

EXHIBIT "A"

(Reserved for Clerk of Court)

**DECLARATION
OF
THE GREENS, A CONDOMINIUM**

The Greens Developer, LLC, a Florida limited liability company (the Developer as defined in Section 2.17 hereof), hereby declares:

1 Introduction and Submission.

- 1.1 The Land. The Developer owns the fee title to certain land located in Lee County, Florida, as more particularly described on Exhibit 1 which is the legal description of the land.
- 1.2 Submission Statement. The Developer hereby submits the Land and all improvements erected or to be erected thereon and all other property, real, personal or mixed, now or hereafter situated on or within the Land and all easements, rights and appurtenances belonging thereto - but excluding all public or private (e.g. cable television and/or other receiving or transmitting lines, fiber, antennae or equipment) utility installations therein or thereon, to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided.
- 1.3 Name. The name by which this condominium is to be identified **THE GREENS, 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" or "Condominium Act" or "Florida Condominium Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter renumbered.
- 2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.3 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.
- 2.4 "Association" or "Condominium Association" means **THE GREENS AT FOUNTAIN LAKES CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium, the common elements owned in individual shares by Unit owners and the maintenance of other real property in which condominium Unit owners have use rights.
- 2.5 "Association Property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.6 "Board" or "Board of Directors" means the board of directors, from time to time, of and is responsible for the administration of the Association.
- 2.7 "Buildings" is defined in Section 3.1 hereof.

- 2.8 "By-Laws" mean the By-Laws of the Association, as amended from time to time.
- 2.9 "Committee" means a group of Board Members, Unit Owners or Board Members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the proposed annual budget or to take action on behalf of the Board.
- 2.10 "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within either the Units and/or the Association Property.
 - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements and/or Association Property.
 - (c) An easement of support in every portion of a Unit which contributes to the support of the Buildings, other Units and/or any part of the Common Elements.
 - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements and/or to the Association Property.
 - (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.
- 2.11 "Common Expenses" mean all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include, without limitation: (a) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (b) the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract; (c) the cost of any bulk contract for broadband, telecommunications, satellite and/or internet services, if any, (d) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house and/or interactive communications and surveillance systems; (e) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property; (f) all expense of installation, repair, and maintenance of hurricane shutters by the Board (provided, however, that a Unit Owner who has already installed hurricane shutters (or other acceptable hurricane protection) shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each Unit, but shall not be excused from any portion of expenses related to maintenance, repair, replacement or operation of same), (g) all expense of installation of hurricane shutters by the Board for those portions of the Buildings requiring shutters in accordance with the applicable building codes in effect at the time that the permits for the Buildings were obtained; (h) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure. Common Expenses shall not include any separate obligations of individual Unit Owners; and (i) all amounts, costs and assessments resulting from the Master Covenants.
- 2.12 "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.
- 2.13 "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.
- 2.14 "Condominium Property" means the Land, Improvements and other property described in Section 1.2 hereof.
- 2.15 "County" shall mean the County of Lee, Florida.
- 2.16 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as same may be amended from time to time.
- 2.17 "Developer" means **THE GREENS DEVELOPER, LLC**, a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not 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 nonexclusive basis. Notwithstanding any assignment of the Developer's rights hereunder (whether partially or in full), the assignee shall not be deemed to have assumed any of the obligations of the Developer unless, and only to the extent that, it expressly agrees to do so in writing. 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. Any assignment of the right to control the Board of Directors must be in writing and must include an assignment of the Developer's obligations under this Declaration.

- 2.18 "Dispute", for purposes of Section 18.1, means any disagreement between two or more parties that involves: (a) the authority of the Board, under the Act or under this Declaration, the Articles or By-Laws to: (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit or the appurtenances thereto; or (ii) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; the levy of a fee or Assessment or the collection of an Assessment levied against a party; the eviction or other removal of a tenant from a Unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a Unit based upon the alleged failure of the Association to maintain the Common Elements or Condominium Property.
- 2.19 "Division" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.20 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property, including, but not limited to, the Buildings.
- 2.21 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.22 "Land" shall have the meaning given to it in Section 1.1 above.
- 2.23 "Limited Common Elements" mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements, unless the context would prohibit or it is otherwise expressly provided.
- 2.24 "Master Association" means the Fountain Lakes Community Association, Inc., a Florida corporation not-for-profit, being the entity responsible for the administration of the Master Covenants.
- 2.25 "Master Covenants" mean the Fountain Lakes Community of Palm Beach Declaration of Protective Covenants recorded in Official Records Book 1938, Page 4601 of the Public Records of Lee County and when the context so requires, shall also mean the Articles of Incorporation and the By-Laws of Fountain Lakes Community Association, Inc., all as amended, modified or supplemented.
- 2.26 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.27 "Unit" means a part of the Condominium Property which is subject to exclusive ownership, and except where specifically excluded, or the context otherwise requires, and as further set forth in Section 3.1 hereof.
- 2.28 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.

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

3 Description of Condominium.

3.1 General Description.

- (a) General Description of the Condominium Property. The Condominium will consist of a total of nine (9) two-story buildings (the "Buildings") containing one hundred forty-four (144) units (the "Units"). Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on Exhibit "2" attached hereto.
- (b) Survey and Graphic Description of the Condominium Property. A copy of the survey and site plan of the Condominium, together with graphic descriptions of the Units and Buildings, are set forth on Exhibit 2 to the Declaration of Condominium. Said Exhibit "2", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions.
- (c) Appurtenances to the Units. There shall pass with a Unit as appurtenances thereto under Florida Statute Section 718.106(2): (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, including, without limitation, the right to transfer such right to other Units or Unit Owners; (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; (e) the right to use the Units for the purposes set forth in Section 17.1 hereof as and the right to lease the Units provided in Section 17.8 hereof and (g) other appurtenances as may be provided by this Declaration.

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

- (a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
 - (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling.
 - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials; provided, however, that the exteriors of doors facing interior Common element hallways shall not be included in the boundaries of the Unit and shall therefore be Common Elements.
- (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "2" hereto shall control in determining the boundaries of a Unit, except that the provisions of Section 3.2(c) above shall control unless specifically depicted 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 Terraces. Any balcony or terrace (and all improvements thereto including any storage spaces or areas located on terraces or balconies) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s), except as provided herein to the contrary.

- (b) Parking Spaces. The Developer, in its sole discretion, reserves the right to designate and assign, with or without consideration, all automobile parking spaces situated on the Condominium Property, as shown on Exhibit "2", as Limited Common Elements for the exclusive use by Unit Owners of specified Units as long as it holds any Unit for sale in the ordinary course of business. Any parking spaces not assigned by the Developer as Limited Common Elements shall remain as Common Elements. After assignment to a Unit by the Developer, each parking space shall pass as Limited Common Elements of the Unit. No Unit Owner shall have or acquire any fee simple title to the parking space at any time except as part of the Unit Owner's undivided share in the Common Elements. To the extent available, the Developer may assign additional parking spaces to a Unit Owner. Upon payment by the Unit Owners of such price as Developer may, in its absolute discretion, demand the Developer shall assign an additional space or spaces to a Unit and once so assigned, said space or spaces shall become a Limited Common Element appurtenant to such Unit. All such assignments of parking spaces 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 assigned as Limited Common Elements under this Section 3.3. The Developer will cause the Association to record 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, if any, shall be retained by Developer and shall not constitute income or revenue of the Association. 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 re-assigned by the Condominium Association, in its sole discretion, to another Unit Owner as a Limited Common Element.

Notwithstanding the foregoing, a Unit Owner who has acquired additional parking spaces from the Developer or Association shall have the right to transfer or assign said additional space or spaces to another Unit Owner upon prior written notice to the Association, provided, however, that each Unit shall have a minimum of one (1) parking space(s) appurtenant thereto at all times. Upon receipt of said written notice of transfer by the Association, the Association shall thereupon cause to be executed in the name of the grantee or transferee a new Parking Space Assignment and record such transfer in the Association Book. There shall be no recordation amongst the Public Records of Lee County of the transfer of a parking space.

As to any Limited Common Element parking space which was originally assigned by the Developer to a Unit owned by the Developer, the Developer reserves the right, at any time that the Developer still owns said Unit, to reassign such parking space, provided that at all times, each Unit shall have one (1) Limited Common Element parking space. Further, a Limited Common Element parking space may be relocated at any time, and from time to time, by the Board to comply with applicable federal, state and local laws and regulations regarding or affecting handicap accessibility.

- (c) Miscellaneous Areas, Equipment. Any fixtures or equipment (e.g., an air conditioning compressor or hot water heater) serving a Unit or Units exclusively and any area (e.g., a closet or ground slab) upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s).

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

- (a) Support. Each Unit, the Buildings 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, the Common Elements, and any other structure or improvement which abuts any Unit, the Buildings or any Improvements, including without limitation, any structures governed by the Master Covenants.
- (b) Utility and Other Services: Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and monitoring systems, and other services and drainage in order to serve the Condominium and/or members of the Association. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such

utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Association shall have a right of access to each Unit to maintain, repair or replace the pipes, wires, ducts, vents, cables, chases/shafts, conduits and other utility, cable television, communications and similar systems, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).

- (c) Encroachments. If (i) any portion of the Common Elements and/or Association Property encroaches upon any Unit (or Limited Common Element appurtenant thereto); (ii) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements and/or Association Property; (iii) any Improvements encroach upon the "Common Property" described in the Master Covenants any Improvement of any Common Property created under the Master Covenants, encroach upon the Condominium Property; or (iv) any encroachment shall hereafter occur as a result of (A) construction of the Improvements; (B) settling or shifting of the Improvements; (C) any alteration or repair to the Common Elements and/or Association Property made by or with the consent of the Association or Developer, as appropriate, or (D) 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 and/or Association Property, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, and for each member of the Association shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use by the Board; and for vehicular and pedestrian traffic 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 purposes. None of the easements specified in this subparagraph 3.4(d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.
- (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 undertaking and completing the construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, and/or any improvements to be located adjacent thereto and for repair, replacement and maintenance or warranty purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so.
- (f) Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors) to stage window washing equipment and to perform window washing and/or any other exterior maintenance and/or painting of the Buildings.
- (g) Sales Activity. For as long as the Developer retains any ownership interest in any portion of the Condominium Property, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements, or Association Property for guest accommodations, model apartments and sales and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants whether in the Condominium or any other property owned by Developer adjacent to the Condominium Property, and to erect on the Condominium Property and Association Property signs and other promotional material to advertise Units or such other properties for sale or lease.
- (h) Association Easements. The Association and the Master Association and their agents, employees, contractors and assigns shall have easements to enter onto

the Condominium Property and Association Property for the purpose of performing such functions as are permitted or required to be performed by any such associations. All easements and rights provided for in the Master Covenants in favor of the Master Association and its members, if any, are hereby granted to said Master Association and its respective members.

- (i) Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Buildings, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjacent structure which are necessarily or conveniently located within the Condominium Property or Association Property (provided that the use of this easement shall not unreasonably interfere with the structure, operation or use of the Condominium Property, the Association Property or the Buildings).

All easements and rights provided for in the Master Covenants in favor of the Master Association, its respective members and/or the Declarant thereunder, and its and their assignees, designees and nominees, are hereby granted to such parties.

- (j) Developer's Right to Install, Provide and Maintain Pay Television Facilities. The Association and each Unit Owner does hereby give and grant to the Developer, and the Developer hereby reserves unto itself, the exclusive right and privilege (but not the obligation) to install, provide, repair, replace and maintain (and solicit customers for) any or all present or future systems and equipment which are or may be developed for the purpose of transmitting a pay television picture and/or internet service into the Units which desire such services and into the recreational facilities, including but not limited to closed circuit, master antenna, community antenna and cable television system and/or internet service and the like and all related conduits, wires, amplifiers, antennas, towers and other apparatus and equipment (collectively, the "CATV System"). All wires, cables and equipment comprising such CATV System shall be and remain the property of the Developer, its successors and/or assigns. Developer may, in its sole discretion, remove and/or relocate the wires, cables and equipment comprising such CATV System. The Association and each Unit Owner does hereby further give and grant to the Developer, and the Developer hereby further reserves unto itself, such perpetual easements over, under, through and across the Condominium Property as may be necessary from time to time to install, provide, repair, replace and maintain (and solicit customers for) such pay CATV System. The Developer shall have the right in its sole discretion, to utilize such pay CATV System for transmission to users other than the Unit Owners or lessees of Units in the Condominium. Developer further reserves the right to assign (in whole or in part), lease, transfer and/or convey the exclusive rights, privileges and easements herein reserved. The Association recognizes and agrees that the Developer, in order to provide such pay CATV System, may be obligated to enter into agreements (including lease agreements) with the appropriate government authorities having jurisdiction, upon such terms and conditions as the Developer may determine in its sole discretion. To the extent necessary, the Association hereby agrees that, at the request of the Developer and with no compensation being due or payable to the Association or to any of the Unit Owners, the Association will execute all such required consents, documents and agreements. Further, the Association hereby irrevocably gives and grants to the Developer a full power of attorney, coupled with an interest, to execute all such consents, documents and agreements on behalf of the Association, upon such terms as the Developer may determine in its sole and absolute discretion. Nothing herein contained shall be deemed to deny any Unit Owner, or any lessee of a Unit, access to any available franchise or licensed cable television service, nor shall such Unit Owner or lessee be required to pay anything of value in order to obtain such service except those charges normally paid for like services by residents of, or providers of such services to, single family or multi-family residences within the same franchised or licensed area and except for installation charges, as such installation charges may be agreed to between the Unit Owner and the provider of the services. The provisions of this Section 3.4(j) may not be amended, modified, deleted or impaired, in whole or in part, without the consent of the Developer.

- (k) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time and without requiring prior approval of the Association and/or any Unit Owner (provided, however, that absent an emergency situation, Developer shall provide reasonable advance

notice), to enter the Condominium Property, including the Units, Common Elements and Limited Common Elements, 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. **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 22 below.**

- (l) Emergency. Notwithstanding the designation of any area as a Limited Common Element, in the event of an emergency, an easement is hereby reserved over all such Limited Common Elements for pedestrian ingress and egress, as may be reasonably necessary as a result of such emergency.
- (m) Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.
- (n) Master Covenants. Easements are hereby reserved over such portion of the Condominium Property required by or created by the Master Covenants.

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

5.2 Voting. Each Unit shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association.

6 Amendment. 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. Except as elsewhere provided, approvals must be by an affirmative vote representing in excess of 66 2/3% or more of the voting interests of all Unit Owners. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting.

6.2 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of

mortgages or other liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by in excess of 66 2/3% of the voting interests of Unit Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement, operation, repair and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.

- 6.3 Mortgagee's Consent. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of said mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.
- 6.4 By The Developer. Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment; (a) to permit time-share estates (which must be approved, if at all, by all Unit Owners and mortgagees on Units); or (b) to effect a Material Amendment which must be approved, if at all, in the manner set forth in Section 6.2 above. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance.
- 6.5 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable 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 underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision _____ for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

7 Maintenance and Repairs.

- 7.1 Units. All maintenance, repairs and replacements of, in or to any Unit, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance, repair and replacement of windows, window coverings, interior nonstructural walls, the interior side of any entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. The obligation to maintain and repair any equipment and fixtures, or other items of personalty which are contained within a Unit (and Limited Common Elements) shall be the responsibility of the applicable Unit Owner and not the Association. Notwithstanding, the Association's obligation to maintain Limited Common Elements as set forth in Section 7.2 the Unit Owner shall maintain, repair and replace at his sole expense: (a) where a Limited Common Element appurtenant to the Unit owned by such Unit Owner consists of a balcony or terrace such Unit Owner shall maintain, repair and replace the finished surfaces of floor within said areas, in any, the fixed and/or sliding glass doors in the entrance ways or other portions of said areas, if any, the electrical outlet(s) and fixtures therein, if any, the replacement of light bulbs, if any. The Unit Owner shall be responsible for the general maintenance and appearance of such areas. Notwithstanding the

foregoing, the Association shall be responsible for the structural maintenance of all balconies and terraces.

7.2 Common Elements, Association Property and Limited Common Elements. Except to the extent (a) expressly provided to the contrary herein, or (b) proceeds of insurance are made available therefore, all maintenance, repairs and replacements in or to the Common Elements, Limited Common Elements and the Association Property, 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 of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners.

7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Unit or Units (to the exclusion of other Units) shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units.

8 Additions, Improvements or Alterations by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of \$50,000.00 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the voting interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing in the aggregate \$50,000.00 or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year. The provisions of this Section 8 shall apply in addition to the requirements of Section 718.113(2) of the Act.

9 Additions, Alterations or Improvements by Unit Owner.

9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, his Unit or any Limited Common Element without the prior written consent of the Board of Directors. The Board shall have the obligation to answer, in writing, any written request by a Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work and requiring the Unit Owner to obtain insurance naming the Developer and the Condominium as additional insureds. 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. Any such addition, alteration or improvement may not adversely affect the structural integrity of the Buildings or cause any damage to or adversely affect the Common Elements, Limited Common Elements and/or the Condominium Property. Once approved by the Board of Directors, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Developer's and 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, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer and/or the Association arising out of the Developer or Association's review of any plans under this Declaration or in granting their consent to any items thereunder. Without limiting the generality of the foregoing, the Developer and the Association shall not be responsible for

reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association or Developer under this Declaration or in granting their consent to any items thereunder.

9.2 Improvements, Additions or Alterations by Developer. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Association, the Board of Directors or other Unit Owners to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements and the installation of signs). Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.2 shall be adopted in accordance with Section 6 and Section 10 of this Declaration.

10 Changes in Developer-Owned Units. Without limiting the generality of the provisions of paragraph 9.2 above, and anything to the contrary notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (a) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (b) change the layout or number of rooms in any Developer-owned Units; (c) change the size of Developer-owned Units by combining separate Developer-owned Units into one (1) or more Units (although being kept as two or more, as applicable separate legal Units so that each Unit that was combined retains all of its rights as a separate Unit under the provisions of the Declaration and the Act), or otherwise; and (d) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Section 6.4, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 6.2 above. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

11 Operation of the Condominium by the Association; Powers and Duties.

11.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association (respectively, Exhibits "4" and "5" annexed hereto), as amended from time to time. The affairs of the Association shall be governed by a Board of not less than three (3) nor more than nine (9) directors. Directors must be natural persons who are 18 years of age or older. Any person who has been convicted of any felony by any court of record in the United States and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her residence is not eligible for Board membership, provided, however, that the validity of any Board action is not affected if it is later determined that a member of the Board is ineligible for Board membership due to having been convicted of a felony.

In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association

Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to install and/or close hurricane shutters in the event of the issuance of a storm watch or storm warning.

- (b) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and the Association Property.
- (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior written request.
- (d) The duty to perform each and every of the obligations of the Developer under any agreements entered into for the provision of services related to or otherwise in connection with all or any part of the CATV System and/or arising out of the rights reserved by the Developer under Section 3.4(j) hereof, in the event the Developer, in its discretion, assigns any such agreements or rights to the Association, which obligations under the preceding part of this Section 11.1(d) are expressly assumed by the Association's joinder herein.
- (e) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (f) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefore mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing.
- (g) The power to charge a fee for the exclusive use of any Common Elements or Association Property by an Owner for a limited period of time and from time to time.
- (h) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium and Association Property.
- (i) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, subject to Section 8 hereof. Real property (including, without limitation, any of the Units) shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors alone; provided that the requirements of Section 8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the proviso regarding the debt incurred) shall also apply to the acquisition of real property; provided, further, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- (j) 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.

- (k) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the Bylaws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.
- (l) The power to act as the collection agent on behalf, and at the request, of the Master Association for assessments due from Unit Owners; provided, however, that any assessments so collected shall not be deemed Assessments or Common Expenses hereunder.
- (m) The power to collect from all Unit Owners all amounts due under the Master Covenants which are hereby deemed to be Common Expenses.
- (n) The power to execute any instrument, consent or other document required under the Master Covenants on behalf of the Unit Owners.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration and the Master Covenants, or otherwise, the Master Covenants, as applicable shall take precedence over this Declaration (to the extent that such provision of the Master Covenants, as applicable is not contrary or in violation of the Act), and this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration to the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

- 11.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9 hereof. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.
- 11.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 11.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, 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.
- 11.6 Effect on Developer. If the Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer:
 - (a) Assessment of the Developer as a Unit Owner for capital improvements, or for transitional engineers or attorneys or for legal expenses incurred in any other action 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 its sales of Units;

- (b) Any action by the Association that would, in the Developer's sole and exclusive opinion, be detrimental to the construction, decorating, design, marketing, promotion or sale 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 sale of Units.

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

13 Collection of Assessments.

13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments coming due while he is the Unit Owner. Additionally a Unit Owner shall be jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the grantee Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

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

- (a) "Special Assessments" shall mean any assessment levied against a Unit Owner other than the assessment required by a budget adopted annually.
- (b) "Capital Improvement Assessments" shall mean and refer to a Special Assessment against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property.
- (c) Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed \$125,000.00 or cause the total Assessments levied to exceed 115% of Assessments for the preceding calendar year, the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum is attained.

13.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at fifteen percent (15%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel to secure the payment of Assessments. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County. To be valid, the claim of lien must state the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates, and the claim of lien must be executed and acknowledged by an officer or authorized officer 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 lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner or any other person claiming an interest in the Unit. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, 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 attorneys' fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may accelerate and declare immediately due and payable all installments of Assessments for the remainder of the fiscal year. In the event that the amount of such installments changes during the remainder of the fiscal year, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 13.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 13.5 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment have been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.
- 13.6 First Mortgagee. The liability of the holder of a first mortgage on a Unit (each, a "First Mortgagee"), or its successors or assigns, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the First Mortgagee's acquisition of title is limited to the lesser of:
- (a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; and
 - (b) One percent (1%) of the original mortgage debt.

The limitations set forth in clauses (a) and (b) above shall not apply unless the First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

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

- 13.7 Maintenance Guaranty. During the period commencing from the date of recording of the first deed of conveyance to the purchaser of a Unit until the earlier of one (1) year thereafter or the date on which control of the Board of Directors of the Association is turned over to Unit Owners other than the Developer (the "Initial Guarantee Expiration Date"), the Developer shall not be obligated to pay the share of the Common Expenses and Assessments attributable to Units that it owns provided that the regular monthly Assessments for Common Expenses imposed on each Unit Owner other than the Developer shall not increase during such period (the "Guarantee Period") over the following amounts set forth on Exhibit "6", and provided further that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during the Guarantee Period and not produced by the Assessments at the guaranteed level. For purposes of this paragraph, income to the Association other than Assessments (as defined herein and in the Act) shall not be taken into account when determining the deficits to be funded by the Developer. After the Initial Guarantee Expiration Date, the Developer shall have the option of extending the Guarantee Period for one (1) or more additional periods, (not to exceed three (3) additional periods) of one (1) year each (an "Additional Guarantee Period"), as provided in Florida Statutes Section 718.116(9). During an Additional Guarantee Period, if any, the Developer guarantees that regular monthly Assessments for Common Expenses imposed on each Unit Owner other than the Developer shall not increase during any such Additional Guarantee Period over the amounts set forth above. Furthermore, during an Additional Guarantee Period, if any, the Developer shall be obligated to pay any amount of Common Expenses actually incurred during an Additional Guarantee Period not produced by the Assessments at the guaranteed level. The Developer may also extend the Guarantee Period for a definite period of time by written agreement entered into with a majority of non-Developer Unit Owners. No funds received from the Unit Owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for Common Expenses, as provided in this Declaration and disclosed in the Estimated Operating Budget referred to above, shall be used for the payment of Common Expenses prior to the then applicable Guarantee Expiration Date. This restriction shall apply to funds including, but not limited to, capital contributions or start-up funds collected from the Unit Owners at the time Unit Owners purchased Units in the Condominium from the Developer. Notwithstanding the foregoing, if the Developer-controlled Association has maintained all insurance coverages required by § 718.111(11)(a), Florida Statutes, the Common Expenses incurred during the Guarantee Period or during any Additional Guarantee Period resulting from a natural disaster or an act of God occurring during the same Guarantee Period, which are not covered by insurance proceeds from the insurance coverages maintained by the Association, may be assessed against all Unit Owners owning Units on the date of such natural disaster or act of God, and their successors and assigns, including the Developer with respect to Units owned by the Developer. In the event of such assessment, all Units shall be assessed in accordance with their ownership interest in the Common Elements as set forth in Exhibit "3" attached hereto.
- 13.8 Estoppel Statement. Within fifteen (15) days after receiving a written request therefore from a purchaser, Unit Owner or mortgagee of a Unit, the Association shall provide a certificate, signed by an officer or agent of the Association, stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 13.9 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, assessments will be collected monthly.
- 13.10 Application of Payments. Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.
- 14 Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 14.1 Purchase, Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium and Association Property shall be purchased by the Association and shall be issued either by an insurance company authorized to do business in Florida, or a surplus lines carrier reasonably acceptable to the Board.
- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the

approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.

- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
- (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). The Association must retain copies of all such insurance policies and endorsements deposited with the Insurance Trustee.
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

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

- (a) Casualty. The Buildings (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policies) and all Improvements located on the Common Elements and the Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Every hazard insurance policy issued or renewed to protect the Condominium shall provide primary coverage for (which constitutes part of the Insured Property):
 - (i) All portions of the Condominium Property located outside the Units;
 - (ii) The Condominium Property located inside the Units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the Unit was initially conveyed; and
 - (iii) All portions of the Condominium Property for which this Declaration requires coverage by the Association.

Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a Unit and serve only one Unit and all air conditioning compressors that service only an individual Unit, whether nor not located within the Unit boundaries. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. The foregoing is intended to establish the property or casualty insuring responsibilities of the Association and those of the individual Unit Owner and do not serve to broaden or extend the perils of coverage afforded by any insurance contract provided to the individual Unit Owner. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief. Every hazard insurance policy issued or renewed to an individual Unit Owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each

insurance policy issued to an individual Unit Owner providing such coverage shall be without rights of subrogation against the Condominium Association that operates the Condominium in which such Unit Owner's Unit is located. All real or personal property located within the boundaries of the Unit Owner's Unit which is excluded from the coverage to be provided by the Association as set forth in this paragraph 14.2(a) shall be insured by the individual Unit Owner.

- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.
- (c) Worker's Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance covering the Common Elements, Association Property and Units if required by the Primary Institutional First Mortgagee or FNMA/FHLMC, or if the Association so elects.
- (e) Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association if required by the Act or FNMA/FHLMC. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.
- (f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (g) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss. Every casualty insurance policy obtained by the Association, if required by FNMA/FHLMC, shall have the following endorsements: (i) agreed amount and inflation guard and (ii) steam boiler coverage (providing at least \$50,000 coverage for each accident at each location), if applicable.

- 14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may (or if required by FNMA/FHLMC, shall) obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.

- 14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors as provided in Section 14.10 below, and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:
- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in 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.
- 14.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:
- (a) Expenses of the Trustee. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefore.
 - (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 with remittances to Unit Owners and their mortgagees being payable jointly to them.
 - (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
 - (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.
- 14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each Owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 14.8 Unit Owners' Personal Coverages. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an

Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.

- 14.9 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.10 Appointment of Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
- 14.12 Damage Not Covered. The cost to repair any damage caused to a Common Element or other property owned by the Association by a Unit Owner or Unit which is not covered by insurance shall be the responsibility of and shall be paid by said Unit Owner. The cost of any damage to a Unit not covered by insurance caused from a source outside the Unit, which source of damage is under the control and management of the Association, and said damage is through no negligence on the part of the Association, shall be borne by the Unit Owner sustaining the damage.

15 Reconstruction or Repair After Fire or Other Casualty.

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

If 75% or more 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 the Primary Institutional First Mortgagees approve such resolution, the Condominium shall be terminated as further provided in Section 19 hereof and the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

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

- 15.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and, if the damaged property which is to be altered is the Buildings 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) must approve the plans which are to be altered.

- 15.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.
- (a) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$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 promptly effect the repairs. Any balance remaining after such repairs have been effected shall, be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
 - (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
 - (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the

construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

- 15.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, the Association shall charge the Owner (but shall not levy an Assessment) in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.
- 15.5 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

16 Condemnation.

- 16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.
- 16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.
- 16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.
- 16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the 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 to and paid by the Owner of the Unit.
 - (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
 - (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

- (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
- (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

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

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

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefore shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
 - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof (the "Percentage Balance"); and
 - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof, by the Percentage Balance.

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

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

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

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

- 16.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.
- 17 Occupancy, Transfer and Use Provisions and Restrictions. In order to provide for congenial Occupancy of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:
- 17.1 Occupancy. Each Unit shall be used as a residence only, whether for permanent or temporary use, all in accordance with all applicable county, city and state codes, ordinances and regulations. The provisions of this subsection 17.1 shall not be applicable to Units used by the Developer for model apartments, sales offices, management services, repairs, maintenance or construction. The foregoing is subject to the provisions of Section III.C.25 of the Master Covenants.
- 17.2 Children. Children shall be permitted to be occupants of Units, but are restricted in certain activities. See the Rules and Regulations attached to the By-Laws (Exhibit "4" to the Declaration of Condominium) as Schedule A thereto.
- 17.3 Pet Restrictions. No Owner occupant of a Unit, including lessees and guests, shall be permitted to maintain any animals in their Unit or the Condominium Property except as permitted herein. Each Owner or occupant (regardless of the number of joint owners or occupants) of a Unit may maintain two (2) household pets in his/her Unit (i.e., 1 cat and 1 dog or 2 dogs or 2 cats), to be limited to dogs and/or cats or other household pets, provided that such pets are (i) permitted to be kept by applicable laws, (ii) not left unattended on balconies, (iii) generally, not a nuisance to residents of other Units or of neighboring buildings, and (iv) not a Rottweiler, Doberman Pincher, Presa Canario, Chow, wolf hybrid, Akita, Huskie or any breed of bull terriers or similar dog commonly referred to as a "pit bull" or other breed considered to be dangerous by the Board of Directors; provided that neither the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Board of Directors, the Developer, each Unit Owner and the Association in such regard. Notwithstanding the foregoing, Unit Owners may maintain an unlimited number of fish or caged domestic-type birds in his/her Unit. Bird cages are not permitted on balconies. No livestock or poultry shall be kept, raised or used upon any portion of the Property. An Owner by the purchase of his Unit agrees to indemnify the Association and hold it harmless against loss or liability of any kind arising from his having any animal in the Property. The foregoing is subject to the provisions of Section III.C.13 of the Master Covenants. Any landscaping damage or other damage to the Common Elements caused by a Unit Owner's pet must be promptly repaired by the Unit Owner. The Association retains the right to affect said repairs and charge the Unit Owner therefore. Without limiting the generality of Section 18 hereof, a violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in the By-Laws and/or any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property.
- 17.4 Alterations. Without limiting the generality and subject to the provisions of Section 9.1 and Section 9.2 hereof, but subject to Section 11 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto, Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, signs, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Condominium and/or alter and/or impair the structural integrity of the Condominium or the plumbing, electrical, HVAC and/or other systems of the Condominium without obtaining the prior written consent of the Association (in the manner specified in Section 9.1 hereof) except that any Unit Owner may display one (1) portable, removable United States flag in a respectful way. Curtains, blinds, shutters, levelors, or drapes (or linings thereof) which face the exterior windows or glass doors of Units shall be white or off-white in color and shall be subject to disapproval by the Association, in which case they shall be removed and replaced with acceptable items.

The foregoing is subject to the provisions of Section III.C.15.b of the Master Covenants with regard to air conditioning units and Section III.C.4 of the Master Covenants for with regard to antennas, aerials, satellite dishes and flagpoles.

- 17.5 Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. In that regard, each Unit Owner, by acceptance of a deed for a Unit, thereby covenants and agrees that it is the intention of the Developer that the stairwells of the Buildings are intended for ingress and egress in the event of emergency only, and as such are constructed and left unfinished solely as to be functional for said purpose, without regard to the aesthetic appearance of said stairwells. The foregoing is not intended to prohibit the use of the stairwells for any other proper purpose. Similarly, the garage and utility pipes serving the Condominium are intended solely for functional purposes, and as such will be left unfinished without regard to the aesthetic appearance of same.
- 17.6 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium and/or Association Property by its residents, occupants or members. No activity specifically permitted by the terms of this Declaration shall be deemed a nuisance. The foregoing is subject to Section III.C.20 of the Master Covenants.
- 17.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 17.7. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.
- 17.8 Leases. Leasing of Units is permitted, provided that every lease of a Unit, be it oral or written, shall be deemed to require that the tenant thereof be governed by and comply with the provisions of the Declaration, the By-Laws, the Articles of Incorporation and any applicable Rules and Regulations of the Association and the Master Association and every lease of a Unit must include a provision that grants the right of cancellation by the Condominium Association in the event of any violation by the tenant of any of the provisions of the documents governing the Condominium. A Unit may not be leased for a term of less than ninety (90) consecutive days and no Unit may be leased more than twice in any twelve (12) month period. A Unit Owner and a tenant or occupant of his Unit is jointly and severally liable for the tenant's or occupant's violation of any provision of the Declaration of Condominium and the Condominium Association's Rules and Regulations. All leases shall provide (or shall be deemed to provide if not provided in the lease) that the Condominium Association shall have the right to (i) terminate the lease upon default by the tenant in observing any of the provisions of the Master Covenants, the Declaration, the Articles or By-Laws of the Association, the applicable rules, or other provisions of any document governing the Condominium, and (ii) to collect all rental payments due to the Owner and apply same against unpaid Assessments if, and to the extent that, the Owner is in default in the payment of Assessments. All leases are made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease. All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease. .
- When a Unit is leased, a tenant shall have all use rights in Association Property and those Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall not have such rights, except as a guest, unless such rights are waived in writing by the tenant. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a Unit Owner and a tenant of Association Property and Common Elements otherwise readily available for use generally by Owners.
- 17.9 Floor Coverings. Without limiting the generality of the approval requirements set forth in Section 9 of this Declaration; no hard surfaced floor coverings such as wood, tile, marble and stone shall be installed in any Unit or its appurtenant Limited Common Elements unless same is installed with sound absorbing backing meeting the requirements, from time to time, of the Association. **Applicable warranties of the Developer, if any, shall**

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

Exterior Improvements. Without limiting the generality and subject to the provisions of Sections 9.1, 9.2, 17.4 or 17.11 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Buildings (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Association. No amateur radio transmission equipment shall be operated or permitted to be operated in the Property without the prior written consent of the Board of the Master Association. The foregoing is subject to: (a) Section III.C.6 of the Master Covenants, (b) Section III.C.15.b of the Master Covenants regarding air conditioning units, and (c) Section III.C.15.c of the Master Covenants regarding solar collectors.

- 17.10 Signs. No Unit Owner may install any sign under the provisions of Section 17.10 without the prior consent of the Association and subject to the provisions of Section III.C.14 and other applicable provisions of the Master Covenants.
- 17.11 Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in Section 11.1 (a) hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys to their respective Units to the Association to use in the performance of its functions. No Unit Owner shall change the locks to his Unit without so notifying the Association and delivering to the Association a new set of keys to such Unit.
- 17.12 Hurricane Shutters. The Board of Directors shall, from time to time, establish hurricane shutter or laminated glass specifications which comply with the applicable building code, and establish permitted colors, styles and materials for hurricane shutters or such laminated glass. Subject to the provisions of Section 9.1 above, the Association shall approve the installation or replacement of hurricane shutters or laminated glass conforming to the Board's specifications. The Board may, with the approval of a majority of voting interests in the Condominium, install hurricane shutters or laminated glass, and may maintain, repair or replace such approved shutters or laminated glass, whether on or within Common Elements, Limited Common Elements, Units or Association Property; provided, however, that if laminated glass or window film, in accordance with all applicable building codes and standards, architecturally designed to function as hurricane protection, is installed, the Board may not install hurricane shutters in accordance with this provision. All shutters shall remain open unless and until a storm watch or storm warning is announced by the National Weather Center or other recognized weather forecaster. A Unit Owner or occupant who plans to be absent during all or any portion of the hurricane season must prepare his Unit prior to his departure by designating a responsible firm or individual to care for his Unit should a hurricane threaten the Unit or should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of the Association.

Each Unit Owner, by acceptance of a deed or other conveyance of a Unit, shall be deemed to have recognized and agreed that the Association shall be solely responsible for the installation of hurricane shutters or laminated glass from time to time and the costs associated therewith shall be deemed a part of the Common Expenses of the Condominium that are included in the Assessments payable by Unit Owners. The obligations of the Association assumed hereby shall include, without limitation, development of appropriate plans to allow for the timely installation of the shutters, and all obligations with respect to the repair, replacement and/or upgrade of the shutters or laminated glass. Developer shall have no obligations with respect to the installation of the shutters, and/or for the repair, replacement and/or upgrade of the shutters. Developer shall have no obligations with respect to the installation of the shutters or laminated glass, and/or for the repair, replacement and/or upgrade of the shutters or laminated glass.

- 17.13 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 17 for good cause shown.
- 17.14 Selling, Transferring and Mortgaging of Units. The following shall apply to all sales, transfer and mortgages of Units:

- (a) Sales. There shall be no restriction on the right of any Unit Owner to sell, convey, mortgage or transfer his Unit. However, every new Unit Owner must notify the Association of his purchase or acquisition of the Unit by providing the Association with a copy of the deed whereby the Unit Owner acquired title to his Unit. Any deed or conveyance to a new Unit Owner shall automatically be deemed to provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, applicable rules and regulations, and all other agreements, documents or instruments affecting the Condominium Property, as the same may be amended from time to time.
- (b) Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 17.
- (c) Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.

17.15 Outside Installations. No radio station or short-wave operations of any kind shall operate from any Unit, Limited Common Elements or Common Elements. Except to the extent permitted under applicable laws, no exterior satellite dish, or other transmitting or receiving apparatus, radio antenna, television or other antenna of any type shall be erected or maintained on the Common Elements, Limited Common Elements, or Units, without the prior written consent of the Association. Notwithstanding the foregoing, upon obtaining the prior written consent of the Association, satellite dishes, and other devices permitted under applicable law, may be installed within the Units or within any Limited Common Elements appurtenant thereto, provided, however, that in no event shall any such device be installed in or on any other portion of the Condominium Property. To the extent permissible under applicable law, the Association may enact Rules and Regulations, requiring that any such devices which may be permitted under applicable law are comparable in size, weight and appearance, are installed and maintained in a manner designed to protect the safety of the Buildings and its occupants and satisfy any standards established by the Association for architectural appearance purposes.

The foregoing is subject to the provisions of Section III.C.4 and 11.C.6 of the Master Covenants with regard to antennas, aerials, satellite dishes, flagpoles, and amateur radio transmission equipment.

- 17.16 Mitigation of Damages and Humidity. No Unit Owner shall install, within his or her Unit, or upon the Common Elements or Association Property, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in 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 or mycotoxins. The Developer does not make any representations or warranties regarding the existence or development of molds 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. In furtherance of the rights of the Association as set forth in Section 11.1(a) above, in the event that the Association reasonably believes that the provisions of this Section 17.17 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) 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).
- 17.17 Cumulative with Restrictions of Master Covenants. Without limiting the generality of Section 23.15 or of the last unnumbered paragraph of Section 11.1 of this Declaration, the foregoing restrictions shall be in addition to, cumulative with, and not in derogation of those set forth in the Master Covenants.
- 17.18 Effect on Developer Unit Owners. Subject to the following exceptions, the restrictions and limitations set forth in this Section 17 shall not apply to the Developer nor to Units owned by the Developer. The Developer shall not be exempt from the restrictions, if any, relating to requirements that leases be in accordance with the provisions of Section 17.8 hereof, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as

such vehicular restrictions relate to the Developer's construction, maintenance and marketing activities.

- 18 Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

18.1 Mandatory Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and reasonable attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be charged the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

18.2 Negligence and Compliance. A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association. In the event a Unit Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines, to sue at law for damages, and to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, provided, however, that nothing contained in this Section 18.2 shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

- 19 Termination of Condominium. The Condominium shall continue until (a) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (b) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the applicable interests in the Common Elements and by the Institutional First Mortgagees of Units to which at least sixty-seven percent (67%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant. In the event such withdrawal is authorized as aforesaid, and provided that the Board first notifies the Division of an intended withdrawal, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of the partition sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the

Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County. The Association shall, within thirty (30) business days following such recordation, provide the Division with a copy of such recorded certificate. This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.

20 Additional Rights of Mortgagees and Others.

- 20.1 Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.
- 20.2 Amendments. Subject to the other provisions of this Declaration and except as provided elsewhere to the contrary, an amendment changing, creating or deleting provisions governing any of the following shall require the approval of a Majority of Institutional First Mortgagees: (a) voting rights; (b) increases in assessments by more than 25% over the previous assessment amount, assessment liens or the priority of assessment liens; (c) reductions in reserves for maintenance, repair and replacement of Common Elements and/or Association Property (except that the Developer prior to turnover of control of the Association may vote to waive reserves in accordance with the provisions of Section 10.1 of the By-Laws in which event the approval of a Majority of Institutional First Mortgagees shall not be required); (d) responsibility for maintenance and repairs; (e) reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; (f) redefinition of Unit boundaries; (g) conversion of Units into Common Elements or Common Elements into Units; (h) expansion or contraction of the Condominium; (i) hazard or fidelity insurance requirements; (j) imposition of restrictions on leasing of units; (k) imposition of restrictions on the selling or transferring of title to Units; (l) restoration or repair of the Condominium after a casualty or partial condemnation; (m) any action to terminate the Condominium after casualty or condemnation; (n) a decision by the Association to establish self management if professional management had been required previously to make the Condominium eligible for FNMA-approved financing; and (o) any provision that expressly benefits mortgage holders, insurers or guarantors as a class. In accordance with Section 718.110(11), Florida Statutes, any consent required of a mortgagee may not be unreasonably withheld.
- 20.3 Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing from the Association, the right to timely written notice of:
- (a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;
 - (b) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;
 - (c) the occurrence of a lapse, cancellation or material modification of any insurance policy maintained by the Association;
 - (d) any proposed termination of the Condominium;
 - (e) any proposed action which requires the consent of a specified number of mortgage holders.
- 20.4 Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.

- 21 Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association and the Master Covenants, including the Bylaws, Articles of Incorporation and Rules and Regulations of the Master Association (collectively the "Master Association Documents") shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent Owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Articles, By-Laws and applicable rules and

regulations and the Master Association Documents, all as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association and the Master Association Documents, all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein. The foregoing is subject to the provisions of Section 23.15 hereof.

- 21.1 **Disclaimer of Warranties.** As the Units are a conversion of previously occupied premises and the Developer has elected to fund conversion reserves, Developer hereby expressly disclaims any and all and each and every express or implied warranties provided by the Florida Condominium Act, same being inapplicable to the Condominium. Without limiting the generality of the foregoing, to the maximum extent lawful, Developer hereby disclaims any and all express or implied warranties whether established by statutory, common, case law or otherwise, as to the design, construction, sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Condominium Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute (including those imposed by the Florida Condominium Act), and all other express and implied warranties of any kind or character. Developer has not given and the Unit Owner has not relied on or bargained for any such warranties. Each Unit Owner, by accepting a deed to the Unit, or other conveyance thereof, shall be deemed to represent and warrant to Developer that in deciding to acquire the Unit, the Unit Owner relied solely on such Unit Owner's Independent Inspection of the Unit, the Condominium and the Condominium Property. The Unit Owner has not received nor relied on any warranties and/or representations from Developer of any kind, other than as expressly provided herein.

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

Further, given the climate and humid conditions in South Florida, molds, mildews, toxins and fungi may exist and/or develop within the Unit and the Condominium Property. Each Owner is hereby advised that certain molds, mildews, toxins and/or fungi may be, or, if allowed to remain for a sufficient period, may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildews, toxins and/or fungi and have released the Developer from any and all liability resulting from same.

As a result of, in the field of construction, other permitted changes to the Unit, and setting and shifting of improvements, actual square footage of a Unit may also be affected. By accepting title to a Unit, the applicable Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any non-material variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Developer's promotional materials or otherwise. Without limited to the generality of this Section 22, each Owner shall be deemed to have fully waived and released the Developer from any warranty and claims for losses or damages resulting from any non-material variances between any represented or otherwise disclosed square footage and the actual square footage of the Unit.

23 **Additional Provisions.**

- 23.1 **Notices.** All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.
- 23.2 **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.

- 23.3 Mortgagees. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lien or 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.
- 23.4 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.
- 23.5 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 therefore, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefore, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 23.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 23.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 23.8 Waiver. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
- 23.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 23.10 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, shall be deemed to have acknowledged and agreed (i) that all of the provisions of this Declaration, and the Articles and By-Laws, and applicable rules and regulations, are fair and reasonable in all material respects, and (ii) to automatically consent to any rezoning, replatting, covenant in lieu of unity of title, revised site plan, change, use or other development rights, by the Developer, or by any affiliate thereof, and in such regard, each Owner, or occupant of a Unit, hereby designates the Association to act on behalf of the Unit Owner, as agent and attorney-in-fact to consent to any such rezoning, replatting, covenant, or change, addition or deletion or transfer. If requested by the Developer each Owner shall evidence their consent to a rezoning, replatting, covenant, or change, in writing (provided, however, that the refusal to give such written consent shall not obviate the automatic effect of this provision). The foregoing Power of Attorney is irrevocable and is coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 23.11 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.
- 23.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 23.13 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, By-laws, any rules or regulations of the Association or any other document governing or binding the association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of

any Owner, occupant or user of any portion of the Condominium and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

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

Each Owner (by virtue of his acceptance of title to his Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed hereby. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns. The provisions hereof shall also inure to the benefit of Developer, which shall be fully protected hereby.

- 23.14 The Master Association. The Condominium is part of a development known as "Fountain Lakes Community of Palm Beach" consisting of various parcels of properties (the "Property"). The Common Property of the Property (as defined in the Master Covenants) is governed by the Master Association pursuant to the Master Covenants. The Master Covenants also contains certain rules, regulations and restrictions relating to the use of the Condominium Property, including without limitation, the Common Elements and the Units, as well as the Common Property. The Association is a voting member of the Master Association. The Unit Owners are not voting members of the Master Association but will be subject to all of the terms and conditions of the Master Covenants, as amended and supplemented from time to time. Among the powers of the Master Association are the power to assess the Association (and other members of the Master Association) for a pro-rata share of the expenses of the operation, maintenance and replacement of the Common Property and as otherwise provided in the Master Covenants and to impose and foreclose liens on the Condominium in the event such assessments are not paid when due. The Condominium Association shall collect the assessments from the Unit Owners and promptly remit the same to the Master Association when such assessments are due in accordance with the terms thereof. The Condominium Association and the Unit Owners shall be liable to the Master Association for the payment of all assessments levied in accordance with the total number of Units contained in the Condominium. In the event the Condominium Association fails to collect any Unit Owner's pro rata share of the assessment, the Condominium Association shall be obligated to advance the sum on behalf of the delinquent Unit Owner(s). In the event the Condominium Association fails to promptly remit such sums to the Master Association or the Unit Owner fails to promptly remit such sums to the Condominium Association, the Master Association shall have all remedies provided at law or in equity in addition to those remedies set forth in the Master Declaration, Article VI, Paragraphs C, D, and F including the right to impose and foreclose liens on the entire Condominium. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a statement of satisfaction of lien in recordable form from the Master Association. For more information please see the Master Declaration, Article VI.B. Establishment of Liens (See Master Declaration, Article VI.C), Collection of Delinquent Assessments (See Master Declaration, Article VI.D), and Rights of Developer and Institutional Mortgagees to Pay Assessments and Receive Reimbursement (See Master Declaration, Article VI.F. In no event shall: (i) the Master Association be deemed the condominium association for the Condominium; or (ii) the Common Property be deemed Common Elements or otherwise part of the Condominium Property.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the _____ day of _____, 2005.

Signed in the present of:

Name: _____

THE GREENS DEVELOPER, LLC, a Florida limited liability company, acting by and through its managing member, to-wit:

OKA Estero, LLC, a Florida limited liability

By: _____
Eduardo Avila, Manager

Name: _____

Address: 2601 South Bayshore Drive, Suite 200
Miami, Florida 33133

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing Declaration was acknowledged before me, this _____ day of _____, 2005, by Eduardo Avila, Manager of OKA Estero, LLC, a Florida limited liability, the Managing Member of The Greens Developer, LLC, a Florida limited liability company. He () is personally known to me, or () produced _____ as identification.

Name: _____
Notary Public, State of Florida

My Commission expires:

Commission No.: _____
[NOTARIAL SEAL]

JOINDER

THE GREENS AT FOUNTAIN LAKES CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, THE GREENS AT FOUNTAIN LAKES CONDOMINIUM ASSOCIATION, INC., has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this ____ day of _____, 2005.

Witnessed by:

THE GREENS AT FOUNTAIN LAKES CONDOMINIUM ASSOCIATION, INC., a Florida corporation, not for profit

Name: _____

By: _____
Jamie Ortega, President

Name: _____

[CORPORATE SEAL]

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing joinder was acknowledged before me, this ____ day of _____, 2005, by Jamie Ortega, as President of THE GREENS AT FOUNTAIN LAKES CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, on behalf of said corporation. He/she () is personally known to me, or () produced _____ as identification.

Name: _____
Notary Public, State of Florida

My Commission expires:

Commission No.: _____
[NOTARIAL SEAL]

JOINDER AND CONSENT OF MORTGAGEE

_____, being the holder of that certain mortgage, recorded in Official Records Book _____, Page _____ of the Public Records of Palm Beach County, Florida, hereby consents to the filing of the foregoing Declaration of Condominium, in accordance with the applicable provisions of Florida Statutes, Chapter 718.

Signed, sealed and delivered
in the presence of:

_____, a Florida _____

Print: _____

By: _____
Name: _____
Title: _____
Date: _____

Print: _____

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, this _____ day of _____, 2005, by _____, as _____ of _____, on behalf of said bank. He/she () is personally known to me, or () produced _____ as identification.

Name: _____
Notary Public, State of Florida

My Commission expires:

Commission No.: _____
[NOTARIAL SEAL]