  - (f) The sale or transfer of a Unit to the Developer, or the sale or transfer of a Unit by the Developer.
- 16.4 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.
- 16.5 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.
- 16.6 Leases. Leasing of Units shall 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, including, without limitation, because the lessor is delinquent in the payment of Assessments to the Association or has any outstanding fine. A reasonable administrative fee will be charged by the Association to the Owner for the cost to review the lease and to perform other services associated therewith. Every lease of a Unit shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all exhibits thereto) and with

any and all Rules and Regulations adopted by the Association from time to time and that any failure by the lessee to comply with the terms under the lease shall empower the Association with the right and authority on behalf of the Owner to commence legal proceedings to cause the lessee to be evicted. Leases for all Units shall comply with and be subject to the provisions of the Declaration of Condominium, Articles of Incorporation, Rules and Regulations, By-Laws, and the Act, and the provisions of same shall be deemed expressly incorporated into any lease of a Unit. A Unit Owner may sublet his Unit. This subsection shall also apply to subleases and assignments and renewals of leases. All leases of Units are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease. No lease of a Unit shall be for a term of less than twelve (12) months and no Unit may be leased in excess of two (2) times in any twelve (12) month period. The Association shall have the right to require that each lease contain certain uniform provisions, consistent with the foregoing terms and conditions.

16.7 Gifts and Devises. 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 16.

16.8 Transfer of Units. Notwithstanding anything contained in Section 16 hereof or any other provisions in this Declaration to the contrary, Developer reserves and shall have the absolute and unqualified right for as long as Developer owns any Unit, now or by reacquisition, to sell, lease at any time and from time to time, mortgage, or otherwise transfer or encumber any such Unit in any way or manner determined by the Developer in its sole and absolute discretion without limitation.

17. Compliance and Default. The Association, each Unit Owner, mortgagee, occupant or tenant of a Unit, and other invitees of a Unit Owner, 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, and the provisions of all such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

17.1 Negligence. A Unit Owner, occupant, tenant or mortgagee of a Unit 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, contractors, officers, agents, invitees or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected by the Association in respect of such negligence.

17.2 Compliance. In the event a Unit Owner, tenant, mortgagee 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, the Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, after written notice and any applicable curative period under that document has expired, the Association shall have the right to proceed in court to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, to make a special charge against the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, and to hire an attorney to make a charge against the Unit Owner and Unit for the costs of such reasonable attorneys' fees incurred in requiring performance and/or compliance of the Unit Owner. In addition, the Association has the irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.

- 17.3 Fines. In the event a Unit Owner, tenant, occupant, invitee, licensee, mortgagee, guest or contractor fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, the Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to impose a fine against the Unit Owner and the Unit. The amount of any fine shall be determined by the Board of Directors of the Association, but in any event shall not exceed any maximum amount permitted by the Act, as such Act may be amended from time to time. Any fine shall be imposed by written notice to the Unit Owner, tenant, or other person or entity in non-compliance, signed by an officer of the Association, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the Unit Owner, tenant, or other person or entity in non-compliance, has the right to contest the fine by delivering written notice to the Association within fourteen (14) days after receipt of the notice imposing the fine. If the Unit Owner, tenant, or other person or entity in non-compliance, timely and properly objects to the fine, a committee of other Unit Owners ("Unit Owner Committee") appointed by the Board of Directors of the Association for the purpose of conducting these types of hearings shall conduct a hearing within thirty (30) days after receipt of the Unit Owner's, tenant's, or non-complying party's objection, and shall give the Unit Owner, tenant, or other person or entity in non-compliance, not less than fourteen (14) days written notice of the hearing date. Such notice shall include:

- (i) A statement of the date, time and place of the hearing;
- (ii) A statement of the provisions of the Declaration, Association By-Laws, or Association Rules and Regulations which have allegedly been violated; and
- (iii) A short and plain statement of the matters asserted by the Association.

At the hearing, the Unit Owner Committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred and that the fine imposed is appropriate. The Unit Owner, tenant, or other person or entity in non-compliance, shall have the right to attend the hearing and to respond to any material considered by the Association and to produce evidence on his behalf and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. If the Unit Owner, tenant, or other person or entity in non-compliance, fails to attend the hearing, then the hearing will be deemed waived and the Unit Owner Committee may ratify the fine without further proceedings. At the hearing, the Unit Owner Committee shall ratify the fine or if the Unit Owner Committee does not agree with the fine, it may reduce or eliminate the fine and shall give the Unit Owner, tenant, or other person or entity in non-compliance, written notice of its decision. Any fine shall be due and payable within fourteen (14) days after written notice of the imposition of the fine, or if a hearing is timely requested within fourteen (14) days after written notice of the Unit Owner Committee's decision at the hearing. If any fine is levied against a tenant and is not paid within fourteen (14) days after same is due, the Association shall have the right to evict the tenant.

- 17.4 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner, tenant, occupant, invitee, licensee, guest or contractor to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the Rules and Regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees (including appellate attorneys' fees).
- 17.5 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the Rules and Regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
18. 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 all of the applicable interests in the Common Elements and by all of the holders of recorded mortgage liens affecting the Condominium Parcels. 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 that Unit Owner has first paid off all mortgages and liens on his Unit. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the

termination and said certificate shall be recorded among the Public Records of the County. This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as Developer owns at least one (1) Unit.

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

19.1 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, which financial statement must be available within 120 days of the Association's fiscal year end, (iii) receive notices of and attend Association meetings, (iv) receive notice of any alleged default in any obligations hereunder by any Unit Owner, on whose Unit such Institutional First 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.

19.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing from the Association, the right to timely written notice of (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. **Covenant Running With the Land.** All provisions of this Declaration, the Articles, By-Laws and the Rules and Regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, legal 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, the Articles, By-Laws and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed of 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 the Rules and Regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

21. **Disclaimer of Warranties.** DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ALL COMMON LAW AND STATUTORY WARRANTIES, ALONG WITH THOSE PERTAINING TO THE DESIGN, CONSTRUCTION, SOUND TRANSMISSION, FINISHING, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, AND THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND HABITABILITY, EXCEPT TO THE EXTENT THAT SUCH WARRANTIES EXIST UNDER THE ACT FOR NON-RESIDENTIAL CONVERSION CONDOMINIUMS AND THEY CANNOT BE DISCLAIMED AND HAVE NOT EXPIRED BY THEIR TERMS THEREUNDER. AS TO THOSE WARRANTIES WHICH CANNOT BE DISCLAIMED, IF ANY, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL SECONDARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY SPECIFICALLY EXCLUDED AND DISCLAIMED. ALL UNIT OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS, WHETHER FROM THE DEVELOPER OR ANOTHER PARTY, SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND SECONDARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES. IN ADDITION TO THE FOREGOING, DEVELOPER HEREBY DISCLAIMS (AND EACH UNIT OWNER, BY VIRTUE OF ACCEPTING TITLE TO A UNIT IN THE CONDOMINIUM, HEREBY WAIVES) ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO THE NUMBER OF SQUARE FEET CONTAINED IN THE UNIT OR ANY APPURTENANT LIMITED COMMON ELEMENTS, NOTWITHSTANDING ANY STATEMENTS OR ESTIMATES OF SAME CONTAINED IN ANY SALES MATERIAL, CONTRACT OR OTHER AGREEMENT.

22. **Additional Provisions.**

22.1 **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), facsimile or express overnight delivery service to the Association at its principal place of business as shown by the records of the Florida Department of State or to such other address as the Association may designate from time to time. 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 the Unit Owner from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by certified mail (return receipt requested), facsimile or express overnight delivery service to their respective business addresses, or to 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 envelope, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

- 22.2 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.
- 22.3 Mortgages. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 22.4 Exhibits. There is hereby incorporated in this Declaration all materials contained in the exhibits annexed hereto.
- 22.5 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.
- 22.6 Governing Law, Venue and Waiver of Jury Trial. 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 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. Venue for any suit, action or other legal proceeding arising out of or relating to this Declaration, the exhibits annexed hereto, or any Rules and Regulations adopted pursuant to such documents, shall be brought in the courts of record of the State of Florida in Palm Beach County or the courts of the United States, Southern District of Florida. **EACH OWNER ACKNOWLEDGES REGARDLESS OF WHERE SUCH OWNER (i) EXECUTED A PURCHASE AND SALE AGREEMENT, (ii) HAS ITS PLACE OF BUSINESS OR RESIDENCE, (iii) OBTAINS FINANCING, OR (iv) CLOSED ON A UNIT, THAT THIS DECLARATION LEGALLY AND FACTUALLY WAS EXECUTED IN PALM BEACH COUNTY, FLORIDA. DEVELOPER HAS AN OFFICE IN PALM BEACH COUNTY, FLORIDA AND EACH UNIT IS LOCATED IN PALM BEACH COUNTY, FLORIDA. ACCORDINGLY, AN IRREFUTABLE PRESUMPTION EXISTS THAT THE ONLY APPROPRIATE VENUE FOR THE RESOLUTION OF ANY DISPUTE OR COURT ACTION ARISING FROM OR RELATED TO THIS DECLARATION OR THE SUBJECT MATTER DESCRIBED HEREIN LIES IN PALM BEACH COUNTY, FLORIDA. IN ADDITION TO THE FOREGOING, EACH OWNER AND DEVELOPER AGREE THAT THE VENUE FOR RESOLUTION OF ANY DISPUTE LIES IN PALM BEACH COUNTY, FLORIDA. EACH OWNER, BY ACQUIRING TITLE TO A UNIT, FOR ITSELF, AND ITS HEIRS, LEGAL REPRESENTATIVES,**

SUCCESSORS, ASSIGNS, LICENSEES, INVITEES, EMPLOYEES, AGENTS, TENANTS, CONTRACTORS, PARTNERS, OFFICERS, MEMBERS, FAMILY MEMBERS, OR ANY OTHER PERSONS OR LEGAL ENTITIES, IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING, ACTION OR LAWSUIT ARISING OUT OF OR IN CONNECTION WITH THE TERMS, PROVISIONS AND SUBJECT MATTER OF THIS DECLARATION, ANY RULES AND REGULATIONS PROMULGATED BY THE ASSOCIATION, OR BY VIRTUE OF OWNERSHIP, USE OR RENTAL OF A UNIT IN THE CONDOMINIUM, AND FURTHER THAT NONE OF THE FOREGOING WILL SEEK TO CONSOLIDATE ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED.

- 22.7 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 any 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.
- 22.8 Waiver. No provisions contained in this Declaration, the exhibits annexed hereto or any Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, 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.
- 22.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each tenant and 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, the Articles and By-Laws of the Association, and Rules and Regulations, are fair and reasonable in all material respects.
- 22.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Land as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This power of attorney is irrevocable and coupled with an

interest. The provisions of this subsection may not be amended without the prior written consent of the Developer.

- 22.11 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 22.12 Grant/Reservation. Developer hereby grants and reserves, as appropriate, all easements described in this Declaration to the extent such formal grant and reservation, as appropriate, is necessary under applicable law to create such easements and such language of grant and reservation has been omitted in any such Section hereof.
- 22.13 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.
- 22.14 Mandatory Non-Binding Arbitration of Disputes.
- (a) Prior to the institution of court litigation, the parties to a dispute, as further defined herein, shall petition the Division for non-binding arbitration. Arbitration shall be conducted according to rules promulgated by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitations. For purposes of this subsection 22.14, a "dispute" shall be as defined pursuant to Florida Statute Section 718.1255, as amended from time to time.
  - (b) At the request of any party to the arbitration, such arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may in the discretion of the arbitrator be permitted in the manner provided by the Florida Rules of Civil Procedure.
  - (c) The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a complaint for a trial *de novo* is not filed within 30 days in a court of competent jurisdiction in which the Condominium is located following the date of issuance of the arbitration decision. The right to file for a trial *de novo* entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding may be awarded reasonable attorneys' fees, the costs of the arbitration, or both, in an amount determined in the discretion of the arbitrator.
  - (d) The party who files a complaint for a trial *de novo* shall be assessed the other party's arbitration costs, court costs, and other reasonable costs,

including attorneys' fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial *de novo* is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial *de novo* shall be awarded reasonable court costs and attorneys' fees.

- (e) The decision of an arbitrator shall be final; however, such a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial *de novo*. If such judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial *de novo*.
- (f) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by filing of a complaint for trial *de novo* has expired. If a complaint for a trial *de novo* has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

**22.15 Priorities in Case of Conflict.** In the event of conflict between or among the provisions of any of the following, the order of priority shall be, from highest priority to lowest:

- (a) The Act, as it existed on the date of recording of the Declaration;
- (b) The Declaration;
- (c) The Articles;
- (d) The By-Laws; and
- (e) The Rules and Regulations of the Association.

**22.16 Member Approval of Certain Litigation.** Notwithstanding any other provisions of this Declaration, the Articles, By-Laws or Rules and Regulations to the contrary, the Board of Directors shall be required to obtain the prior approval of at least three-fourths (3/4ths) of all voting interests prior to the payment of, or contracting for the payment of, legal or other fees or expenses to any person engaged by the Association in contemplation of a lawsuit or for the purposes of making, preparing or investigating any lawsuit, or commencing any lawsuit, other than for the following purposes:

- (a) the collection of Assessments;

- (b) the collection of other charges which Owners are obligated to pay pursuant to this Declaration, the Articles, By-Laws or Rules and Regulations;
- (c) the enforcement of the use and occupancy restrictions contained in this Declaration, the Articles, By-Laws or Rules and Regulations;
- (d) the enforcement of any restrictions on the sale, lease and other transfer of Units;
- (e) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association, its members or the Condominium Property, but, in such event, the aforesaid vote shall be taken with respect to the continuation of the action at the earliest practical date (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4ths) of the voting interests); or
- (f) filing a compulsory counterclaim.

This subsection 22.16 shall not be amended without the approval of at least three-fourths (3/4ths) of all voting interests.

- 22.17 Indemnification. The Association covenants and agrees that it will indemnify and hold harmless Developer and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Condominium Property, Association Property, or the appurtenances thereto, from and against all costs, legal fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein, to the extent permitted by law. Included in the foregoing provisions of indemnification are any expenses that Developer may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the Association.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officer this 9<sup>th</sup> day of February, 2006.

WITNESSES:

Print Name:

Print Name:

DEVELOPER:

BOCA RATON PROPERTY, INC.,  
a Florida corporation

By:

James E. Goldstein, President

Post Office Address:

1475 West Cypress Creek Road, Suite 202  
Fort Lauderdale, Florida 33309

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of February, 2006, by James E. Goldstein, the President of BOCA RATON PROPERTY, INC., a Florida corporation, for and on behalf of the corporation. He is personally known to me or has produced his Florida driver's license as identification.

Name:

Notary Public

(Notary Seal)



Mara Porras  
Commission #DD217552  
Expires: Jul 05, 2007  
Bonded Thru  
Atlantic Bonding Co., Inc.

## JOINDER BY MORTGAGEE

The undersigned Mortgagee does hereby join in and consent to the foregoing Declaration of Condominium and agrees that the lien of its Mortgage and Security Agreement, dated February 8, 2006, and recorded on February 10, 2006, in Official Records Book \_\_\_\_\_, at Page \_\_\_\_\_, of the Public Records of Palm Beach County, Florida, and any other security or financing agreements held by said Mortgagee on the said property, are hereby subject, subordinate and inferior to said Declaration, as may be amended or supplemented from time to time.

The undersigned has caused this Joinder to be executed by its duly authorized officer this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

WITNESSES:

COLONIAL BANK, N.A.

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

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

Post Office Address:

\_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, for and on behalf of the entity. He/She is personally known to me or has produced his/her state driver's license as identification.

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

Notary Public

(Notary Seal)

## TWIN LAKES PROFESSIONAL CENTER, A CONDOMINIUM

- |               |   |
|---------------|---|
| EXHIBIT "1" - | LEGAL DESCRIPTION OF REAL PROPERTY BEING SUBMITTED TO CONDOMINIUM OWNERSHIP               |
| EXHIBIT "2" - | ARTICLES OF INCORPORATION OF TWIN LAKES PROFESSIONAL CENTER CONDOMINIUM ASSOCIATION, INC. |
| EXHIBIT "3" - | BY-LAWS OF TWIN LAKES PROFESSIONAL CENTER CONDOMINIUM ASSOCIATION, INC.                   |
| EXHIBIT "4" - | PLOT PLAN, SURVEY AND GRAPHIC DESCRIPTION OF IMPROVEMENTS                                 |
| EXHIBIT "5" - | PERCENTAGE OWNERSHIP IN COMMON ELEMENTS   |



EXHIBIT "1"

LEGAL DESCRIPTION OF REAL PROPERTY BEING SUBMITTED  
TO CONDOMINIUM OWNERSHIP

EXHIBIT "2"

ARTICLES OF INCORPORATION  
OF  
TWIN LAKES PROFESSIONAL CENTER CONDOMINIUM ASSOCIATION, INC.

EXHIBIT "3"

BY-LAWS  
OF  
TWIN LAKES PROFESSIONAL CENTER CONDOMINIUM ASSOCIATION, INC.

EXHIBIT "4"

PLOT PLAN, SURVEY AND  
GRAPHIC DESCRIPTION OF IMPROVEMENTS

EXHIBIT "5"

PERCENTAGE OWNERSHIP IN COMMON ELEMENTS

This Instrument Prepared by,  
Record, and Return to:  
Michael R. Flam, P.A.  
1144 East Newport Center Drive  
Deerfield Beach, Florida 33442

**DECLARATION OF CONDOMINIUM  
OF  
TWIN LAKES PROFESSIONAL CENTER, A CONDOMINIUM  
(A Non-Residential Conversion Condominium)**

BOCA RATON PROPERTY, INC., a Florida corporation (hereinafter called the "Developer"), does hereby declare as follows:

1. **Introduction, Submission and Phasing Plan.**

- 1.1 **The Land.** Developer owns the fee title to that certain land located in Palm Beach County, Florida, as more particularly described in **Exhibit "1"** annexed hereto and made a part hereof (the "Land").
- 1.2 **Submission Statement.** Developer hereby submits the Land and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, 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.
- 1.3 **Name.** The name by which this condominium is to be identified is TWIN LAKES PROFESSIONAL CENTER, A CONDOMINIUM (hereinafter called the "Condominium").

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

- 2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof.

- 2.2 “Articles” or “Articles of Incorporation” mean the Articles of Incorporation of the Association appended hereto as **Exhibit “2”** and made a part hereof, as amended from time to time.
- 2.3 “Assessment” means a share of the funds which are required for the payment of Common Expenses which from time to time is assessed against the Unit Owners. Assessments shall also include Special Assessments when such Special Assessments are duly adopted by the Board of Directors of the Association.
- 2.4 “Association” or “Condominium Association” means Twin Lakes Professional Center Condominium Association, Inc., a Florida corporation not-for-profit, the sole entity responsible for the operation of the Condominium, in accordance with the terms of this Declaration and the Act.
- 2.5 “Association Property” means the property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.6 “Board” or “Board of Directors” means the board of directors, from time to time, of the Association, referred to in the Act as the “board of administration,” which is responsible for the administration of the Association.
- 2.7 “Building” means the structure or structures located in or on the Land (or on any of the property hereafter made part of the Condominium) and in which the Units, Common Elements and Limited Common Elements are located, irrespective of the number of such structures.
- 2.8 “By-Laws” mean the By-Laws of the Association, appended hereto as **Exhibit “3”** and made a part hereof, as amended from time to time.
- 2.9 “Common Elements” means and includes the portions of the Condominium Property which are not included in the Units, including, without limitation, the following items:
- (a) Easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of Utility Services and/or heating, cooling, ventilation or other services to Units or to the Common Elements, together with related property and installations;
  - (b) An easement of support in every portion of a Unit which contributes to the support of a Building, other Units and/or any part of the Common Elements;
  - (c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements; and

- (d) Any other parts of the Condominium Property designated as Common Elements in this Declaration or the Act.
- 2.10 "Common Expenses" means all expenses properly incurred by the Association in performance of its duties for the Condominium, including, but not limited to: (1) expenses of maintenance, operation, protection, repair or replacement of the Common Elements and Association Property; and (2) expenses declared Common Expenses by the provisions of this Declaration or by the Articles, By-Laws or by the Act. Common Expenses also include insurance for directors and officers, parking areas and road maintenance and operation expenses, in-house communications, and security services, if any, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or property of the Condominium, and the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract. Common Expenses shall not include any separate obligations of individual Unit Owners.
- 2.11 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.
- 2.12 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.13 "Condominium Property" means the Land, Improvements and personal property that are subjected to condominium ownership under this Declaration, all easements and rights appurtenant thereto intended for use in connection with the Condominium and all other property, real, personal and mixed, which may subsequently be made subject to this Declaration as hereinafter described.
- 2.14 "County" means the County of Palm Beach, State of Florida.
- 2.15 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as same may be amended from time to time.
- 2.16 "Developer" means Boca Raton Property, Inc., a Florida corporation, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned by an instrument executed and recorded by Developer. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium Property. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association and, accordingly, shall not be

deemed waived, transferred or assigned to the Unit Owners, the Board, or the Association upon the transfer of control of the Association.

- 2.17 "Division" means the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation.
- 2.18 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on or are to be constructed on the Condominium Property, including, but not limited to, all Buildings.
- 2.19 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, 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-type 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 encumbered.
- 2.20 "Limited Common Elements" means those Common Elements the use of which are 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.
- 2.21 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at any time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.22 "Special Assessment" means any Assessment levied against Unit Owners other than the regular Assessment required by a budget adopted annually.
- 2.23 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- 2.24 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.
- 2.25 "Utility Service" means and is intended to include, but is not limited to, electric power, gas, telephone, hot and cold water, heating, air conditioning ventilation systems, garbage and sewage disposal.

### 3. **Description of Condominium.**

- 3.1 **Identification of Units. THE CONDOMINIUM WILL BE CREATED BY THE CONVERSION OF EXISTING IMPROVEMENTS.** The existing

Building contains twenty-three (23) Units but Developer reserves the absolute and unconditional right, without any obligation, for up to two (2) years after this Declaration is recorded, to subdivide: Unit 105 to up to two (2) Units, Unit 200 to up to two (2) Units, and Unit 243 to up to four (4) Units, or any of them, so that the Condominium will ultimately contain a minimum of twenty-three (23) Units and a maximum of twenty-eight (28) Units. The addition of Units to the Condominium may reduce the share of Common Elements, Common Surplus and Common Expenses attributable to each previously created Unit and the voting share of each Unit Owner. If Developer adds additional Units, as described above, an amendment to this Declaration shall be recorded by Developer in accordance with subsection 8.3 below. If Developer decides not to subdivide Units 105, 200 and 243, or any of them, as described above, the number of Units in the Condominium will remain twenty-three (23) and the Owners thereof shall comprise the entire membership of the Condominium Association and thereby be entitled to cast 100% of the votes of the Condominium Association and own 100% of the Common Elements. Each Unit is identified by a separate numerical designation. The designation of each Unit is set forth on **Exhibit "4"** attached hereto and made a part hereof. Exhibit "4" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the existing Building in which the Units are located, and a plot plan thereof. Said Exhibit "4", together with this Declaration, are sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate 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.

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

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

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the underside of the ceiling slab excluding bar joists, steel beams and vertical structural columns which shall be Common Elements.

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

- (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, except as provided in subsection 3.2(d) below or if subsection 3.4(j) hereof is applicable.
- (c) Apertures. Where there are apertures in any boundary, including but not limited to, windows and doors, the Unit's boundaries shall be extended to include the interior unfinished surfaces of such apertures, including all frameworks, window casings and weather stripping thereof. (Exterior surfaces made of glass or other transparent material, and all framing and casings therefor, shall not be included in the boundaries of the Unit and therefore shall be Common Elements.)
- (d) Exceptions. In cases not specifically covered above, or in any case of a conflict or ambiguity, the survey of the Units set forth as Exhibit "4" hereto shall control in determining the boundaries of a Unit, except that the provisions of subsection 3.2(c) above shall control unless specifically depicted and labeled otherwise on such survey.

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 Patios. The balconies (and railings) and patios which are for the exclusive use of any particular Unit or Units shall be a Limited Common Element of such Unit(s).
- (b) Miscellaneous Areas, Equipment. Any area upon which is located equipment or fixtures (including air conditioning compressors) which are for the exclusive use of any particular Unit or Units and the equipment or fixtures themselves shall be Limited Common Elements of such Unit(s).
- (c) Parking Spaces. The Developer, in its sole discretion, reserves the right to designate and assign, for so long as Developer holds any Unit for sale in the ordinary course of business, with or without consideration, all automobile parking spaces (both covered and uncovered) situated on the Condominium Property, as shown on Exhibit "4" hereof. No Unit Owner shall have or acquire any fee simple title to any parking space at any time except as part of the Unit Owner's undivided share in the Common Elements. If parking spaces are assigned by Developer, such parking spaces shall become Limited Common Elements of that designated Unit. If parking spaces are assigned, such assignments shall be made by a non-recordable instrument in writing ("Parking Space Assignment"); the Association shall maintain a book (the "Association Book") for purposes of recording the current assignee of each parking space; the Developer will cause the Association to record each such Parking Space Assignment

in the Association Book and the Unit Owner to which such use is assigned shall have the exclusive right to use thereof; all fees collected by Developer for assigning parking spaces shall be retained by Developer and shall not constitute income or revenue of the Association; Parking Space Assignments shall be executed by Developer alone, the President of the Association alone, or by any two (2) officers of the Association; and there shall be no recordation in the County of the assignment or transfer of a parking space. No assignment or transfer of title in any manner whatsoever to use a parking space constituting Limited Common Elements may be made or accomplished separately from the passing of title to the Unit to which it is appurtenant, except that the same may be separately assigned by the Developer to the Condominium Association and thereafter maintained as part of the Common Elements or reassigned by the Condominium Association, in its sole discretion, to another Unit Owner as a Limited Common Element. Notwithstanding Developer's reservation of the right to designate and assign parking spaces on the Condominium Property, as described above, it is Developer's intention that parking on the Condominium Property will be made available to all Unit Owners and other permitted users on a first come, first served basis without any assignment being exercised by Developer except that certain spaces in the parking areas may be designated for the sole use of a particular Unit, at any time and from time to time, at the sole discretion of Developer for so long as Developer owns a Unit in the Condominium. After the date when Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board ("Turnover Date"), the Association, with the joinder and consent of the Developer (for so long as Developer owns a Unit in the Condominium) and not less than 85% of the Units in the Condominium, may modify, amend, limit, change or terminate any parking space assignments and designations previously made by Developer.

- 3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act and any easements affecting the Condominium Property and recorded in the Public Records of the County):
- (a) Support. Each Unit, Building and the Improvements 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. Non-exclusive easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, telecommunication and security systems, if any, and other services and drainage in order to serve the Condominium and each Unit. A Unit Owner shall do nothing within or outside their Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television,

telecommunication and security systems, if any, or other service or drainage facilities or the use of these easements. The Association (and its designees, which may include, but are not limited to Unit Owners) shall have an irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any of the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, telecommunication and security systems, if any, service and drainage facilities which are Common Elements and any other Common Elements or Limited Common Elements contained in the Unit or elsewhere in the Condominium Property, or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements, Limited Common Elements, or to a Unit or Units, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day's notice, which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted.

- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit (or Limited Common Element appurtenant thereto); (b) any Unit (or Limited Common Element appurtenant thereto) 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 prior written consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement for ingress and egress in favor of each Unit Owner and its guests, lessees, invitees and mortgagees, shall exist for pedestrian traffic on, over, through and across, sidewalks, accessways, streets, hallways, paths, walks, stairways, elevators and other portions of the Common Elements (not including Limited Common Elements, unless otherwise specifically provided elsewhere in this Declaration) and Association Property as from time to time may be intended and designated for such purpose and use and as may be necessary to provide reasonable access to the public ways; and for vehicular and pedestrian traffic on, over, through and across, and parking on, such portions of the Common Elements as from time to time may be paved and intended for such purpose and use and as may be necessary to provide

reasonable access to the public ways. 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) Construction; Maintenance. The Developer (including its affiliates, and its or their designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any addition or renovation thereto, or any Improvements or Units located or to be located thereon, and to repair, replace and maintain, without any obligation, the Condominium Property or any part thereof when the Developer, in its sole discretion, determines that it is required or desires to do so, or when the Association fails to do so.
- (f) Sales Activity. For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property for model, sales, leasing, management, resales and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units, to erect on the Condominium Property or Association Property signs and other promotional material to advertise Units for sale or lease, to be exempt from any restrictions on the type of vehicle allowed to park on Condominium Property if the vehicle is engaged in any activity relating to construction, maintenance, or marketing of Units, and to take any and all actions which, in the Developer's opinion, may be helpful for selling or leasing Units or for promoting the Condominium and its operations generally.
- (g) Additional Easements. The Developer (as long as it owns any Unit) and the Association, by and through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as its or their attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, if any, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners, or for the purpose of

carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for the permitted purposes described in this Declaration. In addition, the Board of Directors has the authority, without the joinder of any Unit Owner, to grant, modify, or move any easement if the easement constitutes part of or crosses the Common Elements or Association Property subject to Developer's rights and powers under this Declaration.

- (h) Easement for Services. The Developer (as long as it owns any Unit) and the Association, and its or their agents, contractors, designees, employees, successors and assigns shall have (i) a non-exclusive easement for access and use of all the Common Elements, including, but not limited to, those customarily used for pedestrian and vehicular traffic and also including driveways, parking ramps, walkways, lobby areas, elevators, stairways, halls and corridors, balconies, patios, terraces, janitorial closets, mechanical/electrical rooms, trash rooms, and storage rooms for the purpose of cleaning, repairing, maintaining and improving all Buildings or for such other purposes as set forth in this Declaration including, but not limited to, cleaning the exterior side of the windows on any Building; and (ii) an irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association or a Unit Owner pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.
- (i) Easements Reserved by the Developer. For as long as Developer remains liable under any warranty, if any, whether statutory, express or implied, for any act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its successors, assigns, contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time, to enter the Condominium Property for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. Failure of the Association or any Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. **Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in Section 21 below.**
- (j) Divider Walls. The wall separating the Unit of one Owner from the Unit of a horizontally adjoining Owner shall be referred to as a "divider wall." A divider wall shall not be removed or constructed by an Owner, except as provided in this subsection 3.4(j). In the event a Unit Owner acquires an adjacent Unit and a divider wall is no longer intended to completely

separate the adjoining Units, the Owner may remove the divider wall or construct or cause to be constructed a doorway or passageway between the adjoining Units (and an easement is hereby reserved and granted for such purpose) but only after having obtained all required governmental approvals and approval of the Association. The removal of the divider wall or the construction of such doorway or passageway shall be at the sole cost and expense of the Owner performing same and such removal or construction shall not diminish, or in any way impair, the structural integrity or soundness of the Building, or any utility services or related easements for such services within the Building. When title to adjoining Units (which do not then share a complete divider wall) shall vest in two different individuals or entities who thereupon become horizontally adjoining Unit Owners, then the Unit Owner who removed a divider wall must construct, at its sole expense, a new divider wall to completely separate said adjoining Units. A divider wall may not be constructed or erected, however, until a Unit Owner has its plans and specifications for the divider wall reviewed and approved, in writing, by the Association and has also obtained all approvals from any governmental agency having jurisdiction. Any such construction shall be effected at the expense of the Owner performing same and in accordance with the plans and specifications for construction and all applicable building and fire safety codes of any governmental agency having jurisdiction. In no event may a divider wall be constructed if the structural soundness of the Building may in any way be affected thereby or that would impair any utility services or related easements for such services within the Building. That part of the divider wall located within the boundary of the Unit shall be part of the Unit. Adjoining Units which share a divider wall shall have a cross-easement of support in the portion of the divider wall not located within the boundary of the Unit. Maintenance and repair of the divider wall shall be accomplished by the appropriate Owners. Each Owner shall be responsible for any damage caused to a divider wall by its negligent or intentional acts or the negligent or intentional acts of its employees, contractors or agents, and the cost of said repair shall be the specific obligation of that Owner.

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

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

5.1 **Fractional Ownership and Shares.** The undivided fractional ownership interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses, appurtenant to each Unit, is described herein and set forth on **Exhibit "5"** attached to this Declaration and made a part hereof. Such undivided shares are stated as percentages and are based on the total gross square footage of each Unit in uniform relationship to the total gross square footage of all of the Units in the Condominium. Each Unit Owner's share of the Common Expenses and Common Surplus of the Association shall be the same as the Unit's appurtenant ownership interest in the Common Elements. This ownership, however, does not include the right to withdraw or require payment or distribution of said Common Surplus.

5.2 **Voting.** Each Unit Owner shall be a member of the Association and shall be entitled to vote equal to its undivided fractional ownership interest in the Common Elements as set forth on Exhibit "5" attached hereto.

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 a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the Unit Owners of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval or disapproval in writing, provided that such approval or disapproval is delivered to the Secretary of the Association at or prior to the meeting. Except as elsewhere provided, approvals must be by an affirmative vote of (a) Unit Owners of not less than 66-2/3% of the Units in the Condominium and by not less than 66-2/3% of the Board of Directors of the Association; or (b) Unit Owners of not less than 75% of the Units in the Condominium.

6.2 **By the Developer.** The Developer, during the time it is in control of the Board of Directors of the Association, may amend the Declaration (or its Exhibits), Articles of Incorporation or the By-Laws of the Association, to correct an omission or error, resolve an ambiguity, or for any other purpose, except that this procedure for amendment may not be used if such an amendment would, in Developer's reasonable opinion, materially adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing to the amendment. The execution and recording of any amendment by the Developer pursuant to this subsection 6.2 shall be conclusive evidence that the amendment does not materially adversely affect substantial property rights of Unit Owners who did not

join in or consent to such execution, and any such amendment shall be effective as provided below, unless subsequently revoked.

- 6.3 Proviso. Except as otherwise specifically provided in subsection 8.3 below or elsewhere in this Declaration to the contrary, 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 proportion or 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) of the Unit(s) so affected, and all record owners of liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by not less than 75% of the voting interests of Unit Owners in the Condominium, unless otherwise required by any governmental entity. No amendment may be adopted which would terminate, limit, 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 prior written 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. Whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld or delayed. The provisions of subsections 3.4(g), 3.4 (h), 3.4(i), 6.2, 8.2(b), 8.3, 8.4, 9.6, 15.1, 15.6, 15.16, 16.6, 16.8, 21, 22.6, 22.14, 22.15, 22.16 and 22.17 of this Declaration may not be amended in any manner without the prior written consent of Developer, whose consent may be arbitrarily withheld.
- 6.4 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors 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. 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 and 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." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

7. **Maintenance and Repairs.**

- 7.1 **Units.** Except as otherwise expressly provided to the contrary herein, all maintenance, repairs and replacements of, in or to any Unit, whether ordinary or extraordinary, foreseen or unforeseen, shall be performed (or caused to be performed) by the Owner of such Unit at the Unit Owner's sole cost and expense, including, without limitation, maintenance, repair and replacement of: all interior doors, the interior side of the exterior door of the Unit (the Unit Owner's responsibility shall be limited to maintenance and repair, and not the replacement thereof, but the Unit Owner will also be responsible for such replacement if that door is damaged by the Unit Owner or its tenants, invitees or agents), and all keys, locks and hardware; signage installed on the exterior walls including relamping and cleaning, and the repair of damaged exterior wall surfaces caused by the installation, removal, or repair and maintenance of such signage; all roof mounted equipment serving the Unit including air-conditioning compressor, freon lines, and insulation, and satellite dishes; electrical lines, service outlets, and connections to air conditioning equipment – all powered from the Unit panel; roof mounted exhaust and ventilator fans; satellite and/or communications cables, dishes, and other equipment permitted by the Association and installed (or caused to be installed) by the Unit Owner; exterior light fixtures and lamps powered from the Unit electrical panel; all interior improvements and equipment exclusively serving the Unit such as the heating and air-conditioning system including thermostat, ductwork, condensate drain pan and lines including condensate drain structures outside the Building, and air handler machinery and filters; all plumbing fixtures and connections, hardware, and appliances; all air and plumbing vents, exhaust fans and ductwork; and all water lines and waste drain lines from plumbing fixtures to cleanout line connection immediately outside the Unit; electrical panel, circuit breakers, conduits and wiring, convenience outlets, switches, and all interior light fixtures and lamping; all fire alarm equipment exclusively serving the Unit including smoke detectors, horns, and pull stations (if any); all interior nonstructural walls, partitions and finishes, doors, hardware, ceiling grid and tiles, floor coverings, carpet, casework, cabinetry; removing all mold, mildew, fungi and other mycotoxins from the Unit or Limited Common Elements, and performing regular preventive maintenance measures; and personal property, furnishings, and equipment; windows (interior side), window coverings, and all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit and all other property belonging to the Unit Owner.
- 7.2 **Common Elements and Association Property.** Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect by specific Unit Owners, in which case such cost shall be paid solely by such Unit Owners.

- 7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any equipment and fixtures or other items of personal property which service a particular Unit or Units, or are contained within a particular Unit or Units, and Limited Common Elements appurtenant thereto, shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Unit.
- 7.4 Hurricane Protection. The Board of Directors shall, from time to time, establish hurricane shutter specifications which comply with applicable building code, and establish permitted colors, styles and materials for hurricane shutters. All hurricane shutters shall be first approved, in writing, by the Association before any installation thereof. Unit Owners shall submit written requests to the Association for the approval of the installation of hurricane shutters, together with such specifications as the Association requires. If hurricane shutters are installed for a Unit, such shutters shall become a part of that Unit and shall not constitute a Common Element, Limited Common Element or Association Property. The Unit Owner installing a hurricane shutter shall hold harmless and indemnify the Association and all other Unit Owners for all damages, expenses, court costs and attorneys' fees incurred by the Association and all other Unit Owners for repairing any damage to the Building, Common Elements or Limited Common Elements as a result of such installation. Hurricane shutters, if installed, shall remain open unless and until a storm watch or storm warning is announced by the National Hurricane Center or other recognized weather forecaster, and then they must be reopened within the time frame as determined by the Board but in no event later than twenty-four hours after the storm watch or warning has been lifted. Developer shall not be liable or responsible in any manner for the types of hurricane shutters approved by the Association.
- 7.5 Definition of "Maintenance". When used in this Section 7, unless the context requires otherwise, the term "maintenance" and its correlatives shall be read to mean keeping the item to be maintained in a clean and orderly condition and painting, repairing and replacing it when reasonably necessary.

8. **Additions, Alterations or Improvements.**

- 8.1 By the Association. Whenever in the judgment of the Board of Directors, the Common Elements or the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of 5% of the then annual budget of the Association, 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 capital additions, alterations or improvements to such Common Elements or the Association Property, or any part of either, costing less than 5% of the then annual budget of the Association 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.

8.2 By the Unit Owner.

- (a) Consents and Permits. No Unit Owner shall make any addition, alteration or improvement in or to the Units, the Common Elements, the Association Property, or any Limited Common Elements, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer, in writing, any written request by such a Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received (but any written requests pertaining to weight and sound restrictions shall afford the Board a ninety (90) day investigative and determination period), and the failure to do so within the stipulated time shall constitute the Board's consent. The Owner shall pay the Association a reasonable plan review fee for the services of the Board and any other consultants retained by the Board to perform such services. The Board may condition the approval in any manner, including without limitation, retaining approval rights of the contractor to perform the work. No Unit Owner shall make any addition, alteration or improvement in or to the interior of the Unit without obtaining all appropriate governmental permits which are necessary for such work and provided that such alteration, addition or improvement will not adversely affect the structural integrity of the Building or cause any damage to or adversely affect the Common Elements, Limited Common Elements or other Units and/or the Condominium Property. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. 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, tenants, partners, members, employees, officers, directors, shareholders, legal representatives, successors and assigns, as appropriate, to hold the Developer, the Association, and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof as may be required by the Association. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer nor the Association, nor any of its or their officers, directors, partners, employees, shareholders, successors, assigns, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any

plans or other submissions, negligence, or any other misfeasance, malfeasance, or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions under this Declaration. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer and the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each such Owner (including its heirs, tenants, partners, members, employees, officers, directors, shareholders, legal representatives, successors and assigns) having plans reviewed hereunder agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels) arising out of any review of plans by the Association hereunder.

- (b) Weight and Sound Restrictions. Unless installed by the Developer or otherwise first approved by the Board, hard and/or heavy surface floor coverings, such as tile, marble, wood and the like must be submitted to and approved, in writing, by the Board of Directors, which approval may be conditioned upon the use of appropriate soundproofing materials under such floor coverings, and must meet applicable structural requirements. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building. The Board of Directors may require a structural engineer or other appropriately qualified consultant to review certain of the proposed improvements, with such review to be at the Owner's sole expense. The Board will have the right to specify the exact material to be used on any exterior modifications. These use guidelines are consistent with good design practices for waterproofing and structural design. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. **APPLICABLE WARRANTIES OF THE DEVELOPER, IF ANY, SHALL BE VOIDED BY VIOLATIONS OF THESE RESTRICTIONS AND REQUIREMENTS. EACH OWNER, BY ACQUIRING TITLE TO A UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND TRANSMISSION IN ANY UNIT OR BUILDING WITHIN THE CONDOMINIUM PROPERTY IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY UNITS AND/OR MECHANICAL EQUIPMENT MAY BE HEARD IN ANOTHER UNIT. THE DEVELOPER DOES NOT**

**MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND TRANSMISSION BETWEEN AND AMONG UNITS AND IN OTHER PORTIONS OF THE CONDOMINIUM PROPERTY, AND EACH UNIT OWNER HEREBY WAIVES AND EXPRESSLY RELEASES DEVELOPER AND ITS SUCCESSORS, ASSIGNS, OFFICERS, SHAREHOLDERS, DIRECTORS, PARTNERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY WARRANTY OR CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND TRANSMISSION.**

- 8.3 By the Developer. Notwithstanding any other provision in this Declaration to the contrary, the Developer shall have the absolute and unconditional right, without the consent or approval of the Board of Directors or any Unit Owners, (i) to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and the Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements); (ii) change the layout or number of rooms in any Developer-owned Units; (iii) change the size of Developer-owned Units by combining separate Developer-owned Units into one (1) or more Units; and (iv) to subdivide Units 105, 200 and 243, or any of them, as provided in subsection 3.1 above; provided, however, that all such alterations, additions or improvements shall be done in accordance with all applicable building codes and governmental regulations. If the Developer shall make any changes in Units, as provided in this subsection, such changes shall be reflected by an amendment to this Declaration with a survey attached reflecting such authorized alteration of those Units and a modified Exhibit "5" shall replace and supersede the one attached hereto and any subsequent one, and said amendment need only be executed and acknowledged by the Developer and any holders of institutional mortgages encumbering the said altered Units. The survey shall be certified in the manner required by the Act.
- 8.4 Not Applicable to Developer. The restrictions and limitations set forth in this Section 8 shall not apply to the Developer, its designees, successors and assigns, or to Units owned by or leased to the Developer.

9. **Operation of the Condominium by the Association; Powers and Duties.**

- 9.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and By-Laws of the Association (respectively, Exhibits "2" and "3" annexed hereto and made a part hereof), as amended from time to time. In addition, the Association shall have (i) all the common law and statutory powers of a corporation not for profit and for profit under the laws of Florida that are not in conflict with the provisions of the Articles, the Declaration, the By-Laws or the Act; (ii) the powers and duties set forth in the Act, and (iii) all powers and duties granted to or imposed upon it by this Declaration, including without limitation:

- (a) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, and the 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 Articles, the By-Laws, and this Declaration and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (b) The power to adopt and amend Rules and Regulations concerning the details of the operation and use of the Units and the Condominium Property.
- (c) The power to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit Owner by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.

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

9.3 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property to be maintained and repaired by the Association, or caused by the elements, other Unit Owners or third parties. 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. The Association shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where (i) such insurance is not required hereby or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

- 9.4 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 the Unit.
- 9.5 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.
- 9.6 Effect on Developer. If the Developer holds a Unit for sale in the ordinary course of business, the following action may not be taken without the prior written approval of the Developer: any action by the Association that would be detrimental to the sales of Units by the Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.
- 9.7 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable Rules and Regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

**NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY INCLUDING, WITHOUT LIMITATION, UNIT**

**OWNERS AND THEIR EMPLOYEES, FAMILIES, GUESTS, INVITEES, AGENTS, OFFICERS, DIRECTORS, PARTNERS, MEMBERS, SHAREHOLDERS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:**

**(a) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE CONDOMINIUM PROPERTY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF;**

**(b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, THE COUNTY AND MUNICIPALITY IN WHICH THE CONDOMINIUM PROPERTY IS LOCATED, AND/OR ANY OTHER JURISDICTION, OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND**

**(c) ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.**

**EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.**

**AS USED IN THIS SUBSECTION 9.7, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, MANAGERS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS CONTAINED IN THIS SUBSECTION 9.7 SHALL ALSO INURE TO THE**

**BENEFIT OF THE DEVELOPER, ITS SUCCESSORS AND ASSIGNS, WHO SHALL ALL BE FULLY PROTECTED HEREBY.**

10. **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 a reserve (only if required by law) for the operation, maintenance, repair and replacement of the Common Elements, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract, 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, Rules and Regulations or by the Association. Working capital contributions may be used to reimburse the Developer for start-up expenses and otherwise as the Board shall determine from time to time and need not be restricted or accumulated. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts (only if required by law), or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws.

11. **Collection of Assessments.**

- 11.1 **Liability for Assessments.** A Unit Owner, regardless of how title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while that person is the Unit Owner. In addition, a Unit Owner shall be jointly and severally liable with the previous owner for all unpaid Assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the Owner may have to recover from the previous owner the amounts paid by the Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
- 11.2 **Default in Payment of Assessments for Common Expenses.** Assessments and installments thereof not paid within ten (10) days from the day when they are due shall bear interest at the highest lawful rate from the date due until paid. In addition to the above stated interest, the Association shall charge an administrative late fee in an amount not to exceed the highest amount provided for in the Act (as amended from time to time) on Assessments and installments thereof not paid when due. All payments upon account shall be first applied to

interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection and then to the delinquent Assessment. The foregoing method of applying payments shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The Association has a lien on each Condominium Parcel for any unpaid Assessments or installments thereof, with interest, late fees and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien whether suit be brought or not. The lien is effective from and shall relate back to the last to occur of the recording of this Declaration or amendment thereto creating the Condominium Parcel. However, as to Institutional First Mortgagees holding a first mortgage of record, the lien is effective from and after recording of a claim of lien in the Public Records of the County in which the Condominium Parcel is located, stating the description of the Condominium Parcel, the name of the record Owner, name and address of the Association, the amount due and the due date. The claim of lien must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such claim of lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended by any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Unit Owner or any other person claiming an interest in the Condominium Parcel. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon, and costs and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title as well as interest, and all reasonable costs and attorney's fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid Assessments. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner, the Association may declare the Assessment installments for the next twelve (12) months to be accelerated (or if acceleration to such extent is prohibited by the Act, then the Association may declare Assessments to the maximum extent permitted under the Act to be accelerated) and such amount shall thereupon be due and payable on the date the claim of lien is filed. Such accelerated Assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed. In

the event the amount of such installments changes during the period for which Assessments were accelerated, 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.

- 11.3 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 attorneys' 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 and the court shall proceed with the foreclosure action and may award attorneys' 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.
- 11.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court, in its discretion, may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.
- 11.5 Institutional First Mortgagee. An Institutional First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure, or a Deed in Lieu of Foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. The liability of an Institutional First Mortgagee, or its successor or assignees, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's acquisition of title is limited to the lesser of:
- (a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
  - (b) One percent (1%) of the original mortgage debt.

If any unpaid share or Common Expenses or Assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are Common

Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns. An Institutional First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure or Deed in Lieu of Foreclosure may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. As to a Unit acquired by foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the Institutional First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by that Institutional First Mortgagee.

- 11.6 Certificate of Unpaid Assessments. Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit have been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 11.7 Installments. Regular Assessments may be collected monthly or quarterly, in advance, at the sole option of the Association from time to time. Initially, Assessments will be collected monthly, but the Board reserves the right to change to quarterly installments upon advance written notice to all Unit Owners.
- 11.8 Capital Contribution. All Owners, except the Developer and its successors and assigns (who shall be exempt from the provisions of this subsection 11.8), shall contribute and be charged an initial capital contribution ("Capital Contribution") to the Association in an amount equal to one (1) month of the regular Assessment for each Unit then being purchased, which shall be payable at the time of closing of that Unit. The Capital Contribution shall be a "one time only" payment per Unit made by Owners who purchase Units directly from the Developer, its successors or assigns, and shall not apply to successive sales of the same Unit to succeeding Owners. Capital Contributions may be used for the purposes described in this Declaration or as solely determined by the Board.
12. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 12.1 Purchase, Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property and Association Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.

- (b) Mortgagees. No policy or insurance coverage shall impair the security of the Primary Institutional First Mortgagee without its consent.
- (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.
- (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). If no Insurance Trustee is appointed, the Association will perform directly all obligations imposed upon such Insurance Trustee by this Declaration.
- (e) Copies to Mortgagees. A certificate of insurance on standard insurance company forms showing all coverages including endorsements thereto shall be furnished by the Association upon written request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by said insurance policies. Copies of the actual policies and their endorsements will be provided at a charge determined by the actual cost to reproduce said policies. Certificates of insurance shall be furnished not less than thirty (30) days after the beginning of the term of the policies, or not less than thirty (30) days after the renewal 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 (or within any Limited Common Elements appurtenant thereto), including, but not limited to, their personal property, betterments and improvements, and the liability of their operations, and any loss of income or extra expense from damage to their Units.

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

- (a) Casualty. Any Building (including the Limited Common Elements and the Common Elements) and all installations or additions comprising that part of any Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), and all Improvements located on the Common Elements from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or owned by the Association (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. The Association shall not

maintain insurance coverage for the following: all improvements built or installed in the Unit, furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, all equipment located within a Unit (or on Limited Common Elements appurtenant thereto) and such other equipment as the Unit Owner is required to maintain, repair or replace under this Declaration, all electrical fixtures, appliances, air conditioner or heating equipment, water heaters, built-in cabinets, fixtures, appliances or any and all other items permitted to be excluded from the Condominium Association's insurance policy pursuant to the Act. 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 Hazards covered by a standard "all risk" coverage endorsement; and
  - (ii) Such Other Risk as from time to time are customarily covered with respect to Building and improvements similar to the Insured Property in construction, location and use.
- (b) Commercial General Liability. Coverage for public liability covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, with minimum coverage of \$1,000,000 combined single limits for each accident or occurrence and an aggregate of \$2,000,000 per policy year.
- (c) Worker's Compensation. The Association shall obtain worker's compensation and other mandatory insurance under the Act.
- (d) Flood Insurance. The Association shall obtain flood insurance if required by the Primary Institutional First Mortgagee or if the Association so elects.
- (e) Fidelity Insurance. The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association in an amount not less than the minimum sum required by the Act.
- (f) Directors and Officers Liability Insurance. The Association shall obtain directors and officers liability insurance coverage for its directors and officers of not less than \$1,000,000 for each occurrence.
- (g) 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.

- (h) Automobile Liability. The Association shall obtain and maintain automobile liability coverage for any owned, hired or non-owned automobiles used by the Association to perform its duties, services and responsibilities under this Declaration, the Articles, By-Laws, or the Rules and Regulations, of \$1,000,000 per accident or occurrence without an aggregate. This coverage will be provided as an endorsement to the comprehensive general liability policy or provided with a business automobile policy issued to the Association.
- (i) Such Other Insurance. The Board of Directors of the Association shall obtain such other policies of insurance as the Board may 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 co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

- 12.3 Additional Provisions. All policies of insurance shall provide that such policies may not be cancelled 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 a competent appraiser or other duly licensed professional having experience in such matters, 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.
- 12.4 Premiums. Premiums (or allocable shares thereof) upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 12.5 Unit Owner Coverage. Each Unit Owner shall obtain and maintain, at all times, commercial general liability coverage insuring the property lying within the boundaries of its Unit and the liabilities arising from the use and occupation of its

own Unit and other areas of the Common Elements for which it has exclusive use. Each Unit Owner shall provide the Association with a certificate of insurance naming the Association as an additional insured under the liability section. Coverage must be written with an insurance company rated by AM Best A- or higher. The coverage for a Unit Owner must be \$1,000,000 combined single limit per occurrence with a \$2,000,000 per policy year aggregate. This coverage may be increased at the option of the Association from time to time.

- 12.6 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 Association or to the Insurance Trustee (if one exists) which may, but need not, be designated by the Board of Directors. References herein to the Insurance Trustee shall be deemed to apply to the Board of Directors if it elects to serve such functions pursuant to subsection 12.11 hereof. 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 such 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 and/or Limited Common Elements appurtenant thereto, 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.

- 12.7 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 subsection 12.6 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.
- 12.8 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.
- 12.9 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 (or Limited Common Elements appurtenant thereto), nor casualty or theft loss to the contents of an Owner's Unit or Limited Common Elements appurtenant thereto. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all risks not covered by insurance carried by the Association.

- 12.10 Benefit of Mortgagees. Certain provisions in this Section 12 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 12.11 Insurance Trustee Optional. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Insurance Trustee, the Association will perform directly all obligations imposed upon such Insurance Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
13. **Reconstruction or Repair After Fire or Other Casualty.**

- 13.1 Determination to Reconstruct or Repair. Subject to the immediately following sub-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 of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and at least 51% 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 thirty (30) days after the date of issuance of any required building permits from the applicable governmental agencies having jurisdiction over the Condominium Property. 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.

13.2 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 are 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.

13.3 Special Responsibilities.

- (a) 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.
- (b) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
  - (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund

shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

- (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if 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 shall promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee (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 (if appointed), 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.

13.4 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. Costs on account of damage to the Optional Property shall be charged to each Owner in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

13.5 Benefit of Mortgagees. Certain provisions in this Section 13 are for the benefit of mortgagees of Units and may be enforced by any of them.

#### 14. Condemnation.

14.1 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 (if appointed); and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner, or the Board shall have the right to proceed in a court of equity to require performance and/or sue at law for damages.

14.2 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.

- 14.3 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 14 specifically provided.
- 14.4 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 and discretion 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 charged against the Owner of the Unit. The Association shall have the right to collect and enforce such costs and charges as elsewhere provided in accordance with this Declaration, pursuant to subsection 17.2 below and applicable law.
  - (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 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.

14.5 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 and discretion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from 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 14.4(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 14.4(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 Owners 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 thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue to be Owners 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.

- 14.6 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 are 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.

- 14.7 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.

- 15. Occupancy and Use Restrictions. In order to provide for congenial occupancy and use 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:

- 15.1 Use Restriction. All Units shall be occupied and used (whether by ownership, lease, sublease, license or otherwise) solely for an "Approved Business Purpose" (hereinafter defined) and for no other purposes. For purposes hereof, an "Approved Business Purpose" shall mean and refer to a commercial or medical business use that is set forth on the list of approved business uses for a Unit that is on file with the Association. Said list of approved business uses for a Unit may be amended at any time and from time to time at the sole discretion of the Developer, subject to the terms herein. After the Turnover Date, the Association, with the joinder and consent of the Developer (for so long as Developer owns a Unit in the Condominium) and not less than 85% of the Units in the Condominium, may prohibit a previously permitted Approved Business Purpose for a Unit. Developer, for so long as it owns a Unit in the Condominium, shall have the right, without obligation, to grant exclusivity as to an Approved Business Purpose to a Unit from time to time. Any use of a Unit, or any portion thereof, other than for the specified uses expressly permitted herein, shall be deemed invalid, void and unenforceable, and Developer and the Association shall each have the unrestricted right to seek and obtain any remedies available at law or in equity (including any rights to injunctive relief) to prevent, prohibit and/or enjoin the unpermitted use or threatened use. Developer shall also have all rights and remedies that are contained in this Declaration to enforce compliance herewith that either the Developer or the Association may have hereunder, including, but not limited to, Section 17 hereof. The foregoing use restrictions are hereby declared, reserved and imposed by the Developer as an equitable servitude and restrictive covenant running with the Land and each Unit, binding upon the Developer and all persons claiming by, through or under Developer, for the benefit of and as a limitation and burden upon the Land, each Unit, Developer, and all future Owners.
- 15.2 Antennas and Aerials. Except as otherwise approved by the Board, in writing, no antenna, satellite dish, or aerial shall be placed by an Owner upon the Common Elements, Building rooftop, or affixed to the exterior of a Unit, and no antenna or aerial placed or affixed within a Unit shall extend or protrude beyond the exterior of a Unit or the planes of such exteriors. After the Turnover Date, the Association, with the joinder and consent of the Developer (for so long as Developer owns a Unit) and not less than 85% of the Units in the Condominium, may subsequently prohibit any of the foregoing items in this subsection 15.2 which were previously permitted by Developer.
- 15.3 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property or Association Property, nor shall any use or practice be allowed which is a source of annoyance to Owners or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property and/or Association Property by its Owners, members, or occupants. The Association in determining whether an act constitutes a "nuisance" herein shall take into account that the Units are in a non-residential conversion Condominium having both medical and other commercial uses permitted to coexist. Smoking on

the Condominium Property is limited to only those areas of the Common Elements specifically designated by the Association.

- 15.4 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or Association Property, or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. No Unit Owner, tenant, occupant or guest shall store, use or dispose of any hazardous substances, petroleum products or flammable substances on the Condominium Property, as such terms are defined under federal, state or local laws, rules or regulations. The foregoing sentence shall not apply to the storage or use of petroleum products in automobiles, trucks or other gasoline powered vehicles validly located on the Condominium Property, to the Developer or Association, or its or their agents, designees or contractors, while they are involved in providing services for the construction and/or maintenance of the Condominium Property, or if such products or substances are required for the Approved Business Purpose of a Unit provided the storage, use and disposal of such products and substances are approved, in writing, by the Association. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth.
- 15.5 Signs. No sign, advertisement, notice, sticker, graphic, lettering or descriptive design of any kind, including, but not limited to, "for sale" or "for rent" signs, shall be displayed, inscribed, painted, affixed or placed upon any part of the Condominium Property, except for those installed, used or approved, in writing, by the Developer or the Board of Directors. No unsightly materials may be placed on any window or glass door or be visible through such window or glass door on the Condominium Property. Developer shall require uniform door signage for the Units. The Association shall place directories of the business names of all Unit Owners, both inside and outside a Building, at one or more locations on the Condominium Property, as solely determined by the Board. Every Unit Owner's business name will be listed in those directories in a manner solely determined by the Board. The Association may charge each Unit Owner a reasonable fee, at one-time or on a regular basis, for such listings. The Board shall place a street monument on the Condominium Property that will list the business names of certain Unit Owners. The Board, at its sole discretion, will determine which Unit Owners will have their business names listed on the street monument and the list may change from time to time and a Unit Owner's business name may be removed from that street monument even though that Unit Owner may continue to own a Unit. The business names of all Unit Owners will not be listed on the street monument. The Association may charge a reasonable fee, at one-time or on a regular basis, to those Unit Owners whose business names are being listed on the street monument. After the Turnover Date, the Association, with the joinder and consent of the Developer (for so long as Developer owns a

Unit in the Condominium) and not less than 85% of the Units in the Condominium, may change the business names listed on the street monument.

- 15.6 Mitigation of Dampness and Humidity. No Unit Owner shall install, within its Unit, or upon the Common Elements or Association Property, non-breathable wall-coverings or low-permeable paints. Additionally, any and all built-in casework, furniture, and/or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at 78°F, to minimize humidity in the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds, fungi, mildew or mycotoxins. **The Developer does not make any representations or warranties regarding the existence or development of molds, fungi, mildew or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. DEVELOPER SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGES INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL OR CONSEQUENTIAL DAMAGES, PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE, DIMINUTION OR LOSS IN VALUE OF THE UNIT OR CONDOMINIUM PROPERTY, ECONOMIC DAMAGES AND ADVERSE HEALTH EFFECTS RELATING TO, ARISING FROM, RESULTING FROM OR CAUSED BY MOLD, FUNGI, MILDEW OR MYCOTOXIN ACCUMULATION REGARDLESS OF THE CAUSE OF SAME. EACH UNIT OWNER (AND ITS TENANTS, HEIRS, FAMILY MEMBERS, PARTNERS, MEMBERS, DIRECTORS, SHAREHOLDERS, LEGAL REPRESENTATIVES, EMPLOYEES, INVITEES, CONTRACTORS, AGENTS, SUCCESSORS AND ASSIGNS) RELEASES AND DISCHARGES DEVELOPER FROM AND AGAINST ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITIES, LOSSES, INJURIES AND EXPENSES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR UNFORESEEN, THAT ANY OF THE FOREGOING PERSONS OR ENTITIES HAS OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY, ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH INDOOR AIR QUALITY, MOISTURE OR THE GROWTH, RELEASE, DISCHARGE, DISPERSAL OR PRESENCE OF MOLD AND/OR MILDEW OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM.** In furtherance of the rights of the Association as set forth in subsection 3.4(h) of the Declaration, in the event that the Association reasonably believes that the provisions of this Section are not being complied with, then, the Association shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Owner or any other party) and to turn on the air

conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Owner or any other party) to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Owner to the Association).

- 15.7 Interior Window Decorations. No draperies, blinds, shades, shutters or any other decoration or finishing may be affixed to or placed in the interior of any window to a Unit if such is visible from the exterior of the Unit unless such decoration or finishing has been first approved in writing by the Board, which approval may be withheld by the Board in its sole and absolute discretion, and which approval the Board shall not grant if, in its opinion the effect of any of the foregoing will detract from the exterior aesthetic appearance of the Condominium Property.
- 15.8 Litter. No article of personal property shall be hung or shaken from the doors or windows of any Unit. No Owner shall sweep or throw from his Unit any dirt or any other materials. No garbage, trash, refuse or rubbish shall be deposited, dumped, or kept on any part of the Common Elements except in closed containers deposited in receptacles or placed for pick-up in accordance with Rules and Regulations promulgated by the Board.
- 15.9 Utility Addition. No additional utility fixture or improvement including without limitation, any water, sewage, electrical, air conditioning or heating system, line, duct, conduit, pipe, or wire shall be added to service any Unit without the prior written consent thereto by the Board whose consent may be withheld.
- 15.10 Increase in Insurance Rates. Except as expressly permitted under this Declaration, no Owner shall take any action, without the prior written approval of the Board, which will result in an increase in the rate of any insurance policy or policies covering any part of the Condominium Property.
- 15.11 Exterior Improvements. Without limiting the generality of subsection 8.2 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, windows or any other exterior part of any Buildings (including, but not limited to, awnings, signs ("for sale," "for lease" or of any other type), screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Association. After the Turnover Date, the Association, with the joinder and consent of the Developer and not less than 85% of the Units in the Condominium, may subsequently prohibit an exterior improvement to a Building that was previously permitted by Developer.
- 15.12 Additional Rules and Regulations. The Association may promulgate such other Rules and Regulations as it determines to be in the best interests of the Unit Owners provided they in no way diminish, alter or have a material and adverse

effect on the rights and privileges of the Developer or an Owner, including, but not limited to, the right of quiet enjoyment of a Unit by its Owner, and such additional Rules and Regulations shall, as long as they remain in force, be deemed additional covenants and restrictions as to the ownership, use, and occupation of the Condominium Property and are incorporated by reference.

15.13 Relief by Association. The Association shall have the right (but not the obligation) to grant relief in particular circumstances from the provisions of the specific restrictions contained in this Section 15 for good cause shown.

15.14 Fire and Safety Access/Roof Access. All Owners shall be obligated to maintain a fire and safety access through such Owner's Unit as may be required by the applicable fire and safety codes, during normal business hours or otherwise, as required by such codes. No Unit Owner shall personally access or cause others to access the roof of any Buildings for any reason whatsoever without first complying with the written procedures of the Association for such access. Such procedures shall include the filing of applicable licenses and insurance certificates with the Association for technicians servicing rooftop equipment. All service personnel accessing any roof shall work in a clean and safe manner and shall stay within marked rooftop circulation paths and walkways and within the immediate area of equipment being serviced. **DEVELOPER SHALL NOT BE RESPONSIBLE OR LIABLE, AND APPLICABLE ROOF WARRANTIES SHALL BE NULL AND VOID, IN THE EVENT ROOF ACCESS PROCEDURES ARE NOT STRICTLY FOLLOWED.**

15.15 No Timesharing. No portion of the Condominium Property shall ever be used for real estate timesharing or interval ownership of any type, including, but not limited to, under a "timeshare plan," as that term is defined in Chapter 721 of the Florida Statutes on the date of recordation of this Declaration.

15.16 Not Applicable to Developer. The restrictions and limitations set forth in this Section 15 shall not apply to the Developer, its designees, successors and assigns, or to Units owned by or leased to the Developer.

16. **Selling, Transferring, Leasing and Mortgaging of Units.**

16.1 General. In order to assure a community of compatible owners and to protect the value of the Units, no Owner may convey, transfer, dispose of, or encumber his Unit, any part thereof, or any interest therein by sale, lease, mortgage or otherwise (except to the extent permitted hereunder) without strict compliance with the terms and provisions of this Section 16.

16.2 Sales. The sale and conveyance of a Unit shall be subject to a right of first refusal in favor of the Association as hereinafter described. The Association shall have fifteen (15) days from the date of its receipt of a written notice from an Owner stating that Owner's intention to sell his Unit on a form prescribed by the Association ("Resale Notice") within which to exercise its right of first refusal to

purchase that Unit. The Resale Notice shall include the name and address of the intended purchaser, the proposed purchase price, the terms of the transaction and such other information concerning the intended purchaser as the Association may reasonably require, together with an executed copy of the proposed contract or other transfer instrument. A reasonable administrative fee, as determined by the Association, may be charged by the Association to the Unit Owner, for the purpose of defraying the costs associated with processing of the application for approval, reflecting the proposed transfer in the books and records of the Association and other matters associated with any Board approved transfer. If the required Resale Notice is not given to the Association, then at any time after receiving the knowledge of the transfer of ownership of the Unit, the Association may, without notice, approve or disapprove of the transaction. If the proposed transfer is approved by the Association, such approval shall be evidenced by a certificate of approval executed by the President of the Association, which certificate shall be recorded in the Public Records of the County, at the expense of the seller of the Unit. If the Association should exercise its right to purchase the Unit, the price to be paid to Owner shall be the bona fide price stated in the contract to sell. If a question arises as to whether or not the sale price is bona fide, the question shall be resolved by having the price determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) MAI appraisers appointed by the American Arbitration Association, who shall base their determination upon the average of their appraisals of the Unit. The sale and purchase shall be closed within sixty (60) days after receipt of the sales contract, or within thirty (30) days after the determination of the sale price by arbitration, whichever date is later. In the event the Association fails to exercise its right of first refusal within fifteen (15) days from the date of its receipt of the Resale Notice, then such transaction shall be deemed to have the approval of the Association. Notwithstanding the foregoing provision, all approvals must be evidenced by a certificate of approval as hereinbefore provided. All funds expended by the Association for the repurchase of a Unit pursuant to this Section 16, shall be paid from funds collected by the Association from Assessments against the Owners or by other means approved by the Board. All proceeds from the purchased Unit shall be returned to the general reserves of the Association. Any sale or other transfer not authorized pursuant to the terms of this Section 16, shall be void unless subsequently approved by the Association. In addition, no conveyance of a Unit shall be valid unless there is also recorded in the Public Records of the County a certificate signed by an officer or agent of the Association stating that all Assessments, charges, fines and other monies due to the Association, as of the date of the certificate, are paid in full. The Association shall respond to a request for such a certificate within fifteen (15) days of receipt of same and may charge an administrative fee for the processing thereof.

- 16.3 Exceptions. The foregoing provisions pertaining to the sale or transfer of a Unit shall not apply to the following:

- (a) A transfer to, or purchase by an Institutional First Mortgagee, who acquires title as a result of owning a mortgage upon a Unit, and this shall be so whether title is acquired by deed or other conveyance from the mortgagor, or through judicial foreclosure proceedings; nor shall such provisions apply to a transfer or sale by an Institutional First Mortgagee that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale, or tax sale.
- (b) A transfer from a trustee to a successor trustee.
- (c) A transfer by devise or inheritance.
- (d) A transfer by operation of law.
- (e) A transfer to a then existing Unit Owner who is (i) in good standing with respect to paying all Assessments and other charges then due to the Association and (ii) not in violation of this Declaration or the Rules and Regulations.
- (f) The sale or transfer of a Unit to the Developer, or the sale or transfer of a Unit by the Developer.

16.4 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.

16.5 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.

16.6 Leases. All leases of Units shall be in writing and shall be deemed to provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, Rules and Regulations, or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. Further, leases shall provide that the Association shall have the right to collect all rental or lease payments due to the Owner and apply same against unpaid Assessments, if, and to the extent that, the Unit Owner is in default in the payment of Assessments. 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, including, without limitation, because the lessor is delinquent in the payment of Assessments to the Association or has any

outstanding fine. A reasonable administrative fee will be charged by the Association to the Owner for the cost to review the lease and to perform other services associated therewith. Every lease of a Unit shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all exhibits thereto) and with any and all Rules and Regulations adopted by the Association from time to time and that any failure by the lessee to comply with the terms under the lease shall empower the Association with the right and authority on behalf of the Owner to commence legal proceedings to cause the lessee to be evicted. All Unit Owners shall be jointly and severally liable with their tenants to the Association for any amount which is required by the Association to repair any damage to the Common Elements resulting from acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by negligence of the tenant or for the acts and omissions of the 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. Leases for all Units shall comply with and be subject to the provisions of the Declaration of Condominium, Articles of Incorporation, Rules and Regulations, By-Laws, and the Act, and the provisions of same shall be deemed expressly incorporated into any lease of a Unit. A Unit Owner may sublet his Unit. This subsection shall also apply to subleases and assignments and renewals of leases. All leases of Units are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease. All prospective lessees shall be required to place a security deposit, in an amount not to exceed the equivalent of one month's rent, into an escrow account maintained by the Association, which may be used by the Association to repair any damage to the Common Elements or Association Property resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). No lease of a Unit shall be for a term of less than twelve (12) months and no Unit may be leased in excess of two (2) times in any twelve (12) month period. The Association shall have the right to require that each lease contain certain uniform provisions, including provisions reflecting the foregoing terms and conditions.

- 16.7 Gifts and Devises. 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 16.
- 16.8 Transfer of Units. Notwithstanding anything contained in Section 16 hereof or any other provisions in this Declaration to the contrary, Developer reserves and shall have the absolute and unqualified right for as long as Developer owns any Unit, now or by reacquisition, to sell, lease at any time and from time to time, mortgage, or otherwise transfer or encumber any such Unit in any way or manner determined by the Developer in its sole and absolute discretion without limitation.

17. **Compliance and Default.** The Association, each Unit Owner, mortgagee, occupant or tenant of a Unit, and other invitees of a Unit Owner, 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, and the provisions of all such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 17.1 **Negligence.** A Unit Owner, occupant, tenant or mortgagee of a Unit 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, contractors, officers, agents, invitees or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected by the Association in respect of such negligence.
- 17.2 **Compliance.** In the event a Unit Owner, tenant, mortgagee 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, the Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, after written notice and any applicable curative period under that document has expired, the Association shall have the right to proceed in court to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, to make a special charge against the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, and to hire an attorney to make a charge against the Unit Owner and Unit for the costs of such reasonable attorneys' fees incurred in requiring performance and/or compliance of the Unit Owner. In addition, the Association has the irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.
- 17.3 **Fines.** In the event a Unit Owner, tenant, occupant, invitee, licensee, mortgagee, guest or contractor fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, the Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to impose a fine against the Unit Owner and the Unit. The amount of any fine shall be determined by the Board of Directors of the Association, but in any event shall not exceed any maximum amount permitted by the Act, as such Act may be amended from time to time. Any fine shall be imposed by written notice to the Unit Owner, tenant, or other person or entity in non-compliance, signed by an officer of the Association, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the Unit

Owner, tenant, or other person or entity in non-compliance, has the right to contest the fine by delivering written notice to the Association within fourteen (14) days after receipt of the notice imposing the fine. If the Unit Owner, tenant, or other person or entity in non-compliance, timely and properly objects to the fine, a committee of other Unit Owners ("Unit Owner Committee") appointed by the Board of Directors of the Association for the purpose of conducting these types of hearings shall conduct a hearing within thirty (30) days after receipt of the Unit Owner's, tenant's, or non-complying party's objection, and shall give the Unit Owner, tenant, or other person or entity in non-compliance, not less than fourteen (14) days written notice of the hearing date. Such notice shall include:

- (i) A statement of the date, time and place of the hearing;
- (ii) A statement of the provisions of the Declaration, Association By-Laws, or Association Rules and Regulations which have allegedly been violated; and
- (iii) A short and plain statement of the matters asserted by the Association.

At the hearing, the Unit Owner Committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred and that the fine imposed is appropriate. The Unit Owner, tenant, or other person or entity in non-compliance, shall have the right to attend the hearing and to respond to any material considered by the Association and to produce evidence on his behalf and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. If the Unit Owner, tenant, or other person or entity in non-compliance, fails to attend the hearing, then the hearing will be deemed waived and the Unit Owner Committee may ratify the fine without further proceedings. At the hearing, the Unit Owner Committee shall ratify the fine or if the Unit Owner Committee does not agree with the fine, it may reduce or eliminate the fine and shall give the Unit Owner, tenant, or other person or entity in non-compliance, written notice of its decision. Any fine shall be due and payable within fourteen (14) days after written notice of the imposition of the fine, or if a hearing is timely requested within fourteen (14) days after written notice of the Unit Owner Committee's decision at the hearing. If any fine is levied against a tenant and is not paid within fourteen (14) days after same is due, the Association shall have the right to evict the tenant.

- 17.4 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner, tenant, occupant, invitee, licensee, guest or contractor to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the Rules and Regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees (including appellate attorneys' fees).

- 17.5 **No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the Rules and Regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
18. **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 all of the applicable interests in the Common Elements and by all of the holders of recorded mortgage liens affecting the Condominium Parcels. 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 that Unit Owner has first paid off all mortgages and liens on his Unit. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the Public Records of the County. This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as Developer owns at least one (1) Unit.
19. **Additional Rights of Mortgagees and Others.**
- 19.1 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, which financial statement must be available within 120 days of the Association's fiscal year end, (iii) receive notices of and attend Association meetings, (iv) receive notice of any alleged default in any obligations hereunder by any Unit Owner, on whose Unit such Institutional First 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.
- 19.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing from the Association, the right to timely written notice of (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. **Covenant Running With the Land.** All provisions of this Declaration, the Articles, By-Laws and the Rules and Regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, legal 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, the Articles, By-Laws and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed of 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 the Rules and Regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.
21. **Disclaimer of Warranties.** DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ALL COMMON LAW AND STATUTORY WARRANTIES, ALONG WITH THOSE PERTAINING TO THE DESIGN, CONSTRUCTION, SOUND TRANSMISSION, FINISHING, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, AND THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND HABITABILITY, EXCEPT TO THE EXTENT THAT SUCH WARRANTIES EXIST UNDER THE ACT FOR NON-RESIDENTIAL CONVERSION CONDOMINIUMS AND THEY CANNOT BE DISCLAIMED AND HAVE NOT EXPIRED BY THEIR TERMS THEREUNDER. AS TO THOSE WARRANTIES WHICH CANNOT BE DISCLAIMED, IF ANY, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL SECONDARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY SPECIFICALLY EXCLUDED AND DISCLAIMED. ALL UNIT OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS, WHETHER FROM THE DEVELOPER OR ANOTHER PARTY, SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND SECONDARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES. IN ADDITION TO THE FOREGOING, DEVELOPER HEREBY DISCLAIMS (AND EACH UNIT OWNER, BY VIRTUE OF ACCEPTING TITLE TO A UNIT IN THE CONDOMINIUM, HEREBY WAIVES) ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO THE NUMBER OF SQUARE FEET CONTAINED IN THE UNIT OR ANY APPURTENANT LIMITED COMMON ELEMENTS, NOTWITHSTANDING ANY STATEMENTS OR ESTIMATES OF SAME CONTAINED IN ANY SALES MATERIAL, CONTRACT OR OTHER AGREEMENT.

22. **Additional Provisions.**

- 22.1 **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), facsimile or express overnight delivery service to the Association at its principal place of business as shown by the records of the Florida Department of State or to such other address as the Association may designate from time to time. 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 the Unit Owner from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by certified mail (return receipt requested), facsimile or express overnight delivery service to their respective business addresses, or to 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 envelope, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.
- 22.2 **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.
- 22.3 **Mortgagees.** Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 22.4 **Exhibits.** There is hereby incorporated in this Declaration all materials contained in the exhibits annexed hereto.
- 22.5 **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.
- 22.6 **Governing Law, Venue and Waiver of Jury Trial.** 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 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. Venue for any suit, action or other legal proceeding arising out of or relating to this Declaration, the exhibits annexed hereto, or any Rules and Regulations adopted

pursuant to such documents, shall be brought in the courts of record of the State of Florida in Palm Beach County or the courts of the United States, Southern District of Florida. **EACH OWNER ACKNOWLEDGES REGARDLESS OF WHERE SUCH OWNER (i) EXECUTED A PURCHASE AND SALE AGREEMENT, (ii) HAS ITS PLACE OF BUSINESS OR RESIDENCE, (iii) OBTAINS FINANCING, OR (iv) CLOSED ON A UNIT, THAT THIS DECLARATION LEGALLY AND FACTUALLY WAS EXECUTED IN PALM BEACH COUNTY, FLORIDA. DEVELOPER HAS AN OFFICE IN PALM BEACH COUNTY, FLORIDA AND EACH UNIT IS LOCATED IN PALM BEACH COUNTY, FLORIDA. ACCORDINGLY, AN IRREFUTABLE PRESUMPTION EXISTS THAT THE ONLY APPROPRIATE VENUE FOR THE RESOLUTION OF ANY DISPUTE OR COURT ACTION ARISING FROM OR RELATED TO THIS DECLARATION OR THE SUBJECT MATTER DESCRIBED HEREIN LIES IN PALM BEACH COUNTY, FLORIDA. IN ADDITION TO THE FOREGOING, EACH OWNER AND DEVELOPER AGREE THAT THE VENUE FOR RESOLUTION OF ANY DISPUTE LIES IN PALM BEACH COUNTY, FLORIDA. EACH OWNER, BY ACQUIRING TITLE TO A UNIT, FOR ITSELF, AND ITS HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS, ASSIGNS, LICENSEES, INVITEES, EMPLOYEES, AGENTS, TENANTS, CONTRACTORS, PARTNERS, OFFICERS, MEMBERS, FAMILY MEMBERS, OR ANY OTHER PERSONS OR LEGAL ENTITIES, IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING, ACTION OR LAWSUIT ARISING OUT OF OR IN CONNECTION WITH THE TERMS, PROVISIONS AND SUBJECT MATTER OF THIS DECLARATION, ANY RULES AND REGULATIONS PROMULGATED BY THE ASSOCIATION, OR BY VIRTUE OF OWNERSHIP, USE OR RENTAL OF A UNIT IN THE CONDOMINIUM, AND FURTHER THAT NONE OF THE FOREGOING WILL SEEK TO CONSOLIDATE ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED.**

- 22.7 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 any 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.
- 22.8 Waiver. No provisions contained in this Declaration, the exhibits annexed hereto or any Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, 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.

- 22.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each tenant and 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, the Articles and By-Laws of the Association, and Rules and Regulations, are fair and reasonable in all material respects.
- 22.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Land as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This power of attorney is irrevocable and coupled with an interest. The provisions of this subsection may not be amended without the prior written consent of the Developer.
- 22.11 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 22.12 Grant/Reservation. Developer hereby grants and reserves, as appropriate, all easements described in this Declaration to the extent such formal grant and reservation, as appropriate, is necessary under applicable law to create such easements and such language of grant and reservation has been omitted in any such Section hereof.
- 22.13 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.
- 22.14 Mandatory Non-Binding Arbitration of Disputes.
- (a) Prior to the institution of court litigation, the parties to a dispute, as further defined herein, shall petition the Division for non-binding arbitration. Arbitration shall be conducted according to rules promulgated by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitations. For purposes of this subsection 22.14, a "dispute" shall be as defined pursuant to Florida Statute Section 718.1255, as amended from time to time.
  - (b) At the request of any party to the arbitration, such arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a

subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may in the discretion of the arbitrator be permitted in the manner provided by the Florida Rules of Civil Procedure.

- (c) The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a complaint for a trial *de novo* is not filed within 30 days in a court of competent jurisdiction in which the Condominium is located following the date of issuance of the arbitration decision. The right to file for a trial *de novo* entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding may be awarded reasonable attorneys' fees, the costs of the arbitration, or both, in an amount determined in the discretion of the arbitrator.
- (d) The party who files a complaint for a trial *de novo* shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorneys' fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial *de novo* is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial *de novo* shall be awarded reasonable court costs and attorneys' fees.
- (e) The decision of an arbitrator shall be final; however, such a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial *de novo*. If such judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial *de novo*.
- (f) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by filing of a complaint for trial *de novo* has expired. If a complaint for a trial *de novo* has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

22.15 Priorities in Case of Conflict. In the event of conflict between or among the provisions of any of the following, the order of priority shall be, from highest priority to lowest:

- (a) The Act, as it existed on the date of recording of the Declaration;
- (b) The Declaration;

- (c) The Articles;
- (d) The By-Laws; and
- (e) The Rules and Regulations of the Association.

22.16 Member Approval of Certain Litigation. Notwithstanding any other provisions of this Declaration, the Articles, By-Laws or Rules and Regulations to the contrary, the Board of Directors shall be required to obtain the prior approval of at least three-fourths (3/4ths) of all voting interests prior to the payment of, or contracting for the payment of, legal or other fees or expenses to any person engaged by the Association in contemplation of a lawsuit or for the purposes of making, preparing or investigating any lawsuit, or commencing any lawsuit, other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to this Declaration, the Articles, By-Laws or Rules and Regulations;
- (c) the enforcement of the use and occupancy restrictions contained in this Declaration, the Articles, By-Laws or Rules and Regulations;
- (d) the enforcement of any restrictions on the sale, lease and other transfer of Units;
- (e) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association, its members or the Condominium Property, but, in such event, the aforesaid vote shall be taken with respect to the continuation of the action at the earliest practical date (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4ths) of the voting interests); or
- (f) filing a compulsory counterclaim.

This subsection 22.16 shall not be amended without the approval of at least three-fourths (3/4ths) of all voting interests.

22.17 Indemnification. The Association covenants and agrees that it will indemnify and hold harmless Developer and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Condominium Property, Association Property, or the appurtenances thereto, from and against all costs, legal fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees

which may be entered therein, to the extent permitted by law. Included in the foregoing provisions of indemnification are any expenses that Developer may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the Association.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officer this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

WITNESSES:

DEVELOPER:

BOCA RATON PROPERTY, INC.,  
a Florida corporation

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

By: \_\_\_\_\_  
James E. Goldstein, President

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

Post Office Address:  
1475 West Cypress Creek Road, Suite 202  
Fort Lauderdale, Florida 33309

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by James E. Goldstein, the President of BOCA RATON PROPERTY, INC., a Florida corporation, for and on behalf of the corporation. He is personally known to me or has produced his Florida driver's license as identification.

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

(Notary Seal)

## JOINDER BY MORTGAGEE

The undersigned Mortgagee does hereby join in and consent to the foregoing Declaration of Condominium and agrees that the lien of its Mortgage and Security Agreement, dated \_\_\_\_\_, 200\_\_, and recorded on \_\_\_\_\_, 200\_\_, in Official Records Book \_\_\_\_\_, at Page \_\_\_\_\_, of the Public Records of Palm Beach County, Florida, and any other security or financing agreements held by said Mortgagee on the said property, are hereby subject, subordinate and inferior to said Declaration, as may be amended or supplemented from time to time.

The undersigned has caused this Joinder to be executed by its duly authorized officer this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

WITNESSES:

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

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

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

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, for and on behalf of the entity. He/She is personally known to me or has produced his/her state driver's license as identification.

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

(Notary Seal)

**EXHIBITS**  
**TO**  
**DECLARATION OF CONDOMINIUM**  
**OF**  
**TWIN LAKES PROFESSIONAL CENTER, A CONDOMINIUM**

- EXHIBIT "1" - LEGAL DESCRIPTION OF REAL PROPERTY BEING SUBMITTED TO CONDOMINIUM OWNERSHIP
- EXHIBIT "2" - ARTICLES OF INCORPORATION OF TWIN LAKES PROFESSIONAL CENTER CONDOMINIUM ASSOCIATION, INC.
- EXHIBIT "3" - BY-LAWS OF TWIN LAKES PROFESSIONAL CENTER CONDOMINIUM ASSOCIATION, INC.
- EXHIBIT "4" - PLOT PLAN, SURVEY AND GRAPHIC DESCRIPTION OF IMPROVEMENTS
- EXHIBIT "5" - PERCENTAGE OWNERSHIP IN COMMON ELEMENTS