

EXHIBIT "A" TO PROSPECTUS

DECLARATION OF CONDOMINIUM  
of  
**Harbour Isle at Hutchinson Island East, a Condominium**

Prepared by and Return to:  
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**DECLARATION OF CONDOMINIUM  
OF  
HARBOUR ISLE AT HUTCHINSON ISLAND EAST, A CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM is made this \_\_\_\_ day of \_\_\_\_\_, 2004, by HARBOUR ISLE DEVELOPMENT EAST, LLC, a Florida limited liability company, whose principal office is located at 801 Seaway Drive, Hutchinson Island, Florida 34949, for itself, its successors, grantees, assigns and its transferees.

**(For the purposes of this Declaration, all capitalized terms set forth herein are defined in Section 3 or elsewhere in this Declaration.)**

**SECTION 1. PURPOSE AND SUBMISSION STATEMENT.** The purpose of this Declaration is to submit real property and improvements on the real property to the condominium form of ownership and use, in the manner provided by the Condominium Act. Developer does hereby submit the Land and the improvements thereon to the condominium form of ownership and use pursuant to the Condominium Act. Developer specifically submits by special warranty deed Developer's "fee simple" interest in the Land, the legal description of which is attached as Exhibit "A" to this Declaration. The survey exhibits and plot plan of the Condominium, are as set forth in Exhibit "B" to this Declaration.

**SECTION 2. NAME OF CONDOMINIUM AND ADDRESS.** The name by which this Condominium is to be identified is HARBOUR ISLE AT HUTCHINSON ISLAND EAST, A CONDOMINIUM, and its address is 6A Harbour Isle Drive East, Hutchinson Island, St. Lucie County, Florida 34949. Notwithstanding the location of the Condominium in the City of Fort Pierce, St. Lucie County, Florida, the mailing address for the Condominium is 6A Harbour Isle Drive East, Hutchinson Island, Florida 34949.

**SECTION 3. DEFINITIONS.** The following definitions shall apply in this Declaration and in the Articles of Incorporation and Bylaws, unless the context otherwise requires:

3.1 "Articles" means the Association's Articles of Incorporation that are attached as Exhibit "C" to this Declaration, as amended from time to time.

3.2 "Assessment" means a share of the funds required for the payment of Common Expenses by all the Unit Owners and for the payment of Storage Space Area Expenses by those Unit Owners to which a Storage Space Limited Common Element has been assigned as an appurtenance to their Unit. Annual Assessments and Special Assessments shall be levied against each Owner in a percentage, equal to that Owner's Undivided Share and Owners are obligated to the Association for such Assessments pursuant to the Condominium Act, as well as common law assessments that are created by this Declaration and the Master Declaration. Storage Space Area

Expenses shall be levied as provided in Section 8.1.3.4. The Assessments are covenants running with the land, and include without limitation:

3.2.1 "Annual Assessments" means each Owner's annual share of funds required for the payment of: (i) Common Expenses, as determined in accordance with this Declaration; and (ii) Operating Expenses, as determined in accordance with the Master Declaration;

3.2.2 "Special Assessments" means any Assessments levied by the Board that are levied in addition to the Annual Assessments; and

3.2.3 "Storage Space Area Assessments" means each Owner's share, if any, of Storage Space Area Expenses as computed under Section 8.1.3.4.

3.3 "Association" means HARBOUR ISLE AT HUTCHINSON ISLAND EAST CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, its successors and assigns, the entity responsible for the operation of the Condominium.

3.4 "Board" means the board of directors or board of administration that is responsible for the Association's administration.

3.5 "Building Area" means that portion of the Community designated by the Master Declaration which is the subject of a condominium declaration, the entire area of commercial Property in the Community, or otherwise, and any other area of land in the Community which is not Corporation Property.

3.6 "Buildings and Improvements" means the structures and improvements on the Condominium Property.

3.7 "Bylaws" means the Association's Bylaws that are attached hereto as Exhibit "D" to this Declaration, as amended from time to time.

3.8 "Charges" means those charges including but not be limited to maintenance or other services furnished by the Association for the benefit of a specific Owner or a specific Unit, damages, and any other sums other than Assessments that are referred to as Charges in the Condominium Documents. At no time shall a Charge be deemed an Assessment under the Condominium Act or under the Condominium Documents, but such Charge shall give rise to a cause of action against an Owner if not paid.

3.9 "Committed Property" means the portions of the Community which are committed to the provisions of the Master Declaration and those portions of Community which may hereafter become Committed Property pursuant to the recordation of one (1) or more supplements to the Master Declaration.

3.10 "Common Elements" means all portions of the Condominium Property not included within the Units, but not property owned by the Association or Corporation Property, and includes without limitation the following:

3.10.1 The Land.

3.10.2 All portions of the Buildings and Improvements not included within the Units, including Limited Common Elements.

3.10.3 Easements through Units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services or other services (including air ducts) to more than one (1) Unit and/or the Common Elements, including roof drains and pipe chases.

3.10.4 An easement of support and access in every portion of the Condominium Property that contributes to the support of the Buildings and Improvements.

3.10.5 The property and installments required for furnishing utilities and other services (including air ducts) to more than one (1) Unit or to the Common Elements.

3.10.6 One (1) pool deck, one (1) pool, one (1) clubhouse and two (2) tennis courts, all as depicted on Exhibit "B".

3.10.7 The Storage Spaces and the Storage Space Common Area.

3.10.8 The sea wall located on Condominium Property adjacent to the Marina.

3.10.9 Any other parts of the Condominium Property designated as Common Elements or Limited Common Elements in this Declaration.

3.11 "Common Expenses" means all expenses of the operation, maintenance, repair, replacement, protection or insuring of the Condominium Property and other property to the extent required by this Declaration, the expenses of operating the Association, fines levied by governmental authority, and any other expenses properly incurred by the Association for the Condominium, including accounting and legal fees and any amounts budgeted for the purpose of funding reserve accounts; provided however Common Expenses does not include Storage Space Area Expenses. Common Expenses shall include the cost of providing exterminating services for the Units, and may include basic cable television and internet access charges.

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

3.13 "Community" means the Harbour Isle at Hutchinson Island community which is a planned, commercial and residential development being developed in stages by Developer, including, but not limited to the lands depicted on Exhibit "B", which includes without limitation the lands governed by the Master Declaration, and the lands governed by this Declaration, all as amended and supplemented from time to time.

3.14 "Condominium" means Harbour Isle at Hutchinson Island East, a Condominium, established by the recording of this Declaration.

3.15 "Condominium Act" means the Condominium Act, Chapter 718, Florida Statutes (2003), as amended through the date of recording of this Declaration amongst the Public Records, unless the context specifically requires that future amendments to the Condominium Act apply.

3.16 "Condominium Documents" means and includes this Declaration and all recorded exhibits, including the Association's Articles of Incorporation and Bylaws, the Master Declaration, the Corporation's Articles of Incorporation and Bylaws, any Rules, and all instruments and documents referred to therein and executed in connection with this Condominium, all as amended from time to time.

3.17 "Condominium Parcel" means and includes each Unit, its Undivided Share and appurtenances.

3.18 "Condominium Property" means the real and personal property (owned or leased) by the Association, and real or personal property (owned or leased) comprising the Condominium, including, but not limited to, the Buildings and Improvements, the Common Elements, and all easements and rights appurtenant thereto intended for use in connection with the Condominium, including a perpetual, non-exclusive easement pursuant to the Master Declaration over, and across the Corporation Property to public ways, including dedicated streets. Notwithstanding anything contained herein to the contrary, however, the term "Condominium Property" shall not include any telecommunications lines or equipment owned by a utility and/or telecommunications firm(s) and/or other entity (entities) which have contracted with or have imposed other legal requirements upon Developer and/or the Association to provide a utility or telecommunications service and equipment and telecommunications equipment, owned by Developer, the title to which is hereby specifically reserved to Developer, Developer's successors and/or assigns.

3.19 "Corporate Easements" means any easement either established for the benefit of the Corporation or in which the Corporation has an interest and any and all other easements, buffer easements or other areas, now or in the future established by: (i) any applicable plat, including the Plat; (ii) the Master Declaration, a condominium declaration, or any supplement or amendment thereto; (iii) governmental or quasi-governmental code, ordinance or other provision; (iv) specific agreement; or (v) specific grant. Corporate Easements shall be easements located in Building Areas or on other property not owned by the Corporation.

3.20 "Corporate Easement Improvements" means any landscaping, masonry walls, fences or other improvements or ground cover owned and/or maintained by the Corporation located in, on or about a Corporate Easement.

3.21 "Corporation" means HARBOUR ISLE AT HUTCHINSON ISLAND PROPERTY MAINTENANCE ASSOCIATION, INC., a Florida corporation not for profit, organized to administer the Master Declaration and having among its members Developer, owners of commercial property in the Community, the Association (through which all Owners are indirectly represented) and the association of any other condominium or homeowner association.

3.22 "Corporation Property" means all real or personal property: (i) owned or leased by the Corporation; (ii) in which the Corporation has easement rights; or (iii) dedicated by the Master Declaration or by a recorded subdivision plat to the Corporation for the use and benefit of the Corporation's members, and includes, but is not limited to the Committed Property which is not within a Building Area, Corporate Easements and Corporate Easement Improvements, but specifically excludes any lands governed by a condominium association.

3.23 "County" means St. Lucie County, Florida.

3.24 "Declaration" means this Declaration of Condominium for Harbour Isle at Hutchinson Island East, a Condominium, as amended from time to time.

3.25 "Developer" means HARBOUR ISLE DEVELOPMENT EAST, LLC, a Florida limited liability company, Developer's successors, assigns and legal representatives. Developer shall have the right to assign any and all of the rights and privileges reserved for Developer under this Declaration. An Owner shall not, solely by the purchase of a Unit, be deemed to be a successor or assign of Developer or of the rights of Developer under the Condominium

Documents, unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Developer.

3.26 "Entity" means either a corporation, a business-named partnership or a limited liability company that owns a Unit.

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

3.28 "Guest" means any person who is not a member of the immediate family of an Owner, Primary Occupant or Permanent Occupant who occupies a Unit at the invitation of the Owner, Primary Occupant or Permanent Occupant, without requirement to contribute money, perform any services or provide any other consideration to the Owner, Primary Occupant or Permanent Occupant in connection with any such occupancy of the Unit. A Permanent Occupant of a Unit shall not be considered a Guest. Furthermore, an Owner or Primary Occupant of a Unit shall never be considered a Guest in the Unit owned, unless the Owner or Primary Occupant is visiting a Permanent Occupant in the Unit.

3.29 "Institutional First Mortgagee" means an Institutional Mortgagee holding a first mortgage lien on a Unit.

3.30 "Institutional Mortgagee" means the holder (or its assignee) of a mortgage encumbering a Unit, which mortgagee is a bank, savings and loan association, savings bank, national savings bank, mortgage company, insurance company or any subsidiary or entity owned by any of the foregoing, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Unit, which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns. The term also refers to Developer who may hold a mortgage on a Unit.

3.31 "Land" means the property described on Exhibit "A" attached to this Declaration.

3.32 "Lease" means the grant by an Owner of a temporary right of use of the Owner's Unit for good and valuable consideration.

3.33 "Limited Common Elements" means and refers to those Common Elements that are reserved or assigned for the use of a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. Reference herein to Common Elements shall include also all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

3.34 "Marina" means those areas of the Community consisting of the marina legally described as Tract "A" of the Plat ("Marina Parcel"), jetties, all docks and slips, and any other related land comprising a part of the marina not owned and governed by a condominium association or the Corporation, together with an easement of support in favor of the Marina.

3.35 "Master Declaration" means the Declaration of Protective Covenants and Restrictions for the Harbour Isle at Hutchinson Island Community recorded April 30, 2004, in

Official Records Book 1954, Page 1857, of the Public Records, and all amendments and supplements thereto. Pursuant to the terms of the Master Declaration, portions of the real property in the Community are set aside from time to time by Developer in accordance with the plan for development set forth therein and Operating Expenses are made specifically applicable to Owners to be collected by the Association on behalf of the Corporation in the same manner and by the same procedure as Common Expenses.

3.36 "Member" means a record Owner of a Unit and member of the Association.

3.37 "Occupant" is a person who is physically present in a Unit for two (2) or more consecutive days, including staying overnight. The defined term "Occupant" shall include, as the context requires, any Permanent Occupant and any Primary Occupant.

3.38 "Operating Expenses" means the expenses for which all Owners of Units in the Community are liable to the Corporation as described in the Master Declaration and include, but are not limited to, those expenses incurred by the Corporation in administering, operating, reconstructing, maintaining, repairing and replacing all portions of the Corporation Property, and any and all improvements thereon as well as all personal property for which the Corporation has such obligation to purchase and maintain as set forth in the Master Declaration, including the costs of administration of the Corporation and any special assessments of the Corporation.

3.39 "Owner" means the record owner, whether one (1) or more persons or Entities, of the fee simple title to any Unit, but excludes those having such interests merely as security for the performance of an obligation.

3.40 "Permanent Occupant" means a person who is occupying a Unit other than as a Guest. Notwithstanding the foregoing, any person who occupies a Unit for more than sixty (60) days in any calendar year or more than sixty (60) days in any 360-day period shall be deemed to be a Permanent Occupant.

3.41 "Plans and Specifications" means the plans and specifications prepared for the Buildings and Improvements prepared by Kelly Computer Graphics, Inc., dated October 15, 2003, and September 22, 2003, without an identified Job Number, and Douglas Root Architects, Inc. dated September 7, 2003, Job No. 03140603.

3.42 "Plat" means the Plat of Harbour Isle at Hutchinson Island recorded April 30, 2004, in Plat Book 43, Page 31, in the Public Records.

3.43 "Primary Institutional Mortgagee" means that Institutional Mortgagee which, at the time a determination is made, holds first mortgages on more Units than any other Institutional Mortgagee, such determination to be made by reference to the number of Units encumbered, and not by the dollar amount of such mortgages.

3.44 "Primary Occupant" means a designated natural person approved for occupancy when title to a Unit is held in the name of an Entity or trustee of a Trust, which natural person has executed a Primary Occupant Designation Certificate in the form attached as Exhibit "I" to this Declaration.

3.45 "Public Records" means the public records of the County in which all real property documents are recorded so as to provide constructive notice thereof.



3.46 "Rules" means those rules and regulations promulgated from time to time by the Board governing the use of the Condominium Property, including the Units, and the operation of the Association or those rules promulgated from time to time by the Corporation.

3.47 "Storage Space Common Area" means the Storage Space Area other than the Storage Spaces.

3.48 "Storage Space Area" means all of Tract "K" of the Plat and all improvements located thereon, including the Storage Spaces.

3.49 "Storage Space Area Expenses" means all expenses of the operation, maintenance, repair, replacement, protection or insuring of the Storage Space Area, including without limitation the Common Elements in the Storage Space Area, Storage Spaces owned by the Association, the expenses incurred by the Association in connection with operating the Storage Space Area, fines levied by governmental authority, and any other expenses properly incurred by the Association in connection with the Storage Space Area, including accounting and legal fees and any amounts budgeted for the purpose of funding reserve accounts. Storage Space Area Expenses shall include the cost of providing exterminating services for the Storage Space Area.

3.50 "Storage Space" means one of the storage spaces shown on Exhibit "B". Each Storage Space shall be assigned as a Limited Common Element appurtenant to a Unit. The vertical boundaries of the Storage Space shall be the side of the drywall or other wall material side that is attached to and touches the studs in the wall. The horizontal boundary of the ceiling of the Storage Space shall be the side of the drywall or other ceiling material that is attached to and touches the rafters of the ceiling. The horizontal boundary of the floor of the Storage Space shall be the top surface of the concrete slab floor of the Storage Space. Notwithstanding the foregoing, the entire garage door (other than the exterior surface), entrance door (other than the exterior surface), the windows, if any, and the casings, frames and hardware for each of the foregoing (collectively, the "Exterior Portion of the Storage Space") shall be a part of the Storage Space.

3.51 "Total Property" means the land that may be subject to the Master Declaration.

3.52 "Undivided Share" means each Unit's percentage of ownership share in the Condominium Property other than Units, the Common Elements and the Common Surplus. The Undivided Share shall be 1/288.

3.53 "Unit" means and refers to that portion of the Condominium Property that is subject to exclusive ownership.

3.54 "Utility" means and refers to a public or private utility.

3.55 "Very Substantial Damage" or "Very Substantial" means that two-thirds (2/3) or more of the Units in any one (1) building, as to that building, or two-thirds (2/3) of all Units and/or two-thirds (2/3) or more of the Condominium Property are or have been rendered untenable by casualty loss or damage.

3.56 "Voting Interest" means and refers to the arrangement established in the Condominium Documents by which Owners of each Unit or Members of the Association collectively are entitled to one (1) vote in Association matters.



**SECTION 4. IDENTIFICATION OF UNITS; DESCRIPTION OF CONDOMINIUM PROPERTY AND IMPROVEMENTS; SURVEYS AND PLANS; UNIT BOUNDARIES.**

4.1 Identification of Units. The Condominium shall consist of twelve (12) four (4)-story buildings and associated improvements to be known as Buildings "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "37" and "38". Each such building shall consist of twenty-four (24) Units, with six (6) Units on each floor. Each Unit is declared to be a Unit and subject to private ownership and is identified by floor number, a "1" indicating the first floor, a "2" indicating the second floor, a "3" indicating the third floor and "PH" indicating the fourth floor penthouse, then followed by a zero "0" and the Unit number, either "1", "2", "3", "4", "5" or "6", and then followed by "Building" and the building number. By way of example, the Units in Building 1 are identified by the following designations: "101", "102", "103", "104", "105", "106", "201", "202", "203", "204", "205", "206", "301", "302", "303", "304", "305", "306", "PH01", "PH02", "PH03", "PH04", "PH05" and "PH06", then "Building 1".

4.2 Survey and Plot Plans. The Survey is attached to this Declaration as Exhibit "A" and includes the legal description and survey of the Condominium Property. The plot plans and a Certificate of Surveyor which geographically describe the improvements in which the Units are or may be located, and which also show the Units, their approximate dimensions, and the Common Elements and Limited Common Elements to be constructed are set forth in Exhibit "B".

4.3 Developer Reservation. Developer specifically intends to sell Units as fee simple estates. Developer reserves the right, however, to lease Units or convey any Units in fee simple subject to a Lease.

4.4 Share of Ownership. There will be two hundred eighty-eight (288) Units in the Condominium, each having as an appurtenance thereto one (1) vote in the Association and an equal one-two hundred eighty-eighth (1/288th) undivided share of ownership in the Common Elements.

4.5 Unit Boundaries. Each Unit shall include that part of a building that lies within the following boundaries, the boundaries being part of the Unit:

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

4.5.1.1 Upper Boundaries: The horizontal plane up to but not including the lower surface of the ceiling structural element of the Unit.

4.5.1.2 Lower Boundaries: The horizontal plane immediately adjacent to but not including the floor slab of the Unit.

4.5.2 Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be: the vertical planes of the interior side of the exterior surfaces of the outside walls of the building and excluding any fixtures, for example, balcony railings, thereon; the vertical planes of the center line of an interior wall bounding another Unit, extended to the upper and lower boundaries; the undecorated interior surfaces of any window frames, window sills, doors and door frames bounding the Unit; and the exterior surfaces of any window panes or sliding glass door panes bounding the Unit.

4.5.3 Interior Walls. No part of the non-structural interior partition walls within a Unit shall be considered part of the boundary of a Unit.

4.5.4 Excluded from the Units: Any items referred to in this Declaration as Common Elements or Limited Common Elements shall be excluded from the Units even though they may lie within a Unit boundary.

4.5.5 In cases not specifically covered in this Section 4.5 or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth in Exhibit "B" to this Declaration shall control in determining the boundaries of a Unit, except that the provisions of this Section 4.5 shall control over said Exhibit.

4.6 Facilities. Commonly-used facilities and facilities designated for use by the Association:

4.6.1 Located in each building containing Units: one (1) elevator, hallways, two (2) stairways, a porte cochere, a trash room, and an electrical/mechanical room; and

4.6.2 Located elsewhere on the Condominium Property (collectively, the "Amenities"): (i) one (1) pool; one (1) clubhouse; two (2) tennis courts; and one (1) guardhouse/entrance feature; (ii) one (1) Storage Building (as a Limited Common Element); (iii) street lighting (The street lighting may be leased or purchased by the Association (not the Developer) from the applicable service provider and the applicable lease or purchase payments paid over an extended period of time from Annual Assessments.); (iv) parking spaces (some of which shall be Limited Common Elements); (v) streets; (vi) other common areas, including green spaces and water management lakes as shown on Exhibit "B"; and (vii) the sea wall along the boundary of the Condominium and the Marina. Developer anticipates that Developer will deliver to the Association the Amenities by March 2005, although Developer shall not be obligated to complete the Common Elements (including the Amenities) until two (2) years after the first contract for the sale of a Unit is fully executed by Developer and a purchaser ("Completion Date"). Thus purchasers who take title to their Units prior to Completion Date may not have access to any or all of the Amenities until after such date.

**SECTION 5. EASEMENTS; RELATED EXPENSES.** Each of the easements and easement rights referred to in this Section 5 is reserved through the Units and the Condominium Property (as applicable) and is a covenant running with the Condominium Property. Notwithstanding any other provisions of this Declaration, the easements established and granted herein shall survive the removal of any portion of the Condominium Property from the Condominium. None of the easements specified in this Section 5 may be encumbered by any leasehold or lien other than those on the Units. Any lien encumbering these easements shall automatically be subordinate to the rights of Owners with respect to such easements and the use thereof.

5.1 Utility Service and Drainage Easements.

5.1.1 There is hereby created a blanket easement upon, across, over, through and under the Units and the Condominium Property for the installation, replacement, repair and maintenance of all Utility and service lines and systems and drainage and water management, including, but not limited to, electric, gas, water, sewer, telephone, electric, cable television, internet access, air circulation, security, and surveillance or communication lines and systems. By virtue of this easement, it shall be expressly permissible for Developer or the providing Utility or service company to install and maintain facilities and equipment on the Condominium Property, to excavate for such purposes and to affix and maintain wires, circuits, and conduits through the walls of the Units and on, in and under the roofs and exterior walls of the Units, providing the disturbed areas are restored to the condition in which they were found and that an easement does not prevent or unreasonably interfere with the use of the Units. Except as otherwise provided in

Section 5.1.2, no sewer, electrical lines, water lines, or other Utility service lines or facilities for such utilities, and no cable or communication lines and systems or drainage and water management systems, may be installed or relocated in the Units or on the Condominium Property except as are approved by Developer or as established by the terms of this Section 5. Developer may also transfer title to Utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any Utility or governmental agency to which any such Utility-related equipment, facilities or material are to be so transferred. Developer reserves the right and authority to modify or relocate the above referenced easements.

5.1.2 Once Developer closes upon the sale of the last Unit of the Condominium, the powers vested in Developer under Section 5.1.1 shall terminate, and shall then vest in the Association. The Board shall exercise such powers in the Board's reasonable discretion without the need for joinder of any Owner.

5.1.3 Developer under Section 5.1.1 and the Association under Section 5.1.2, or the Developer's or the Association's designee, as applicable, shall have a right to remove any improvements interfering with or impairing such facilities or easements herein reserved. No Owner shall do anything anywhere in, on or about his Unit that interferes with or impairs or may interfere with or impair the provision of such utilities or other services or the use of these easements.

5.1.4 The Corporation Property is subject to all easements set forth in the Master Declaration.

5.2 Marina Channel and Basin; Jetties. The Condominium Property is subject to those easements (collectively, the "Marina Channel and Basin Easement") necessary for the construction, inspection, dredging, maintenance, repair and replacement and the reasonable crossing of the Marina channel and basin, including, without limitation, the Marina's sea walls and any structural supports therefor (collectively, the "Marina Channel and Basin"), wherever located landward within 25 feet of the boundary line between the Condominium Property and the Marina. The Marina Channel and Basin Easement is granted to the owner of the Marina, including its tenants, licensees, invitees, successors and assigns and shall include the right of access, ingress and egress from the property owned by the Marina owner over Condominium Property to conduct such construction, inspection, dredging, maintenance, repair and/or replacement of the Marina Channel and Basin. If at any time during the construction, inspection, dredging, maintenance, repair or replacement of the Marina Channel and Basin, the Condominium Property is altered or damaged in any manner, then the Marina owner shall have the obligation to reasonably return the Condominium Property to its original condition as it existed prior to the commencement of such construction, inspection, dredging, maintenance, repair or replacement.

5.3 Drainage of Marina and Corporation Property. Pursuant to the terms of the Master Declaration, the Corporation is responsible for the construction, inspection, maintenance, repair and replacement of the drainage and water management system in the Community, including that portion located on the Condominium Property. The lake depicted as WMA-2 on the Plat, drainage structures, swales, culverts, and all other portions of the drainage and water management system located on the Condominium Property are an integral part of said drainage and water management system serving the Total Property. In connection therewith, the Corporation is granted: (i) an easement for drainage from and to the Total Property into said drainage and water management system; (ii) an easement for access, ingress, egress and for the construction, periodic inspection, maintenance, repair and replacement of said drainage and water management system, including, but not limited to, all conduit, pipes, pumps, and other appurtenant equipment located in, on or under the Condominium Property; and (iii) an easement for access, ingress and egress and other uses in connection with the drainage and water management system of the Total Property as

shown on Exhibit "B". If at any time, during the construction, inspection, maintenance, repair or replacement of the drainage and water management system, the Condominium Property is altered or damaged in any manner, then the Corporation shall have the obligation to return the Condominium Property to its original condition as it existed prior to the commencement of such construction, inspection, maintenance, repair or replacement.

5.4 Conservation Easement. The Conservation Easement located on Condominium Property adjacent to the Indian River as depicted on the Plat as CE-3 and as established in that Amended and Restated Deed of Conservation Easement recorded November 13, 2003, in Official Records Book 1841, Page 2935, of the Public Records, as further amended and restated from time to time (the "Conservation Easement") is specifically subject to the following terms, covenants, conditions and restrictions:

5.4.1 The following activities are prohibited in or on the Conservation Easement:

5.4.1.1 Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

5.4.1.2 Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

5.4.1.3 Removal or destruction of trees, shrubs, or other vegetation, except for removal of exotic vegetation in accordance with a maintenance plan approved by the South Florida Water Management District;

5.4.1.4 Excavation, dredging, or removal of loan, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

5.4.1.5 Surface use except for purposes that permit the land or water area to remain in its natural condition;

5.4.1.6 Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing;

5.4.1.7 Acts or uses detrimental to such aforementioned retention of land or water areas; and

5.4.1.8 Acts or uses within the Association's regulatory jurisdiction that are detrimental to the preservation of any features or aspects of the Condominium Property having an historical or archaeological significance.

5.4.2 Monitoring and maintenance of the mitigation areas ("Mitigation Areas") described in the South Florida Water Management District Permit No. 56-01689-P, a copy of which is attached hereto as Exhibit "G" (the "SFWMD Permit") shall be the responsibility of the Association and the Other Seawall Owner (hereinafter defined) jointly and severally. The Association jointly and severally with the other Seawall Owner must successfully complete the mitigation and satisfy the permit conditions. The success criteria are described in the SFWMD Permit.

5.4.3 Any easements or use rights reasonably necessary, by the Corporation, other condominium associations or other Entities, for the implementation of the covenants, conditions and restrictions contained in the SFWMD Permit.

5.4.4 Any easements or use rights reasonably required or necessary for the implementation of the covenants, conditions and restrictions and obligations contained in the Army Corps of Engineers Permit No. 200106166 (IP-TKW) ("ACOE Permit"), a copy of which is attached hereto as Exhibit "H".

5.5 Encroachments. If any Unit encroaches upon any of the Common Elements or the Condominium Property for any reason other than the intentional act of an Owner, or if any Common Elements or the Condominium Property encroaches upon any Unit, as a result of: (i) construction of the Buildings and Improvements, (ii) settling or shifting of the Buildings or Improvements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association, (iv) any repair or restoration of Buildings or 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, or (v) for any other reason, then an easement shall exist to the extent of that encroachment and for the maintenance of the same as long as the encroachment exists.

5.6 Ingress and Egress. A non-exclusive easement shall exist in favor of each Owner, tenant and Occupant and their respective Guests and invitees, for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Elements and the Condominium Property as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Common Elements and the Condominium Property as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways. Speed bumps shall be permitted and shall be deemed not to violate any rights of any person in whose favor the easement for ingress and egress lies.

5.7 Governmental and Quasi-Governmental Ingress and Egress. A non-exclusive easement shall exist in favor of all governmental and quasi-governmental agencies supplying services to the Condominium Property, including, but not limited to, police, fire, ambulance, and other support services, over, through and across sidewalks, streets, parking spaces, paths, walks, hallways, stairways, elevators and other portions of the Common Elements and the Condominium Property as from time to time may be intended or designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Common Elements or Condominium Property as from time to time may be paved or intended for such purposes.

5.8 Construction; Maintenance. Developer (including Developer's designees, contractors, successors and assigns) shall have the right, in Developer's and their sole discretion, from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes where the Association fails to do so, or for any other purpose, provided such activity does not prevent or unreasonably interfere, in the opinion of Developer, with the use or enjoyment by the Owners of the Condominium Property.

5.9 Sales Activity. For as long as there are any unsold Units, Developer, Developer's designees, successors and assigns, shall have the right to use any such Units, and other Units with the Unit Owner's permission, and parts of the Common Elements for model Units and sales offices, to show model Units, sales offices and the Condominium Property to prospective

purchasers and tenants of Units, to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease and for any other similar purpose Developer deems appropriate in Developer's opinion.

## SECTION 6. APPURTENANCES TO EACH UNIT; USE AND POSSESSION OF UNITS AND SOCIAL PROVISION WHEN A UNIT IS LEASED.

6.1 Appurtenances to Each Unit. The Owner of each Unit shall have certain rights and own a certain interest in the Condominium, including without limitation, the following:

6.1.1 An Undivided Share. Each Unit's Undivided Share percentage shall be one/two hundred eighty-eighth (1/288<sup>th</sup>).

6.1.2 Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles and the Bylaws.

6.1.3 The exclusive right to use the Limited Common Elements reserved for the Unit (and with respect to the Storage Spaces, exclusive right to use the Storage Space and exclusive right, in common with all other Owners who have Storage Spaces appurtenant to their Units, to use the Storage Space Area excluding the Storage Spaces).

6.1.4 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. An easement in airspace that is vacated shall be terminated automatically.

6.1.5 Other appurtenances as may be provided in this Declaration and the Exhibits attached hereto.

6.2 Use and Possession. An Owner is entitled to exclusive use and possession of the Unit owned. An Owner is entitled to use the Unit as a single-family residence in accordance with the purposes for which it is intended, but no use of the Unit or of the Condominium Property may unreasonably interfere with the rights of other Owners or other persons having rights to use the Condominium Property. No Unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the Condominium Property, including the Units, shall be governed by the Condominium Documents and by the Rules.

6.3 Social Provision Regarding Use When the Unit is Leased. When a Unit is leased, a tenant in such Unit shall have all use rights in the Condominium Property otherwise readily available for use generally by Owners and the Owner of such Unit shall temporarily relinquish such rights and not have such rights except as a Guest. Nothing in this Section 6.3 shall interfere with the access rights of the Owner as a landlord pursuant to Chapter 83, Florida Statutes, or otherwise. The Board shall have the right to adopt Rules to prohibit dual usage by an Owner and a tenant of the Condominium Property otherwise readily available for use generally by Owners.

## SECTION 7. COMMON ELEMENTS.

7.1 Generally. The Common Elements are located and bounded as shown on the Survey and Plot Plans, as amended. Each Unit shall have appurtenant thereto its Undivided Share, as it then exists. The Board shall have the authority to adopt Rules respecting the use and enjoyment of the Common Elements.



7.2 Restraint Upon Separation and Partition. The fee title to each Unit shall include both the Unit and the Unit's Undivided Share and such Undivided Share shall be deemed to be conveyed or encumbered with each respective Unit, even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any attempt to separate the fee title to a Unit from the Undivided Share appurtenant to such Unit shall be null and void, and no action shall lie for partition of the Undivided Share.

## SECTION 8. LIMITED COMMON ELEMENTS.

8.1 Description of Limited Common Elements. Certain Common Elements have been designated as Limited Common Elements, reserved for the use of a particular Unit or Units, to the exclusion of all other Units. The Limited Common Elements and the Units to which their use has been designated are as described in this Declaration and as further identified on the Survey and Plot Plans (Exhibits "A" and "B" to the Declaration), as amended. The following Common Elements are hereby designated as Limited Common Elements, and shall be appurtenant to the Unit to which their use has been assigned or for which they serve:

8.1.1 Windows, Window and Door Screens and their Frames, and Doors. The window and door screens, if any, and their frames, casings and hardware, sliding glass door screens, if any, and their hardware and framings, and casings and hardware for the sliding glass doors, are Limited Common Elements of the Unit served thereby. In all cases, all windows panes, sliding glass door panes, etc. when they form a part of the boundary of the Unit are not Limited Common Elements but rather are parts of the Units.

8.1.2 Heating and Air Conditioning Units, Water Heaters and Certain Electrical and Plumbing Lines, Fixtures and Outlets. The air conditioning/heating unit, including the handling equipment and all appurtenances and lines wherever situated, and the water heater, including all appurtenances and lines, wherever situated, serving each Unit shall be Limited Common Elements of the Unit served thereby. Also, any electrical and plumbing lines, fixtures and outlets located in the Common Elements but which serve only one (1) Unit shall be Limited Common Elements of the Unit served thereby.

### 8.1.3 Storage Spaces.

8.1.3.1 In General. The Storage Spaces are deemed to be Limited Common Elements, all of which are initially assigned to Developer with respect to one of Developer's Units. The Storage Space Common Area is also a Limited Common Element for the benefit of those Units to which Storage Spaces are assigned. Each Owner of a Unit shall have the right to obtain an assignment from Developer for remuneration (as long as a Storage Space is available for assignment) for one (1) or more Storage Spaces, the location of each such Storage Space to be determined by mutual agreement of Developer and such Owner. A Unit may have more than one (1) Storage Space assigned to it. The Storage Spaces are numbered on Exhibit "B" to this Declaration. Such assignment shall be accomplished by Developer's execution of a Storage Space assignment form ("Storage Space Assignment Form"), attached to and made a part of this Declaration as Exhibit "F", at the later of: (a) the closing of the Unit to which such Storage Space shall at all times be an appurtenance to a Unit; or (b) upon substantial completion of the Storage Space. For any transfer of a Storage Space to be effective, a copy of the fully executed Storage Space Assignment Form shall be delivered to the Association. Once assigned, a Storage Space shall be a Limited Common Element appurtenant to the Unit to which it is assigned. Once appurtenant to a Unit, the only manner in which such Storage Space may be assigned is set forth as follows: (i) in connection with the transfer of title to the Unit to which it is appurtenant, and then only to the purchaser of said Unit; or (ii) to another Owner or to the



Association only if the mortgagee, if any, of the Unit from which the Limited Common Element is severed consents to such transfer in writing and the Storage Space Assignment Form is duly completed. Upon such severance, the Storage Space shall become a Limited Common Element of the new Unit to which it is assigned.

8.1.3.2 Restrictions on Use of Storage Spaces and Storage Space Area.

8.1.3.2.1 The Storage Spaces may be leased, but only to other Unit Owners, and for a period of not less than ninety (90) days.

8.1.3.2.2 The Storage Spaces shall not be used for commercial purposes (which shall not exclude the use of the Storage Space as a home office, provided such use is not contrary to law), and no goods, services or samples shall be sold, shown or otherwise provided from the Storage Space or any other part of the Storage Space Area.

8.1.3.3 Maintenance Obligations. Each Owner of a Unit to which a Storage Space is appurtenant shall maintain the interior and the appurtenant Exterior Portion of the Storage Space in good working order and in compliance with the rules and regulations of the Association, as amended from time to time, including, without limitation, the obligation to conform the Exterior Portion of the Storage Space to the norms set forth by the Association.

8.1.3.4 Storage Space Area Assessments. The Storage Space Area Expenses shall be assessed and shared equally by the Owners of all of the Units to which Storage Spaces are assigned pursuant to Section 8.1.3.1 of this Declaration ("Storage Space Area Assessments"). If a Unit has more than one (1) Storage Space assigned as an appurtenance, the Owner's proportionate share of the Storage Space Area Assessments shall be adjusted accordingly. The Association shall keep separate records of the Storage Space Expenses and Storage Space Assessments. The annual budget or a schedule attached to the annual budget shall separately show the amounts budgeted for the Storage Space Expenses which are to be shared equally by the Owners of Units to which each Storage Space is assigned. The Association shall prorate such an Owner's obligation based on the date upon which the Storage Space is assigned to said Owner's Unit under Section 8.1.3 of this Declaration, but only after the Association receives notice of any such assignment.

8.1.4 Parking Spaces. Each Unit shall be entitled to the use of one (1) assigned parking space that shall be an unseverable Limited Common Element appurtenant to said Unit. The location of such assigned parking space shall be initially determined by Developer. The assigned parking spaces are as numbered on Exhibit "B" to this Declaration. The parking space assignment form ("Parking Space Assignment Form") to be used in connection with the parking space assignment is attached to and made a part of this Declaration as Exhibit "E".

8.1.5 Air Conditioning Returns. That portion of the Common Elements of a building in which an air conditioning return is located shall be deemed a Limited Common Element appurtenant to the Unit that is served by such air conditioning return.

8.1.6 Others. Any part of the Common Elements connected to or exclusively serving a single Unit that is specifically required to be maintained, repaired, or replaced by or at the expense of the Owner pursuant to the terms of Section 11.2 of this Declaration shall be deemed a Limited Common Element appurtenant to that Unit, whether specifically described above or not.

8.2 Exclusive Use; Transfer of Use Rights. The exclusive use of a Limited Common Element is an appurtenance to the Unit to which it serves or to which it is assigned. The right of

exclusive use to each Limited Common Element passes with the Unit, whether or not separately described, and cannot be separated from the Unit, except as provided in this Declaration.

8.3 Conflict. In the event of a conflict between Exhibit "B" to the Declaration and this Section 8 as to Limited Common Elements, this Section 8 shall control.

SECTION 9. ASSOCIATION. The Condominium's operation is managed by the Association, which shall perform its functions pursuant to the terms of this Declaration, the Articles and the Bylaws.

9.1 Membership and Voting Rights. The Association's membership shall be as provided in the Articles and Bylaws. Owners of each Unit shall collectively be entitled to vote in accordance with the terms and provisions set forth in the Articles and Bylaws.

9.2 Limitation on Liability. Notwithstanding the Association's duty to maintain and repair certain portions of the Condominium Property, the Association shall not be liable to Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the Condominium Property to be maintained and repaired by the Association, or caused by the elements. Furthermore, in the event that any portion of the Condominium Property for which an Owner has the maintenance responsibility under this Declaration, or an Owner's property or personal belongings, are damaged in the course of the Association's maintenance, repair, replacement or reconstruction after casualty of the Condominium Property for which the Association has responsibility, that Owner accepts the full risk of loss. The only exception is for the Association's (whether for itself or its contractor) gross negligence or willful misconduct which causes the loss, in which case the Association bears the risk of loss created by the same.

9.3 Purchase, Conveyance, Leasing and Mortgaging of Real Property.

9.3.1 The Association may acquire title to, or a leasehold interest in, real property. In order to facilitate such acquisition or lease, the Association may enter into agreements for the acquisition of fee interests, leaseholds, easements, and other possessory or use interests in lands, beach clubs, clubhouses, pools, parking, docks, dock slips, marinas, and other recreational facilities and any other property of any kind whatsoever, whether or not contiguous to the Condominium Property, intended to be used by or for the benefit of the Owners (whether or not on an exclusive basis).

9.3.2 The Association may convey all or any portion of the Association Property owned by it.

9.3.3 The Association may lease all or any portion of the Association Property owned by it.

9.3.4 The Association may mortgage all or any portion of the Association Property owned by it.

9.3.5 The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements, and other expenses and undertakings in connection therewith shall be Common Expenses.

9.3.6 No actions authorized under this Section 9.3, however, may be taken as long as Developer owns any Units, without the prior written consent of Developer. The powers of the

Association established by this Section 9.3 are further subject to approval by a majority of the Voting Interests of the Association's entire membership.

9.4 Acts of the Association. Unless the approval or action of Owners, and/or a certain specific percentage of the Board, is specifically required in this Declaration, the Articles or Bylaws, the Rules 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, without the Owners' consent, and the Board may so approve and act through the Association's proper officers without a specific resolution. When the Association's approval or action is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

9.5 Corporation. The Association shall be a member of the Corporation as described in the Master Declaration and Articles of Incorporation of the Corporation. The Corporation has been organized for the purpose of administering the covenants and obligations relating to the Community, including the Corporation Property, the use of which is shared by all owners in the Community, as set forth in the Master Declaration. All Association Members acquire the benefits as to use of the Corporation Property and the obligation to pay assessments for operating expenses in accordance with the terms of the Master Declaration.

SECTION 10. ASSESSMENT, CHARGES; LIENS; WORKING CAPITAL CONTRIBUTIONS. The Association has the power to levy and collect Assessments against each Unit and Owner to provide the necessary funds for the Condominium's proper operation and management and for the Association's proper operation and management, including both Annual Assessments for each Unit's share of Common Expenses as set forth in the annual budget, and Special Assessments for any proper Common Expenses. The Association may also levy Charges against individual Units and Owners for any amounts, other than Common Expenses, which are properly chargeable against such Units and Owners under the Condominium Documents and the Master Declaration.

10.1 Share of Common Expenses. Except as otherwise provided in Sections 10.3 and 10.4, each Owner shall be liable for his share of the Common Expenses assessed against his Unit, which share shall be equal to the Undivided Share.

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

10.3 Who is Liable for Assessments? The Owner of each Unit, regardless of how title was acquired, is liable for all Assessments or installments thereon coming due while such Owner is the Owner. Multiple Owners are jointly and severally liable. Except as otherwise provided in Section 10.7.1, whenever title to a Unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid Assessments applicable to the Unit, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

10.4 No Waiver or Excuse From Payment. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Elements, by abandonment of the Unit on which the Assessments are made, by interruption in the availability of the Unit or the Common Elements for any reason whatsoever, or by dissatisfaction with the Association and/or its

operation and policies. No Owner may be excused from payment of such Owner's share of the Common Expenses unless all Owners are likewise proportionately excused from payment, except as otherwise provided in Section 10.7.1 as to certain mortgagees. Developer may be excused from payment for Common Expenses as stated within this Declaration or in accordance with Section 718.116 (9)(a), Florida Statutes.

10.5 Application of Payments; Failure to Pay; Interest; Late Fees. Assessments and installments thereon paid on or before ten (10) days after the date due shall not accrue interest, but all sums not so paid shall accrue interest at the highest rate allowed by law on open accounts at the particular time, calculated from the date due until paid. In addition, Assessments or installments not paid on or before ten (10) days after the date due shall result in the imposition of a late fee equal to the maximum amount permitted by the Condominium Act from time to time. (At the time of recordation, the maximum late fee chargeable is the greater of Twenty-Five Dollars (\$25.00) or five percent (5%) of the late payment.) Assessments or installments thereon shall become due, and the Owner shall become liable for the Assessments or installments, on the date established in the Bylaws or otherwise set by the Board for payment. All payments on account shall be applied in the following order irrespective of any restrictive endorsement, designation or instruction placed on or accompanying any payment: (i) interest; (ii) late fees; (iii) costs; (iv) attorneys' fees and paralegal charges; and (v) Annual and/or Special Assessments. If payment is made by a check that fails to clear, then the Owner shall be considered not to have made payment.

10.6 Liens. The Association has a lien on each Unit (including any Limited Common Elements appurtenant thereto) securing payment of past due Assessments, including interest, paralegal charges, attorneys' fees and costs incurred by the Association incident to the collection of the Assessment and/or enforcement of the lien, whether before, during or after a lien foreclosure suit or other lawsuit. Any claim of lien recorded shall state the Unit's legal description, the record Owner's name, the Association's name and address, the Assessments past due and the due dates. Subject to the provisions of Section 10.7, the Claim of Lien is effective from and has those priorities as stated in the Condominium Act, as amended from time to time, and shall remain in effect until barred by law. The Claim of Lien secures all unpaid Assessments, interest, paralegal charges, attorneys' fees, and costs coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction or assignment of the lien at such person's reasonable cost and expense. The lien shall not secure late fees unless the Condominium Act is amended to permit same.

10.7 Priority of Lien; Liability of Mortgagees and Other Lienholders, Leases.

10.7.1 Rights of Mortgagees and Other Lienholders. The liability and priority of mortgagees and other lienholders and successors in title to Units as result of a mortgage or lien foreclosure shall be as provided in the Condominium Act, as amended from time to time.

10.7.2 Leases. Any Unit's lease shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

10.8 Foreclosure of Lien; Action at Law. The Association may bring an action in the Association's name to foreclose the Association's lien for unpaid Assessments in the manner provided for in the Condominium Act and may also bring an action to recover a monetary judgment for unpaid Assessments without waiving any lien rights. In addition to any Assessments due, the Association shall be entitled to recover interest, paralegal charges, attorneys' fees and all costs of collection, including court costs. Late fees are recoverable at law, and as part of the Claim of Lien, unless prohibited by the Condominium Act, as amended from time to time. If the Association shall

bring a lien foreclosure action, the Association shall be entitled to the appointment of a receiver to collect the rent for the Unit: (i) if the court in which the foreclosure action is pending determines that the Owner of the Unit is required to pay such rent; or (ii) that is paid by the any tenant, licensee or other Occupant of all or any part of the Unit. Such receiver shall be appointed pursuant to a court order in the foreclosure action. If some person other than the Association acts as a receiver, then the cost of the receiver shall be borne by the non-prevailing party in the lawsuit. Homestead shall not be a defense to a lien foreclosure action.

10.9 Certificate As To Assessments. Within fifteen (15) days after request by an Owner or mortgagee, the Association shall provide a certificate stating whether all Assessments and other monies owed to the Association by the Owner with respect to the Unit have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association or any management company employed by the Association may levy an administrative charge for the issuance of said Certificate.

#### 10.10 Charges.

10.10.1 Who is Liable for Charges? Each Unit's Owner, regardless of how title was acquired, is liable for all Charges coming due while such party is the Owner. Multiple Owners are jointly and severally liable.

10.10.2 Application of Payments; Failure to Pay; Late Fees; Interest. Any Charges paid within ten (10) days after the date due as specified in the notice of Charge from the Association shall not accrue interest, but all Charges not so paid shall accrue interest at the highest rate allowed by law, calculated from the date due until paid. In addition, any Charges or installments not paid within ten (10) days after the date due shall result in the imposition of a late fee of the higher of Twenty-Five Dollars (\$25.00) or five percent (5%) of the late payment. All payments on account shall be applied in the sole discretion of the Board, irrespective of any restrictive endorsement, designation or instruction placed on or accompanying any payment. The Association also has the right to refuse to accept a partial or insufficient payment. No payment by check is deemed paid until the check has cleared. However, interest and late fees shall be calculated as accrued until the date the Association actually receives payment.

10.10.3 Collection of a Charge. The Association may bring an action to recover a monetary judgment for unpaid Charges and shall be entitled to recover interest, late fees, paralegal charges, attorneys' fees and all costs of collection, including court costs.

10.11 Working Capital Contributions. Developer may require that each Unit's initial purchaser from Developer pay to the Association a working capital contribution equal to one-quarter (1/4) of the Annual Assessment then due. Such contribution, if made, may be used to reimburse the Association for start-up expenses, or otherwise as the Board shall determine from time to time; however, notwithstanding the terms set forth above, no working capital contributions shall be used by the Association for the payment or reimbursement of Common Expenses prior to the expiration of any guarantee period in which Developer is excused from the payment of Assessments.

**SECTION 11. MAINTENANCE; REPAIR AND REPLACEMENT; MAINTENANCE STANDARDS; ALTERATIONS AND IMPROVEMENTS.** Responsibility for the Condominium Property's protection, maintenance, repair, replacement, and maintenance standards, and the alteration and improvement of the Condominium Property, shall be as follows:

11.1 Association Maintenance. In addition to other provisions contained elsewhere in this Declaration, the Condominium Property shall be protected, maintained, repaired and replaced by the Association at the Association's expense, as an item of Common Expense, including without limitation the following:

11.1.1 Units. The exterior outside portions of the buildings which comprise Units (including light fixtures on building walls) and the interior surfaces contributing to the support of the buildings, including concrete slabs, firewalls and outside walls which comprise the Units.

11.1.2 Common Elements. All Common Elements.

11.1.3 Limited Common Elements. All Limited Common Elements, other than those referred to in Section 11.2.2 that are the responsibility of the individual Owner or Owners.

11.1.4 Utility/Plumbing. All conduits, rough plumbing and other installations located within or outside of a Unit for the furnishing of utilities to more than one (1) Unit, to the Common Elements, or to the Limited Common Elements maintained by the Association.

11.1.5 Exterminating. The Association shall be responsible to provide termite treatment to the Condominium Property as well as to individual Units. If a building must be tented, the Association shall be responsible only for the cost of the actual tenting, and not for any Owner or Occupant's incidental expenses such as food and lodging, and not for any losses to property within the Unit due to the tenting process. All Owners, tenants and Occupants shall be responsible to remove themselves, their pets and their perishable items upon reasonable notice by the Association, for tenting to be effected. Any Owner (for himself and/or for his tenants and other Occupants) who fails to so cooperate shall be liable to the Association for damages caused by delays and otherwise. The Association shall be entitled to a preliminary injunction order requiring compliance with this Section 11.1.5.

11.1.6 Seawall. The Association shall have the obligation to maintain, jointly and severally with the condominium association managing Tract "B" on the Plat (the "Other Seawall Owner"): (a) the entire seawall and the jetties shown on Exhibit "B", including those portions of the seawall and jetties that are not located on the Condominium Property; and (b) any Mitigation Areas required to be maintained under the SFWMD Permit or the ACOE Permit, whether or not such mitigation areas are located on the Condominium Property, in the Community or otherwise. The Association and the Other Seawall Owner shall maintain the seawalls and jetties: (i) in the condition (including, without limitation, aesthetic, architectural and structural condition) that they were when they were delivered by the Developer to the Association and the Other Seawall Owner; and (ii) in accordance with good workmanship and engineering guidelines and practices as determined by high caliber reputable engineering firms located in or near Fort Pierce, Florida. The Association shall have the obligation to maintain, jointly and severally with the Other Seawall Owner, the Mitigation Areas as required by the SFWMD Permit and the ACOE Permit. The Association shall have the right of contribution from and to the Other Seawall Owner for an amount equal to 624/912nds of the cost to maintain the seawall and jetties and the cost to maintain the Mitigation Areas. Notwithstanding any of the foregoing, the Association shall not have the right of contribution against the Developer or its affiliates, but shall have the right of contribution against Developer's successors-in-interest that are not affiliated with Developer. Under certain circumstances, the Corporation has granted an easement to the Association on the portion of the seawall, if any, and the jetties that are not on Association property under Section 3.14 of the Master Declaration.



11.1.7 Water Management System. The Association shall have the secondary obligation to maintain the water management lake depicted on the Plat as WMA-2, drainage pipes, drainage and water management system and the appurtenances thereto which are part of the drainage and water management system that are located on the Condominium Property to the extent not maintained by the Corporation. Pursuant to the terms of the Master Declaration, the Corporation shall have the primary obligation to maintain the lake depicted on the Plat as WMA-2, drainage pipes, drainage and water management system and the appurtenances thereto which are part of the drainage and water management system and to the extent that the Association is required to perform such tasks, it shall be reimbursed by the Corporation for the reasonable costs and expenses related thereto.

11.1.8 Association's Property. The Association shall protect, maintain, repair and replace any Association real or personal property.

11.1.9 Storage Spaces. The Association shall create a separate budget for the maintenance, repair and operation of the Storage Space Area. Only Owners who have accepted assignments of Storage Spaces as appurtenances to their Units shall be responsible for payment of their proportionate share of the budget for the Storage Space Area. By acceptance of an assignment of a Storage Space as an appurtenance to his Unit, each Owner agrees to be bound by the terms of this Section 11.1.9, including the payment of a proportionate share of the maintenance, repair and operation of the Storage Space Area.

11.2 Owner Maintenance. Each Owner is responsible, at such Owner's sole expense, for the maintenance, repair, and replacement of the following:

11.2.1 Units. All portions of the Unit, whether the maintenance, repair or replacement is ordinary or extraordinary; exclusive of exterminating within the Unit, except for those portions of the Unit that are specifically enumerated to be the Association's responsibility under Section 11.1.

11.2.2 Limited Common Elements. The Owners of Units to which Limited Common Elements are appurtenant shall be responsible to maintain, repair and replace the following Limited Common Elements:

11.2.2.1 Window and Door Screens and Windows and Doors Frames and Doors: The entirety of the items referred to in Section 8.1.1.

11.2.2.2 Heating and Air Conditioning Units, Water Heaters and Certain Electrical and Plumbing Lines; Fixtures and Outlets: The entirety of the items referenced in Section 8.1.2.

11.2.2.3 Storage Spaces. The entirety of the Storage Space.

11.2.3 Miscellaneous Covenants of Each Owner.

11.2.3.1 Each Owner must perform promptly all maintenance, repairs and replacements that are necessary to ensure a high quality condition and appearance and/or that, if not performed, would affect any of the Condominium Property and any Units belonging to any other Owners.



11.2.3.2 Each Owner shall be liable for any damages or costs incurred which occur due to a failure to perform and/or in connection with the performance of the maintenance, repair and replacement responsibilities under this Section 11.

11.2.3.3 Each Owner shall promptly report in writing to the Association or the Association's agents any defect or need for repair on Condominium Property that the Association is responsible to maintain, repair and replace under this Declaration.

11.2.3.4 No Owner shall do anything that would adversely affect the Common Elements' safety or soundness, or any other portion of the Condominium Property that the Association is obligated to maintain under this Declaration. The Board's opinion shall control in determining whether the Condominium Property's safety or soundness is adversely affected or whether damage might be caused to such Condominium Property.

11.2.3.5 Each Owner is responsible for the expense of all decorating within that Owner's Unit, including painting, wall papering, paneling, floor covering, window coverings, lamps and other light fixtures, and other interior furnishings and interior decorating.

11.2.3.6 The floors in all of the Units above the first floor must be covered with insulating material approved by the Association. Each Unit as delivered by the Developer is deemed to have met this covenant.

11.3 Maintenance Standards for Owners and Residents. Owners' maintenance obligations under this Declaration shall be performed to ensure a high standard for the Condominium's appearance at all times. Each Owner must perform promptly all maintenance, repairs and replacement for which the Owner is responsible and which are necessary to ensure such high standards. No Owner or resident shall impede or otherwise perform or interfere with the Association's maintenance responsibilities under this Declaration. Each Owner and resident shall be governed by maintenance standards that the Board may adopt from time to time. The following constitutes maintenance standards for Owners, which the Board is empowered to supplement from time to time without having to amend this Declaration:

11.3.1 Windows and Glass Doors. Broken or cracked glass shall be immediately replaced for safety concerns as well as cosmetic reasons.

11.3.2 Screens and Screen Frames. Torn, cut or otherwise damaged screening and damaged screen frames shall be replaced with new materials as soon as reasonably possible after the damage occurs. Screen frames shall remain freshly painted at all times.

#### 11.4 Alterations and Improvements by Owners.

11.4.1 Owners' Limited Rights. Developer has established a uniform scheme and appearance for the Buildings and Improvements, which must be maintained. Therefore, Owners' rights to make alterations and improvements to the exterior of buildings, and alterations, improvements, decorations and changes to Units' interiors that can be seen from outside the Unit, are very limited. THEREFORE, IF THIS DECLARATION FAILS TO PERMIT AN OWNER TO MAKE AN ALTERATION OR IMPROVEMENT THAT FALLS WITHIN THE SCOPE OF THE IMMEDIATELY PRECEDING SENTENCE, THEN SUCH ALTERATION OR IMPROVEMENT SHALL NOT BE PERMITTED. IF SUCH ALTERATION OR IMPROVEMENT DOES FALL WITHIN THE SCOPE, SUCH ALTERATION OR IMPROVEMENT SHALL BE PERMITTED ONLY IF THE ALTERATION OR IMPROVEMENT FALLS WITHIN THE GUIDELINES REFERRED TO

IN SECTION 11.4.2 (AS AMENDED BY THE BOARD FROM TIME TO TIME), AND UNLESS OTHERWISE STATED, ONLY UPON THE BOARD'S PRIOR WRITTEN APPROVAL.

11.4.2 Architectural Standards. The following constitute architectural standards for the Condominium applicable to all Owners. THE FOLLOWING ARE THE ONLY PERMITTED ALTERATIONS AND IMPROVEMENTS REFERRED TO IN SECTION 11.4.1 WHICH, UNLESS OTHERWISE STATED, REQUIRE THE BOARD'S PRIOR WRITTEN APPROVAL:

11.4.2.1 Shutters. Shutters (including hurricane shutters) shall not be permitted unless (i) installed by Developer; (ii) 90% of the Owners approve of such shutters; or (iii) such Unit Owner is permitted as a matter of law to install such shutters. The Owner shall maintain any such shutters permitted under this subsection in good working condition and any hurricane shutter protection shall comply with any and all applicable building codes. Such hurricane protection, other than that which may be installed by Developer, if any, shall be of such color and specification as the Board shall determine and shall be architecturally designed to function as hurricane protection in compliance with any applicable building code. The shutters, if any, shall be placed in a closed position in the event of a hurricane warning.

11.4.2.2 Doors. No screen doors other than those installed by the Developer shall be permitted without the prior written approval of the Association.

11.4.2.3 Solar Panels/Devices; Roof Ventilators; Turbines; Antennae; Satellite Dishes; Roofs. No solar panels/devices, roof ventilators, turbines, antennae, or satellite dishes (other than satellite dishes (and any accessories related thereto) that are located wholly within the Unit and not in excess of two (2) feet in any dimension, and then only if such satellite dish is screened from view in accordance with the Rules if so provided in the Rules), shall be permitted without advance written approval of the Association. If any of the foregoing prohibitions are contrary to law, then to such extent and only to such extent such illegal prohibitions shall be inoperative, but the Association may pass rules that are as restrictive as the law permits. Without limiting the foregoing, no device, including the foregoing, the installation of which requires cutting into the roof membrane shall be allowed without the Association's advance written approval.

11.4.3 Removal of Interior Partition Wall or Unit Floor; Combination of Units.

11.4.3.1 No removal of any interior partition wall shall be permitted without advance written approval of the Association and only if the removal will not materially affect or interfere with: (i) the utility services constituting Common Elements, if any, located therein; (ii) any easement, whether for the benefit of the Association or for the benefit of another; or (iii) the structural integrity of the building. However, if a permit is required, the Owner shall provide a copy of any such permit to the Association prior to the start of the work.

11.4.3.2 No removal of any boundary wall or Unit floor between Units to make one (1) dwelling shall be permitted without advance written approval of the Association. All affected Units must be owned by the same Owner and the removal must not materially affect or interfere with: (i) the utility services constituting Common Elements, if any, located therein; (ii) any easement whether for the benefit of the Association or for the benefit of another; or (iii) the structural integrity of the building. However, such removal shall not alter the Units' Undivided Shares or the sharing of Common Expenses. The alteration of the percentage of ownership of a Unit's Undivided Share or sharing of Common Expenses may be made only after obtaining the approval required by Section 22.5.2.

11.4.4 Indemnification. An Owner making or causing to be made any such alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom.

11.5 Alterations and Improvements by the Association. Subject to the provisions of Sections 15 and 16 relating to insurance and casualty, the Association shall have the right to make or cause to be made alterations or improvements to the Condominium Property, as are approved by the Board. If the cost of such alterations or improvements is five percent (5%) or less of the annual budget cumulatively in a budget year, the Board's approval alone is sufficient. However, if the cost of such alterations or improvements exceed five percent (5%) of the annual budget cumulatively in a budget year, then the alteration or improvement is deemed to be material and substantial and may not be made unless ratified either before or after the fact by a majority of the Voting Interests of the Association's entire membership. Notwithstanding the foregoing, at no time shall any alteration or improvement made by the Association jeopardize the safety or soundness of any of the Buildings and Improvements or interfere with any Owner's peaceful use of such Owner's Unit.

11.6 Corporation Maintenance. The Corporation may, at the Corporation's discretion, enter into agreements for and provide cable television, internet access, alarm and security service and pest control service to the Condominium Property, the expense of which shall be included in the Association's Assessments as Common Expenses. The Association shall also have the right to enter into agreements with the Corporation to provide maintenance and repairs for the Condominium Property, the expense of which shall be deemed a Common Expense of the Association.

SECTION 12. USE RESTRICTIONS. The use of the Units and the Condominium Property shall be restricted in accordance with the following provisions as long as the Condominium exists:

12.1 Occupancy of Units; Subdivision.

12.1.1 Occupancy. Each Unit shall be occupied either by Owners or their tenants and their respective family members, Guests and invitees. Each Unit shall be utilized as a single-family residence and for no other purpose.

12.1.2 Subdivision. No Unit may be subdivided into more than one (1) Unit. Only entire Units may be sold, leased or otherwise transferred.

12.2 No Age Restriction. There is no minimum age requirement for permanent occupancy of a Unit.

12.3 Pets. Pets shall be permitted, only as provided in the Rules, as may be amended from time to time.

12.4 Vehicles and Parking. Rules, regulations and restrictions with regard to vehicles and parking shall be contained in the Rules.

12.5 Signs. No signs of any type shall be maintained, kept or permitted on the Condominium Property, or in, on or about a Unit (interior or exterior) such that such signs may be viewed from the Common Elements, Limited Common Elements or other Units, with the following exceptions:

12.5.1 Signs referred to with respect to Developer in Section 21.2.

12.5.2 Official notices of the Association.

12.5.3 Signs on vehicles permitted by the applicable Rules.

12.6 No Business Activity. No business of any kind whatsoever shall be maintained, operated, carried on, permitted or conducted on the Condominium Property. Garage sales, yard sales and the like are prohibited. Notwithstanding the foregoing:

12.6.1 Any business that qualifies as a home occupation under the applicable zoning code shall be permitted.

12.6.2 The practice of marketing, selling or leasing Units shall not be considered to be a business activity under this Section 12.6.

12.6.3 The business of operating the Association shall not be considered to be a business activity under this Section 12.6.

SECTION 13. LEASING OF UNITS. An Owner may lease only an entire Unit and only in accordance with this Declaration after receiving the Association's prior written approval as provided for in this Section 13. Reference to "leasing" in this Section 13 shall also include rental. Prior written approval is also required in connection with any lease renewal and any change in occupancy under, during or in conjunction with a lease.

13.1 Procedures.

13.1.1 Notice by the Owner. An Owner shall give to the Board or the Board's designee written notice of an intended lease or rental of a Unit at least fifteen (15) days prior to the proposed date of lease commencement and occupancy thereunder, together with the name and address of the proposed tenant(s) (and Occupants, if the Occupants are not the same persons at the tenants), an executed copy of the proposed lease, and such other information as the Board may reasonably require, including the ages and names of the proposed Occupants. No lease may be modified to change the proposed Occupants or otherwise without the Board's written consent, and the Board shall treat such modification as if it were a request for the Board's consent of a new proposed lease. The Board may require the personal appearance of any tenant(s), the spouse and any other intended Occupants, as a condition of approval. The Board may also require the payment of a transfer fee as more particularly described in Section 13.1.7.

13.1.2 Approval. After the required notice and all information and the transfer fee have been provided to the Board, and the tenant(s), the spouse and other immediate family members and any other intended Occupants have appeared before the Board (if required), the Board shall approve or disapprove the proposed lease within ten (10) days. If the Board neither approves nor disapproves the lease and the tenant(s), and/or the intended Occupants within this time period, such failure to act shall be deemed the equivalent of an approval, and on demand, the Board shall issue a letter of approval to the Owner.

13.1.3 Disapproval. A proposed lease shall be disapproved only if a majority of the entire Board so votes, and in such case the lease shall not be made. Notice of disapproval shall be sent or delivered in writing to the Owner.

13.1.4 Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board in the Board's election may approve or disapprove the lease.

13.1.5 Unapproved Leases. Any lease which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall be void unless subsequently approved in writing by the Board. The Board shall have the right to have removed any tenant(s) or Occupant(s) and their personal or other belongings by injunctive relief or by other means provided in this Declaration should this Section 13 be violated.

13.1.6 Application Form. The Board is vested with the authority to prescribe an application form requiring the inclusion of specific personal, social, financial, and other data relating to the intended tenant(s) and Occupants, as may reasonably be required by the Board to enable the Board to reasonably investigate the intended tenant(s) and Occupants within the time limits extended to the Board for that purpose as set forth in this Section 13. The application shall be completed and submitted to the Board or its designee along with and as an integral part of the notice of intended lease.

13.1.7 Transfer Fee. The Board is empowered to charge a fee in connection with and as a condition for the approvals set forth in this Section 13, in an amount not to exceed the maximum amount allowed by the Condominium Act or other applicable law or ordinance, as amended from time to time. So long as and only so long as prohibited by law at the particular time, there shall be no transfer fee in connection with the renewal of a lease, with the same tenant, if the renewed lease term immediately follows the expiration of the previous lease term.

13.1.8 Certain Exceptions; Institutional Mortgagees. Section 13 shall not apply to Units owned by an Institutional Mortgagee that acquires title as the result of owning a mortgage encumbering the Unit concerned, whether title is acquired by deed from the mortgagor, its successors or assigns, or through foreclosure proceedings.

13.2 Contents in Lease Agreement. Every lease as of the Effective Date of this Declaration, whether oral or written shall contain, and if it does not contain, shall automatically be deemed to contain, the following:

13.2.1 The tenant and all Occupants shall abide by all provisions of the Condominium Documents, including the Rules, as amended from time to time.

13.2.2 The parties recognize that the Board on behalf of the Association, as agent for the landlord/Owner, has the power to evict or eject tenants and Occupants under Chapter 83, Florida Statutes, or otherwise, for violations of the Condominium Documents and the Rules, as amended from time to time.

13.3 Subleasing; Renting Rooms. Subleasing of a Unit shall be absolutely prohibited. Furthermore, no rooms shall be rented in any Unit. The intention is that only entire Units may be rented, and Units may not be sublet.

13.4 Frequency of Leasing. No lease shall be made more often than two (2) times in any calendar year. For purposes of calculation, a lease shall be considered as made on the first day of the lease term.

13.5 Minimum Lease Terms. No lease shall be made with a lease term which is less than ninety (90) consecutive days in duration.

**SECTION 14. OWNERSHIP AND TRANSFER OF OWNERSHIP OF UNITS.** In order to maintain a community of congenial, financially-responsible residents with the objectives of protecting the value of the Units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of the ownership of a Unit shall be subject to the following provisions so long as the Condominium exists, which provisions each Owner agrees to observe.

**14.1 Forms of Ownership.**

**14.1.1 General.** Except as otherwise provided in this Section 14.1, there is no limitation with regard to how a Unit may be owned.

**14.1.2 Life Estate.** A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 14.2. In that event, the life tenant shall be the only Association Member for such Unit, and the occupancy of the Unit shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights in and to the Unit unless separately approved by the Association. The life tenant shall be personally liable for all Assessments and Charges against the Unit. Any consent or approval required of Members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required or permitted. If there is more than one (1) life tenant, the life tenants shall be treated as co-Owners.

**14.1.3 Ownership by an Entity.** A Unit may be owned by an Entity if approved in the manner provided for under Section 14.2 of this Declaration. This provision's intent is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Unit may be used as short-term, transient accommodations for several individuals or families. The approval of the Entity under Section 14.2 shall be conditioned upon designation by the Entity of one (1) natural person to be the Primary Occupant, which Primary Occupant and other intended Occupants shall also be subject to approval along with the Entity. The designation shall be in the form of the Primary Occupant Designation Certificate attached as Exhibit "I" to this Declaration. All references to Owner or Member in the Condominium Documents as to use and occupancy of and voting and other membership rights with respect to the Unit owned by the Entity shall mean and refer to the Primary Occupant; this shall not, however, relieve the Entity of any of the Entity's responsibilities and obligations under the Condominium Documents or Rules. The foregoing provisions place personal responsibility and liability upon the Primary Occupant; such personal responsibility and liability exists notwithstanding any provision to the contrary contained in the articles of incorporation or bylaws of the corporate Owner, contained in any partnership agreement of the partnership, or in the regulations of the limited liability company. Any change in the Primary Occupant shall be treated as a transfer of ownership by the Entity subject to the provisions of Section 14.2 of this Declaration. Notwithstanding the foregoing, this Section 14.1.3 shall not apply to Developer.

**14.1.4 Ownership by Trustee or Trustees.** If a Unit is owned by a trustee or trustees of a trust, the trustee or trustees shall be deemed the Primary Occupants and shall have liability to the Association in their individual capacity and not as trustees. Each trustee shall be approved by the Board pursuant to the terms of Section 14.2.



## 14.2 Transfer of Ownership of Units.

### 14.2.1 Transfers Subject to Section 14.2.

14.2.1.1 Sale or Gift. No Owner may dispose of a Unit or any interest in the Unit by sale or gift (including agreement for deed) without the Board's prior written approval.

14.2.1.2 Devise or Inheritance. If any Owner acquires title by devise or inheritance, the right to occupy or use the Unit shall be subject to the Board's approval.

14.2.1.3 Other Transfers. If any person acquires title in any manner not considered in the foregoing Sections 14.2.1.1 or 14.2.1.2, the right to occupy or use the Unit shall be subject to the Board's approval (that person having no right to occupy or use the Unit before being approved by the Board) under the procedures outlined in Section 14.2.2.

### 14.2.2 Procedures.

#### 14.2.2.1 Notice to Association.

14.2.2.1.1 Sale or Gift. An Owner intending to make a sale or gift of his Unit or any interest in the Unit shall give to the Board or the Board's designee written notice of such intention at least thirty (30) days prior to the intended closing or transfer date, together with the name and address of the proposed purchaser or donee, an executed copy of the sales contract, if any, and such other information as the Board may reasonably require. The Board may require the personal appearance of any purchaser(s) or donee(s) and the spouse and other immediate family members and other intended Occupants, as a condition of approval.

14.2.2.1.2 Devise, Inheritance or Other Transfers. The transferee(s) must notify the Board of the change in ownership and submit a certified copy of the instrument evidencing the change in ownership and such other information as the Board may reasonably require. The transferee(s) shall have no occupancy or use rights unless and until approved by the Board.

14.2.2.1.3 Demand. With the notice required in Section 14.2.2.1.1 and Section 14.2.2.1.2, the Owner or transferee seeking approval may make a written demand that, if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser upon the same price and terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Unit determined as provided below. This obligation of the Association exists only if the written demand is made by the Owner or transferee along with and at the same time as the notice required by the terms of Section 14.2.2.1.1 and Section 14.2.2.1.2.

14.2.2.1.4 Failure to Give Notice. If no notice is given by an Owner or transferee, at the time the Board learns of the transfer, the Board, at the Board's election, may approve or disapprove the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a Unit, or making a gift of the Unit, such failure shall create a rebuttable presumption that the seller and the purchaser, or Owner making the gift, intended to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

14.2.2.2 Approval. After the required notice and information have been provided and the transfer fee has been paid to the Board, and the purchaser(s) or donee(s) and the spouse and other immediate family members and other intended Occupants have appeared before



the Board (if required), the Board shall approve or disapprove the transfer within twenty (20) days. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the Association's President or Vice-President in recordable form and delivered to the transferee. If the Board neither approves nor disapproves the transfer within this twenty (20)-day period, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

#### 14.2.2.3 Disapproval.

14.2.2.3.1 With Good Cause. The Association's approval shall be withheld if a majority of the whole Board so votes. Only the following may be deemed to constitute good cause for disapproval: (i) the person seeking approval or one (1) or more of the intended Occupants has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude; (ii) the person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts; (iii) the person seeking approval or one (1) or more of the intended Occupants has evidenced an attitude of disregard for covenants or restrictions applicable to the Condominium and/or Rules, by his or their conduct in this Condominium as a tenant, Owner or Occupant of a Unit, or by such attitude at the personal appearance before the Board or its designee; or (iv) the person seeking approval has failed to provide the information required to process the application in a timely manner, has failed to pay the required transfer fee, has failed to appear before the Board as requested or has provided false information during the application process.

14.2.2.3.2 Without Good Cause. If the Board disproves without good cause, and if the Owner or transferee has made the demand set forth in Section 14.2.2.1.3, then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the Owner or transferee (hereafter "the Seller") the name of an approved purchaser who will purchase the Unit upon substantially the same price and terms as in the disapproved sales contract. If no sales contract was involved, or if the Board challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two (2) MAI appraisers, one (1) selected by the Seller and one (1) selected by the Board. The cost of the appraisals and all other closing costs in cases where no sales contract is involved, shall be shared equally by the purchaser and Seller, except that the purchaser shall pay for purchaser's title insurance, and all costs of mortgage financing; real property taxes and Assessments and Charges shall be prorated between the purchaser and Seller for the year of closing and the parties shall bear their own attorneys' fees, if any. The closing shall take place no later than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure to close by the Seller shall constitute a breach of contract and shall entitle the purchaser to the remedies of specific performance or damages.

14.2.2.3.3 If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required in Section 14.2.2.3.2, or if the approved purchaser defaults in his/her/their purchase, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand, a Certificate of Approval shall be issued.

### 14.3 General Provisions.

14.3.1 Unapproved Transfers. Any transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall be void unless subsequently approved in writing by the Board. The Board shall have the right to remove any transferees and other Occupant(s) and their personal belongings by injunctive relief or by other means provided in this Declaration should this Section 14 be violated.

14.3.2 Application Form. The Association is vested with the authority to prescribe an application form requiring the inclusion of specific personal, social, financial, and other data relating to the intended purchasers or new Owners, and Occupants, as may reasonably be required by the Board in order to enable the Board to reasonably investigate the intended purchasers, new Owners and Occupants within the time limits extended to the Board for that purpose as set forth in this Section 14. The application shall be complete and submitted to the Board or its designee along with and as an integral part of the notice of intended transfer.

14.3.3 Transfer Fee. The Board is empowered to charge a fee in connection with and as a condition for the approvals set forth in this Section 14 in the amount not to exceed the maximum amount allowed (if any maximum is so set) by the Condominium Act or other applicable law or ordinance, as amended from time to time.

14.3.4 Certain Exceptions. Section 14.2 shall not apply to a transfer to or purchase by an Institutional Mortgagee that acquires its title as the result of owning a mortgage encumbering the Unit concerned, whether title is acquired by deed from the mortgagor, its successors or assigns, or through foreclosure proceedings; nor shall such Section 14.2 apply to a transfer or sale by an Institutional Mortgagee that so acquires its title. Nor shall Section 14.2 require the approval of a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale. Notwithstanding the foregoing, this Section 14.3.4 shall not be construed to exempt the foregoing from compliance or permit the foregoing to be in noncompliance with the Condominium Act and all other provisions of the Condominium Documents; nor shall the grantee (other than another Institutional Mortgagee) of the foregoing be exempt from the requirements of Section 14.2.

14.3.5 Additional Exceptions. Section 14.2 shall not apply to transfers of title to or from Developer or by the Owner thereof to his spouse, adult children, parents, parents-in-law, adult siblings or an Entity or trustee of a trust where the Owner or the aforementioned related persons are and continue to be the sole beneficiary or beneficiaries of a trust or an equity Owner of an Entity.

SECTION 15. INSURANCE. In order to adequately protect the Condominium Property that is required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions.

15.1 Duty and Authority to Obtain. The Board shall obtain and keep in force the insurance coverage which the Association is required to carry by the Condominium Act or any other law or ordinance and under the Condominium Documents, and may obtain and keep in force any or all additional insurance coverage as the Board deems necessary. The insured's name shall be the Association and Owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, and by the insurance guidelines as published from time to time by FNMA, the Association may self-insure.

15.2 Required Coverage. The Association shall maintain adequate insurance covering the minimum Condominium Property which the Condominium Act requires, as the Condominium Act is amended from time to time, in an amount determined annually by the Board, such insurance to afford the following protection:

15.2.1 Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "Causes of Loss – Special Forms" property contract or if such coverage is not available, other similar insurance contract as deemed proper by the Board.

15.2.2 Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as required by the Board, with cross-liability endorsement to cover liabilities of Owners as a group, to an Owner.

15.2.3 Automobile. Automobile liability for bodily injury and property damage for all hired and/or non-owned motor vehicles in such limits or protection and with such coverage as may be required by the Board.

15.2.4 Workers' Compensation. Workers' Compensation insurance on at least a minimum premium basis.

15.2.5 Statutory Fidelity Bond. A minimum fidelity bond as required by the Condominium Act, on a per-person basis, for each person having access to Association funds.

15.2.6 Directors and Officers Liability Insurance. To the extent available, insurance to protect all directors and officers of the Association.

15.3 Optional Coverage. Other such insurance coverage as the Board may determine to be in the best interests of the Association and the Owners. Some of the more common options include:

15.3.1 Flood insurance.

15.3.2 Boiler and Machinery Coverage Endorsement (including breakdown on air conditioning equipment).

15.3.3 Scheduled equipment floater (protection for specialized mobile equipment).

15.3.4 Broad Form Comprehensive General Liability Endorsement.

15.3.5 Elevator liability and elevator collision.

15.3.6 Medical payments.

15.3.7 Leakage, seepage and wind-driven rain.

15.3.8 Plate glass insurance - perimeter Unit walls.

15.3.9 Employment Liability.

15.4 Description of Coverage. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by Owners or their authorized representatives upon written request.

15.5 Waiver of Subrogation. If available and where applicable, the Board shall endeavor to obtain insurance policies that provide that the insurer waives the insurer's right to subrogation as to any claim against the Developer, the Association, the Owners, or their respective servants, agents or Guests, except for any claim based upon gross negligence evidencing reckless, willful and wanton disregard for life or property.

15.6 Insurance Proceeds. All insurance policies purchased solely by the Association shall be for the benefit of the Association, the Owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The Association's duty shall be to receive such proceeds as are paid and hold and disburse them in trust for the purposes stated in this Declaration and for the benefit of Owners and their respective mortgagees in the following shares:

15.6.1 Common Elements. Proceeds on account of damage to Common Elements shall be held in as many undivided shares as there are Units, the shares of each Owner being the same as each Owner's Undivided Share.

15.6.2 Units. Proceeds on account of damage within the Units shall be held in undivided shares based on the prorated amount of damage within each damaged Unit as a percentage of the total damage within all Units.

15.6.3 Mortgagee. If a mortgagee endorsement has been issued as to a Unit, the shares of the mortgagee and the Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it holds and which encumbers Unit(s), except as otherwise provided in this Section 15 or Section 16. No mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.7 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of Owners in the following manner:

15.7.1 Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the proceeds shall be paid to defray the costs. Any proceeds remaining after defraying the costs shall be distributed to the beneficial Owners, with remittances to Owners and their mortgagees being paid jointly. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee. This remittance shall be made solely to an Institutional First Mortgagee when requested by such Institutional First Mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt.

15.7.2 Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided in this Declaration that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners, remittances to Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee. This remittance shall be made solely to an Institutional First Mortgagee when requested by such Institutional First Mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment of its mortgage debt.

15.8 Association as Agent. The Association is hereby irrevocably appointed as agent for each Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium Property and to execute and deliver releases upon the payment of such claims.

15.9 Owners. Owners may, but shall not be required, to procure insurance upon their personal property and for their personal liability and living expense and for any other risks not otherwise insured by the Association in accordance with this Section 15. Owners may at their option purchase insurance for the Condominium Property that is also insured by the Association pursuant to this Section 15. Insurance purchased by Owners pursuant to this Section 15.9 shall be so purchased at their own expense. 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 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.

SECTION 16. RECONSTRUCTION OR REPAIR AFTER CASUALTY. If any portion of a Unit or any portion of the Condominium Property is damaged by casualty, the determination of reconstruction and repair shall be governed by the following:

16.1 Damage to Units. Where loss or damage occurs within one (1) or more Units, any Association insurance proceeds on account of the loss or damage, less the deductible, shall be distributed to the Owner(s) of the damaged Unit(s) in shares as provided for in Section 15.6.2, and to the Owner(s)' mortgagees, being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee. This remittance shall be made solely to an Institutional First Mortgagee when requested by such Institutional First Mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt. The Owner(s) of the damaged Unit(s) shall thereupon be responsible for reconstruction and repair.

16.2 Damage to Common Elements - Less than Very Substantial. Where loss or damage occurs to the Common Elements, but the loss is less than Very Substantial, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

16.2.1 The Board shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

16.2.2 If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and of the Common Elements, the Association shall promptly, upon determination of the deficiency, either utilize existing available funds of the Association; or if necessary or desirable, levy a Special Assessment against all Owners for the deficiency. Notwithstanding any other provision in this Declaration to the contrary, such Special Assessment need not be approved by Owners. The Special Assessment shall be added to the funds available for repair and restoration of the Common Elements.

16.3 Determination Whether to Reconstruct. Should Very Substantial Damage occur, then:

16.3.1 The Board shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.

16.3.2 A membership meeting shall be called by the Board to be held not later than ninety (90) days after the Board has obtained the estimates referred to in Section 16.3.1 and has been able to locate not less than two-thirds (2/3) of the membership of the Association (if the Condominium Property and/or some or all of the buildings have suffered Very Substantial Damage) or two-thirds (2/3) of the membership in those building(s) suffering Very Substantial Damage (if only certain buildings have suffered Very Substantial Damage), to determine the opinion of such membership with reference to rebuilding or termination of the Condominium as to the Condominium and/or to the building(s) suffering Very Substantial damage, subject to the following:

16.3.2.1 If the insurance proceeds and reserves available for restoration and repair are sufficient to cover the cost so that no Special Assessments or Charges will be assessed against the Owners, then the Condominium or the building(s) suffering Very Substantial Damage shall be restored or repaired, unless two-thirds (2/3) of the Voting Interests of the membership in the Condominium (if the Condominium Property and/or some or all of the buildings have suffered Very Substantial Damage) or two-thirds (2/3) of the Voting Interests of the membership in those building(s) suffering Very Substantial Damage (if only certain buildings suffered Very Substantial Damage) shall vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of Units, in either of which cases the Condominium and/or the building(s) suffering Very Substantial Damage shall be terminated.

16.3.2.2 If the Condominium Property has suffered Very Substantial Damage and if the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the costs thereof without the imposition of a Special Assessment against all Owners, then unless two-thirds (2/3) of the Voting Interests of the membership of the Association vote in favor of the imposition of such Special Assessment and against termination of the Condominium, the Condominium shall be terminated.

16.3.2.3 If the Condominium Property has suffered Very Substantial Damage and the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the costs thereof without the imposition of a Special Assessment and two-thirds (2/3) of the Voting Interests approve the imposition of such Special Assessment, the Association, through its Board, shall levy such Special Assessment and shall proceed to negotiate and contract for the necessary repairs and restoration. The funds obtained through the imposition of such Special Assessment shall be added to the funds available for repair and restoration of the Condominium Property.

16.3.2.4 If only certain buildings suffer Very Substantial Damage and if the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the costs thereof without the imposition of a Charge against the Units in the buildings containing Very Substantial Damage, then unless two-thirds (2/3) of the Voting Interests of the membership as to the building(s) suffering Very Substantial Damage vote in favor of the imposition of such Charge and against termination of the Condominium as to the building(s) suffering Very Substantial Damage, the Condominium as to the building(s) suffering Very Substantial Damage shall be terminated and the property as to the building(s) suffering Very Substantial Damage shall be removed from the provisions of the Condominium Act.

16.3.2.5 If only certain buildings suffer Very Substantial Damage and if the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the costs thereof without the imposition of a Charge and two-thirds (2/3) of the Voting Interests of the membership in those building(s) suffering Very Substantial Damage approve the imposition of such



Charge, the Association, through its Board, shall levy such Charge and shall proceed to negotiate and contract for the necessary repairs and restoration. The funds obtained through the imposition of such Charge shall be added to the funds available for repair and restoration of the property as to the Units in the building(s) suffering Very Substantial Damage.

16.3.2.6 If any dispute shall arise as to whether Very Substantial Damage has occurred, a determination by the Board shall be binding upon all Owners.

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from the insurance proceeds. If a balance remains after disbursement of the insurance proceeds after the payment of all costs of repair and restoration, such balance shall be distributed to Owners, except as otherwise provided in Sections 15 or 16 of this Declaration.

16.5 Equitable Relief. In the event of damage to the Common Elements which renders any Unit untenantable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the Owner of the untenantable Unit may petition a Court for equitable relief, which may include a termination of the Condominium as to the building(s) affected and a partition. For the purposes of this provision, it shall be presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within four (4) months following the damage or destruction and is completed within nine (9) months thereafter.

16.6 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the Plans and Specifications for the original Buildings and Improvements; or otherwise according to different plans and specifications approved by the Board, by the vote of not less than three-fourths (3/4) of the Voting Interests of the membership, and by the Primary Institutional Mortgagee, if any.

16.7 Termination. In the event of termination of the Condominium as to a particular building or with respect to the entire Condominium, the provisions of Section 18 shall apply.

## SECTION 17. CONDEMNATION OR EMINENT DOMAIN.

17.1 Deposit of Awards with Association. The taking of all or any portion of the Condominium Property by condemnation or eminent domain shall be deemed to be a casualty to that portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Owners, Owners shall deposit the awards with the Association; and if any Owner fails to do so, a Charge shall be made against the defaulting Owner and the Unit concerned in the amount of his award, or the amount of that award shall be set off against any sums payable to that Owner. The Charge shall be collected as provided for in Section 10.10.3 of this Declaration.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged Condominium Property and/or buildings containing units will be reconstructed and repaired after a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and Special Assessments and/or Charges will be deemed to be Condominium Property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not



terminated after condemnation, the size of the Condominium will be reduced, Owners of condemned Units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and Special Assessments and/or Charges shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

17.4 Association as Agent. The Association is hereby irrevocably appointed as each Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation.

17.5 Units Reduced but Habitable. If the condemnation reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the award for the taking of a portion of that Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

17.5.1 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 paid by the Unit's Owner.

17.5.2 Distribution of Surplus. The balance of the award, if any, shall be distributed to the Unit's Owner and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagees.

17.5.3 Adjustment of Shares in Common Elements. If a Unit's floor area is reduced by the taking, the number representing the share in the Common Elements appurtenant to the Unit shall be reduced in the proportion by which the Unit's floor area is reduced by the taking, and then the shares of all Owners in the Common Elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

17.6 Uninhabitable Unit. If the condemnation is of an entire Unit or reduces the size of a Unit so that it cannot be made habitable, 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 effected in the Condominium:

17.6.1 Payment of Award. The Unit's fair market value immediately prior to the taking shall be paid to the Unit's Owner and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagee(s).

17.6.2 Addition to Common Elements. If possible and practical, the Unit's remaining portion shall become a part of the Common Elements and shall be placed in condition for use by some or all Owners in a manner approved by the Board.

17.6.3 Adjustment of Shares in Common Elements. The shares in the Common Elements appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the Common Elements among the reduced number of Owners. This shall be done by restating the shares of continuing Owners in the Common Elements as percentages of the total of the numbers representing the shares as they existed prior to the adjustment.

17.6.4 Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Owner and to condition the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for

those purposes shall be raised by Special Assessment against all Owners who will continue as Owners of Units after the changes in the Condominium affected by the taking. The Special Assessments shall be made in proportion to the shares of those Owners in the Common Elements after the changes affected by the taking.

17.6.5 Arbitration. If a Unit's fair market value prior to the taking cannot be determined by agreement between the Owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The Owner, the first mortgagee, if any, and the Association shall each appoint one (1) qualified appraiser, who shall appraise the Unit and determine the fair market value by computing the arithmetic average of their appraisals of the Unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any Court or competent jurisdiction. Each party shall bear the cost of its own appraiser.

17.7 Taking of Common Elements. Awards for the taking of the Common Elements shall be used to make the remaining portion of the Common Elements usable in a manner approved by the Board. The balance of such awards, if any, shall be distributed to all Owners in the shares in which they own the Common Elements after adjustment of these shares on account of the condemnation, if any. If a Unit is mortgaged, the remittance shall be paid jointly to the Owner and the mortgagee(s) of the Unit.

17.8 Amendment of Declaration. Any changes in Units and in the Common Elements, in the ownership of the Common Elements, and in the sharing of Common Expenses that are necessitated by condemnation shall be accomplished by amending this Declaration. Such amendment need be approved only by a majority of all Directors. The consent of Owners or lienholders is not required for any such amendment.

17.9 Priority-Conflict. In the event of any conflict between Section 16 and this Section 17, the provisions of this Section 17 shall control and govern.

SECTION 18. TERMINATION. The Condominium may be terminated in the following manner in addition to the manner provided in Condominium Act:

18.1 Agreement. The Condominium may be terminated at any time after Developer has constructed all of the Buildings and Improvements, by the approval in writing of all of Owners of Units in the Condominium at the time and by all record mortgagees.

18.2 Very Substantial Damage. If one or more building(s) in the Condominium, as a result of casualty, suffers Very Substantial Damage, or Section 17.2 applies and it is decided that one (1) or more building(s) in the Condominium suffering Very Substantial Damage will not be reconstructed or repaired, the Condominium form of ownership of the property in this Condominium, as to the building(s) affected, will terminate without agreement.

18.3 General Provisions. Upon termination of the building(s) suffering Very Substantial Damage or if Section 17.2 applies, the former Owners of Units in such building(s) shall become Owners, as tenants in common, of that portion of the Condominium which was terminated and the assets of the Association applicable to the one (1) or more buildings affected. The shares of such tenants in common shall be the same as were their Undivided Shares of the Common Elements based on their share as a proportion to the share of Owners in the affected building(s). The mortgagee or lienor of an Owner, shall have a mortgage or lien solely and exclusively upon the Undivided Share of such tenant in common in and to the lands and other properties and rights which he may receive by reason of such termination. The termination of the Condominium as to

the one (1) or more building(s) affected shall be evidenced by a certificate of the Association executed by its president and secretary certifying as to facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of the County.

18.4 New Condominium. The Condominium's termination does not bar creation of another Condominium affecting all or any portion of the same property.

18.5 Sale; Partition.

18.5.1 Very Substantial Damage. Except as may be provided otherwise in Section 18.5.2, following termination of all or any portion of the Condominium, the former Condominium Property which was terminated may be partitioned and sold upon the application of any Owner. However, if following a termination, at least seventy-five percent (75%) of the voting interests of Owners of the affected building(s) determine to accept an offer for the sale of the property, all Owners shall be bound to execute deeds and other documents reasonably required to complete the sale. In such event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale, shall be discontinued by all parties.

18.5.2 By Agreement (Other Than For Very Substantial Damage). If the proposed termination is submitted to a meeting of the membership of the Association as to the affected building(s), pursuant to notice, and is approved in writing within sixty (60) days of said meeting by seventy-five percent (75%) of the Voting Interests of all Members of the Association as to the affected building(s), and by all Institutional Mortgagees as to the affected building(s), then the Association and the approving Owners as to the affected building(s), if they desire, shall have an option to purchase all of the Units of the other Owners as to the affected building(s) within a period expiring one hundred twenty (120) days from the date of such meeting. Such approvals shall be irrevocable until the expiration of the option and if the option is exercised, the approvals shall be irrevocable. During this option period, and up through the date of closing on the option, no actions for partition shall lie. The option shall be exercised upon the following terms:

18.5.2.1 Exercise of Option. An agreement to purchase executed by the Association and/or the record Owners of the Units who will participate in the purchase, shall be delivered by personal delivery or mailed by certified or registered mail, to each of the record Owners of the Units to be purchased, and such delivery shall be deemed the exercise of the option. The agreement shall indicate which Units will be purchased by each participating Owner and/or the Association, and shall require the purchase of all Units owned by Owners not approving the termination, but the agreement shall create a separate contract between the seller and his purchaser.

18.5.2.2 Price. The sale price for each Unit shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days after the delivery or mailing of such Agreement and, in the absence of agreement as to price, it shall be determined by appraisers appointed by a Judge of the Circuit Court in and for the County, on the petition of the seller. The expense of appraisal shall be paid by the purchaser.

18.5.2.3 Payment. The purchase price shall be paid in cash.

18.5.2.4 Closing. The sale shall be closed within thirty (30) days following the determination of the sale price.

18.6 Last Board. In the event that the Condominium is terminated in its entirety, the members of the last Board shall continue to have the powers granted in the Condominium

Documents for the purpose of winding up the affairs of the Association, notwithstanding the fact that the Association itself may be dissolved upon termination of the Condominium.

18.7 Provisions Regarding Surface Water Management System and Termination of the Condominium. If the Condominium is terminated, prior to termination of the Condominium, the Association shall transfer, convey or dedicate the surface water management system, property containing the surface water management system and water management portions of the Condominium Property to a local governmental entity reasonably acceptable to the South Florida Water Management District. If the local governmental entity declines to accept the surface water management system, property containing the surface water management system and water management portions of the Condominium Property, then the Association shall transfer, convey or dedicate the surface water management system, property containing the surface water management system and water management portions of the Condominium Property to a non-profit corporation.

18.8 Provisions Survive Termination. The provisions of this Section 18 shall be deemed covenants running with the land, and shall survive the termination of the Condominium in its entirety until all matters covered by those provisions have been completed.

#### SECTION 19. COMPLIANCE AND DEFAULT; REMEDIES.

##### 19.1 Duty to Comply; Right to Sue.

19.1.1 Each Owner, Occupant, Guest, tenant and other invitee, and the Association, shall be governed by and shall comply with the provisions of the Condominium Act and the Condominium Documents. Actions for damages, for injunctive relief, and/or for declaratory relief, for failure to comply may be brought by the Association, by an Owner or by an Occupant, Guest, tenant or other invitee occupying a Unit against the following persons (which list is not all inclusive):

19.1.1.1 The Association;

19.1.1.2 Any Owner;

19.1.1.3 Members of the Board designated by the Developer, for actions taken by them prior to the time control of the Association is assumed by the Unit Owners other than the Developer.

19.1.1.4 Any member of the Board who willfully and knowingly fails to comply with these provisions.

19.1.1.5 Any tenant leasing a Unit, and any other Occupant, Guest or invitee occupying a Unit.

19.1.2 Any Owner prevailing in an action between the Association and the Owner and, if entitled to recover attorneys' fees, may recover additional amounts determined by a court to be necessary to reimburse such Owner for such Owner's share of Assessments levied by the Association to fund the Association's expenses of the litigation.

19.1.3 The Association shall also have any other remedies provided for in the Condominium Documents and the Condominium Act.

19.1.4 The mandatory procedures regarding the non-binding arbitration of disputes set forth in Florida Statutes, 718.1255, as amended from time to time, and the applicable Rules of the Florida Administrative Code, shall be followed and shall apply so long as they exist and apply.

19.2 Association Notice to Correct. If any Owner shall fail to properly discharge the maintenance, repair and replacement obligations as provided for in Sections 11.2, 11.3 and 11.4, or shall fail to make and pay for maintenance, repair or replacement as provided for in Sections 11.2, 11.3 and 11.4 and in the judgment of the Board, the same shall result in a condition of unsightliness tending to adversely affect the value or enjoyment of neighboring Owners and residents, or should any Owner violate Sections 11.2, 11.3 or 11.4, or should the neglect or the willful misconduct of Owner(s) cause damage which then requires maintenance, repair or replacement by the Association, then the following shall apply:

19.2.1 The Board may (but shall not be required to) provide notice of such condition(s) to the proper Owner, demanding that the condition(s) be corrected within thirty (30) days from the date the notice was sent. If the Owner does not rectify the condition at the end of this thirty (30)-day period, then the Association may seek a court order authorizing the Association to contract to have the necessary work performed (and entry onto the Unit), whereupon the cost of this work shall become a Charge against the Owner and Unit concerned (solely or proportionately as the Board shall determine), which Charge shall be collected pursuant to Section 10.10.3 of this Declaration.

19.2.2 Provisos. Notwithstanding any provision to the contrary in this Section 19.2: (i) the thirty (30)-day notice period may be shortened or eliminated if the Board determines that an emergency exists; and (ii) the thirty (30)-day notice shall not apply to Section 19.3.

19.3 Negligence; Damage Caused by Condition of Unit. Each Owner shall be liable to the Association for the expenses of any maintenance, repair or replacement of any portion of the Condominium Property made necessary by his act or negligence, or by that of any Occupant or member of his family or his Guests, invitees, employees, agents, or tenants. If any condition, defect or malfunction existing in a Unit, whether caused by the Owner's negligence or otherwise, shall cause damage to any portion of the Condominium Property or to other property owned by another Owner, the Owner of the offending Unit shall be liable to the Association or Owner responsible for repairing the damaged areas, for all costs of repair or replacement not paid by insurance. If the Association effects correction, the cost shall be levied as a Charge against the Owner and his Unit, which Charge shall be collected pursuant to Section 10.10.3 of this Declaration, and the Association may, but is not required to, provide notice to the Owner prior to effecting correction.

19.4 Association's Access to the Units; Key.

19.4.1 The Association, by and through the Board, officers, or the agents or employees of the Association, has an irrevocable right of access to each Unit during reasonable hours upon the giving of reasonable notice (except in the case of an emergency when no notice is required), when necessary for the maintenance, repair or replacement of those items for which the Association is obligated to maintain, repair and replace under this Declaration.

19.4.2 Each Owner shall deposit a key to the Unit with the Association. Should the Owner change any lock or install or add a new one, the Owner shall deposit the new additional key(s) with the Association. The Association's use of the key to gain access to a Unit shall be limited to the need to perform maintenance, repairs, replacement, alterations and protection of the Condominium Property. Should the Owner fail to provide a key, and should the Association be

required to gain access to a Unit, the Owner shall be liable for any damage caused by the Association to the Unit and Common Elements resulting from the Association's forced entry into the Unit for the purposes stated in this Section 19.4.

19.5 Owners' Responsibility. Owners are strictly responsible to ensure that their family members, Guests, invitees, agents, tenants, servants, etc. or any Occupants of their Units comply with the Condominium Documents and all applicable statutes and laws. As such, Owners are responsible and liable to the Association for violations of the Condominium Documents by their family members, Guests, invitees, agents, tenants, servants, etc. or any Occupants of their Units.

19.6 Waiver of Rights. The failure of the Association or of a Member to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or Member to enforce such right, provision, covenant or condition in the future.

19.7 Costs and Attorneys' Fees and Paralegal Charges. Except and to the extent otherwise provided in Florida Statutes Section 718.1255, as amended from time to time, the applicable Rules of the Florida Administrative Code or the Condominium Act, in any legal proceeding arising out of an alleged failure of an Owner (for himself/herself or for his/her family members, Guests, invitees, agents, tenants, servants, etc. or any Occupants of the Unit), or the Association to comply with the Condominium Documents, or applicable statutes or laws, the prevailing party shall be entitled to recover costs of the proceedings and attorneys' fees and paralegals' charges (including appellate attorneys' fees and paralegals' charges).

19.8 No Election of Remedies. All rights, remedies and privileges granted to the Association or Owners under any terms, provisions, covenants, or conditions of the Condominium Documents or Rules, or applicable statutes or laws, shall be deemed to be cumulative, and the exercise of any one (1) or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity.

19.9 Eviction of Tenants and Occupants. Except and to the extent otherwise provided in or barred by Florida Statutes Section 718.1255, as amended from time to time, and the applicable Rules of the Florida Administrative Code or the Condominium Act, the Association possesses all rights and remedies of the landlord/Owner under Chapter 83, Florida Statutes, for the purposes of enforcing against violations of the Condominium Documents. If tenants and/or Occupants are in non-compliance with any of the Condominium Documents, such non-compliance shall be a breach of the Condominium Documents and therefore a breach of the lease. The Association on behalf of the landlord/Owner may terminate the lease, and re-enter and re-take possession of the Unit for and on behalf of the landlord/Owner, after providing the notices required by Chapter 83, Florida Statutes. The Association has the right to serve such notices, terminate the lease and seek possession of the Unit for and on behalf of the landlord/Owner, upon the expiration of thirty (30) days after the Association mails notice of such intent to the landlord/Owner, without further notification nor the need to obtain specific permission from the landlord/Owner. The Association then has the right to institute eviction proceedings in Court against the tenants as agent for and on behalf of the landlord/Owner, based on the non-compliance mentioned above. The Association may exercise the Association's rights and remedies under this Section 19.9 without any liability to the landlord/Owner or tenants/Occupants (including, but not limited to, the loss of rent to the landlord/Owner and loss of possession by the tenants/Occupants), except as may be provided for in Chapter 83, Florida Statutes. The tenants/Occupants shall be jointly and severally responsible for the costs, paralegal charges and attorneys' fees incurred by the Association in connection with this matter.



SECTION 20. RIGHTS OF MORTGAGEES. The following rights shall apply to certain or all mortgagees, in addition to those rights contained elsewhere in the Condominium Documents:

20.1 Amendments to the Declaration. Written consent of certain mortgagees of a Unit shall be required for certain amendments to this Declaration. (Refer to Section 22.5.4 below.)

20.2 Association Lien Foreclosure. Certain named mortgagees have certain rights in connection with Association lien foreclosure actions, as provided for in Section 10.7.1.

20.3 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any Unit, the Association, on behalf of one (1) or more Owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the Unit at the foreclosure sale. Any mortgagee shall have the right to accept title to the Unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the Unit at the foreclosure sale. If the Association or any of the Members redeem the mortgage or cure the default, it or they shall have a lien against the Unit for all sums expended in connection therewith and shall have the same rights to collect such sums as in the case of a past due Assessment.

20.4 Right to Inspect Books. The Association shall make available to Institutional Mortgagees requesting the same current copies of the Condominium Documents and the Association's official records, which pursuant to the Condominium Act, may be inspected by Owners. For the purposes of this Section 20.4 "available" shall mean ready for inspection, upon written request, during normal business hours or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting the photocopies.

20.5 Financial Statements. Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statements of the Association for the immediately preceding fiscal year.

20.6 Lender's Notices. Upon written request to the Association, any Institutional Mortgagee shall be entitled to timely written notice of:

20.6.1 Any sixty (60)-day or longer delinquency in the payment of an Assessment or Charge owed by the Owner of any Unit on which the mortgagee holds a mortgage; and any thirty (30)-day or longer default of any other provision in the Condominium Documents by an Owner of any Unit on which the mortgagee holds a mortgage.

20.6.2 A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

20.6.3 Any condemnation or casualty loss that affects a material portion of the Condominium or any Unit.

20.6.4 Any proposed action that requires the consent of a specified percentage of mortgage holders.

20.6.5 Notice of Association meetings.

20.7 Access. All Institutional Mortgagees shall specifically have a complete right of access to all of the Common Elements for the purpose of ingress and egress to any Unit upon

which they have a mortgage loan. Any Institutional Mortgagee shall be entitled to attend meetings of the Association.

20.8 Presumption. Where an Institutional First Mortgagee, by some circumstance fails to hold a first mortgage encumbering a Unit, but it is evident that such mortgage is intended to be a first mortgage, such mortgage nevertheless, for the purpose of the Condominium Documents, shall be deemed to be an institutional first mortgage.

**SECTION 21. DEVELOPER'S UNITS AND PRIVILEGES; DEVELOPER DESIGNEES**. The following provisions shall apply in addition to any and all provisions contained elsewhere in this Declaration with respect to Developer's Units and privileges. The provisions of this Section 21 shall take precedence over any other provisions to the contrary in the Condominium Documents.

21.1 Changes in General Plan of Development. Developer reserves the right to make such physical modifications to the Condominium as may be required by any lender, governmental authority, or as may be, in Developer's judgment, necessary or desirable. Provided, however, that the foregoing is subject to the rights of any Owner or other person under the Condominium Act, and shall require the approval of Owners as required by Florida Statutes Section 718.110(2), and if so required, the provisions of Section 22.5.2 shall control and govern.

21.2 Construction/Sales/Lease Activities. No Owner, person, or the Association, or their respective use of the Units or the Condominium Property, shall interfere with Developer's construction, completion, and sale or leasing of the Units (except that the Association shall have the right to approve leases and tenants of Units to be leased by Developer) or any portion of the Total Property. Until all of the Units have been sold by Developer or are no longer being offered for sale in the ordinary course of business, Developer shall be irrevocably empowered: (i) to sell Units to any person, Entity or trustee of a trust approved by Developer without any interference or objection from the Association, and without any limitation; and (ii) to prohibit any changes to any provision of the Condominium Documents, which addresses an Owner's use of a Unit which, in Developer's sole discretion, negatively impacts on Developer's ability to sell Units owned by Developer. Furthermore, Developer reserves the right to retain title to any Units and lease all or portions of same, without any intention of selling them so long as Developer obtains the approval of the Association for any such lease. Developer shall have the right to transact upon the Condominium Property any business necessary to consummate the sale/lease of Units, including, but not limited to, the right to construct, install, maintain and use temporary construction, office, storage and sales facilities, place signs, banners and flags on the Condominium Property for construction or sales purposes, use the Condominium Property for sales offices or for sales and promotional purposes, and conduct sales activities relating to the Total Property or property owned by Developer or any of Developer's affiliates or designees that are situated outside of the Condominium. Any sales offices, signs, fixtures, furnishings or other tangible personal property belonging to Developer shall not be considered as part of the Condominium Property nor owned by the Association and shall remain the property of Developer. Developer shall further be exempt from any vehicle or parking restrictions established by the Rules only to the extent that the vehicles in question are engaged in any activity relating to the construction, maintenance or marketing for sale or for lease of Units, the Total Property, or property owned by Developer or any of Developer's affiliates or designees that are situated outside of the Condominium.

21.3 Specific Exemptions Under the Declaration. In addition to any other exemptions provided in favor of Developer in this Declaration, Developer and Developer's designees shall be exempt from all use restrictions contained in this Declaration, except for those use restrictions that are precluded by the Condominium Act or other applicable law or ordinance.

## SECTION 22. AMENDMENT OF DECLARATION.

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

22.2 Procedure; Notice and Format. Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the Members not later than the next annual meeting for which sufficient time exists to give proper notice before that meeting. The full text of any amendment to the Declaration shall be included in the notice of Owners' meeting at which a proposed amendment is to be considered. New words shall be inserted in the text by underlining and words to be deleted shall be lined through with hyphens; provided, however, that 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."

22.3 Vote Required. Except as otherwise provided by the Condominium Act, or by specific provision of the Condominium Documents, this Declaration may be amended as follows:

22.3.1 Up through a date which is the earlier of: (i) the date upon which Developer no longer owns any Units in the Condominium; or (ii) seven (7) years from the date of the recording of this Declaration, by the vote of a majority of the entire Board and (a) if Developer opposes the amendment, seventy-five percent (75%) of the voting interests of the Members, or (b) if Developer does not oppose the amendment, a majority of the voting interests of the Members.

22.3.2 After the date referred to in Section 22.3.1, by a vote of a majority of the entire Board and a majority of the Voting Interests of all Members.

22.3.3 If the amendments were proposed by written petition signed by Owners pursuant to Section 22.1, then the concurrence of the Board shall not be required.

22.4 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by any officer of the Association with the formalities of a deed. The Certificate of Amendment shall on the first page state the book and page numbers of the public records where the Declaration is recorded. If the written consent procedure is used, the consents of Owners need not be recorded, so long as the Certificate of Amendment executed by the officer of the Association attests to the execution of a sufficient number of consents to pass the amendment in question. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of the County.

22.5 Provisos. Notwithstanding any provision contained in the Condominium Documents to the contrary:

22.5.1 No amendment shall operate to unlawfully discriminate against any Unit or group of Units.

22.5.2 No amendment shall be made which falls under Florida Statutes Section 718.110(4), unless the Members vote and the approvals required therein are obtained.

However, any such amendment related to a matter that falls under Sections 11.4.3.2, 21.1 and 22.6 may be approved without the approval of the Board so long as a majority of the Voting Interests of all Members do approve.

22.5.3 Developer shall be permitted to unilaterally amend this Declaration without the approval of any Owner and the Association, as permitted by Florida Statutes Sections 718.110(2). Furthermore, so long as Developer owns any Unit in the Condominium for a period of seven (7) years after the recording of this Declaration, no amendment to this Declaration that impairs or removes any reservation, right or privilege of Developer or Developer's designees shall be effective unless Developer or Developer's designees, as applicable, shall join and consent to the amendment.

22.5.4 Except as to Section 22.6 as to which no mortgagee consent is necessary except as provided therein, any amendment that materially affects the rights or interests of mortgagees or for which the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation require mortgagee consent in the manner so provided in Florida Statutes Section 718.110(11), as the same shall be amended from time to time, shall not take effect without the written consent of the mortgagee, which consent may not be unreasonably withheld (joinder being unnecessary). In such case, the Certificate of the Association mentioned in Section 22.4 shall reference the obtaining of the necessary consents.

22.5.5 Any amendment proposed to this Declaration which would affect the surface water management system, conservation easement or water management portions of the Corporation Property shall be submitted to the South Florida Water Management District for review prior to finalization of the amendment. The South Florida Water Management District shall determine if the proposed amendment will require a modification of the environmental resource or surface water management permit. If a permit modification is necessary, the modification must be approved by the South Florida Water Management District prior to the amendment of this Declaration.

22.6 Modifying Appurtenances; Changing Undivided Share; Merger. For so long as Developer owns Units for sale, the declaration, bylaws and common elements of two (2) or more independent condominiums in the Community may be merged to form a single condominium upon the approval of Developer and a majority of Voting Interests of Members and all record owners of liens; and upon the recording of new or amended articles of incorporation, declaration and bylaws. For so long as Developer owns Units for sale, only the approval of Developer and a majority of Voting Interests of Members is required to: (i) change the number, configuration, or size of any Unit not yet conveyed to an Owner in a material fashion; (ii) materially alter or modify the appurtenances to the Units; or (iii) change the Undivided Share, by an amendment to the Declaration. Such an amendment shall not require the consent of an Institutional Mortgagee or Owner unless: (a) Developer changes the proportion by which an Owner, other than Developer, shares the Common Expenses and the Common Surplus or owns the Common Elements, in which event, such Owner whose share of Common Elements, Common Expenses and Common Surplus is being so changed and the Institutional Mortgagees of record holding mortgages on the affected Units consents in writing thereto; or (b) such change materially and adversely affects an Owner as determined by Developer in Developer's reasonable discretion, in which event such Owner and the Institutional Mortgagee of record holding the mortgage on the affected Unit consents in writing thereto.

## SECTION 23. MISCELLANEOUS PROVISIONS.

23.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Exhibits attached hereto, or applicable Rules adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions hereof or thereof, all of which shall remain in full force and effect.

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

23.2.1 The Condominium Act that applies.

23.2.2 The statutes applicable to not-for-profit corporations that apply.

23.2.3 Other Florida Statutes that apply.

23.2.4 This Declaration.

23.2.5 The Articles.

23.2.6 The Bylaws.

23.2.7 The Rules and architectural guidelines promulgated by the Board.

23.3 Interpretation; Construction. The Board is responsible for interpreting the provisions of this Declaration and its Exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

23.4 Invalidity. If any Court shall hereafter determine that any provision of this Declaration as originally drafted, or amended, violate the rule against perpetuities or any other rules of law because of the duration of the period involved, the period specified in the Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed such rules of law, and for such purpose measuring lives shall be that of the (original) incorporator(s) of the Association.

23.5 Captions. The captions in the Condominium Documents are inserted only as a matter of convenience and for ease of reference and in no way define or limit any provision in the Condominium Documents.

23.6 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.

23.7 Owners' Affirmative Duties. All Owners are charged with the affirmative duty to keep the Association advised, in writing, of any mailing addresses as they change from time to time. All Owners must also advise the Association of any second addresses. The Association shall be permitted to rely on the information supplied by Owners in writing. Each Owner also consents to the Association distributing to each Owner a directory of Owners and their addresses.

23.8 Covenants Running with the Land. All provisions of the Condominium Documents shall, to the extent applicable be perpetual and be construed to be covenants running with the Condominium, and all of the provisions of the Condominium Documents shall be binding upon and inure to the benefit of Developer, Owners, the Association and their respective heirs, personal representatives, successors and assigns (as the context requires), and shall be binding on all Occupants, Guests and invitees to the Units and the Condominium Property. None of the provisions contained in the Condominium Documents are intended to create, nor shall be construed as creating, any rights in and for the benefit of the general public.

23.9 Exhibits. There is hereby incorporated in this Declaration any materials contained in the Exhibits attached hereto which under the Act are required to be part of the Declaration.

23.10 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a Vice-President may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an Assistant Secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two (2) separate capacities.

23.11 Ratification. Each Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each Occupant and Guest of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of the Condominium Documents are fair and reasonable in all material respects.

23.12 Developer as Sole Beneficiary of Condominium Documents. Notwithstanding any provision or language in the Condominium Documents to the contrary, the legal counsel of Developer prepared the Condominium Documents solely for the benefit of its client, the Developer, and not for the benefit of any third parties. The terms, covenants and conditions established by the Condominium Documents, while continuing to be valid after turnover of control of the Association to the Owners, were intended for the sole benefit of Developer. Therefore, no third party, including Owners of Units, may claim that such party was an intended, third-party beneficiary of the services of such legal counsel.

23.13 Arsenic. Causeway Island is described as that land located east of the Seaway Drive bridge to South Hutchinson Island in the City of Fort Pierce, Florida. Causeway Island, including the Community, was created largely from soils dredged from submerged lands in the area. Low levels of arsenic have been detected in the soils of the Community. These levels are consistent with that found throughout the soils of Causeway Island and the adjacent Indian River Lagoon. These levels likely resulted from natural conditions or from storm water runoff of pesticides and herbicides into the Indian River Lagoon, or both. The levels are significantly lower than the minimum levels necessary for the Environmental Protection Agency of the Florida Department of Environmental Protection ("DEP") to have jurisdiction for remedial action. Nonetheless, to further enhance the Community, the Association has implemented and, subject to the Association's rights under the law, agrees to cause the Association to continue to implement a Soil Management Plan and Risk Analysis ("Remediation Plan") dated September 3, 2003, with respect to the Condominium Property for the safe residential development of the Condominium Property until it is determined by the Association that the continued implementation of the Remediation Plan is no longer necessary. While the DEP abstained from commenting on the Remediation Plan because the levels of arsenic were below its jurisdictional level for remedial action, the DEP suggested that the Remediation Plan was of the type that is frequently used to cut off the exposure pathways and thereby eliminating the mechanism by which humans are exposed



to arsenic. Further information and copies of the relevant documentation are available upon request from the Association.

23.14 Adjacent Land. Portions of the Property lying upland from the Indian River Lagoon (i.e. the water generally adjacent to the Community) lie outside of the Community's property lines, and thus such upland property that lies between the Community and the Indian River Lagoon is owned or otherwise controlled by persons other than the Corporation, the Association and the Unit Owners.

23.15 Marina Rights. Notwithstanding that the Marina is adjacent to the Condominium Property, no Owner shall have any right to use any portion of the Marina unless such right is specifically granted under a separate instrument executed by the Marina Owner, who is not obligated to grant any such rights.

23.16 Storage Spaces. There are more Units than there are Storage Spaces, and thus necessarily, the ownership of a Unit does not imply or guarantee the right to have a Storage Space as a Limited Common Element appurtenant to a Unit.

IN WITNESS WHEREOF, HARBOUR ISLE DEVELOPMENT EAST, LLC, a Florida limited liability company, as Developer, has caused the execution of this Declaration of Condominium of Harbour Isle at Hutchinson Island East, a Condominium, on the \_\_\_\_ day of \_\_\_\_\_, 2004.

WITNESSES:

HARBOUR ISLE DEVELOPMENT EAST,  
LLC, a Florida limited liability company

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

By: \_\_\_\_\_  
R. Mason Simpson, President

[Company Seal]

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

Address: 801 Seaway Drive  
Hutchinson Island, FL 34949

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF INDIAN RIVER )

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2004, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared R. Mason Simpson, President of HARBOUR ISLE DEVELOPMENT EAST, LLC, a Florida limited liability company, who is personally known to me or who has produced a \_\_\_\_\_ as identification and who did not take an oath and that the official seal of the Company is duly affixed and the instrument is the act and deed of the Company.

WITNESS my signature and official seal at \_\_\_\_\_, in the County of \_\_\_\_\_, State of Florida, the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires: \_\_\_\_\_

HARBOUR ISLE AT HUTCHINSON ISLAND EAST 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, HARBOUR ISLE AT HUTCHINSON ISLAND EAST CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this \_\_\_\_ day of \_\_\_\_\_, 2004.

WITNESSES:

HARBOUR ISLE AT HUTCHINSON ISLAND  
EAST CONDOMINIUM ASSOCIATION,  
INC., a Florida corporation not for profit

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

By: \_\_\_\_\_  
R. Mason Simpson, President

[CORPORATE SEAL]

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

Address: 801 Seaway Drive  
Hutchinson Island, FL 34949

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF INDIAN RIVER )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared R. Mason Simpson, President of HARBOUR ISLE AT HUTCHINSON ISLAND EAST CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, who is personally known to me or who has produced a \_\_\_\_\_ as identification and who did take an oath and that the official seal of the Corporation is duly affixed and the instrument is the act and deed of the Corporation.

WITNESS my signature and official seal at \_\_\_\_\_, in the  
County of \_\_\_\_\_, State of Florida, the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires: \_\_\_\_\_

**JOINDER OF MORTGAGEE TO DECLARATION OF CONDOMINIUM**

FIDELITY FEDERAL BANK & TRUST, the owner and holder of that Construction Mortgage, Future Advances, in the original principal amount of \$18,000,000.00 recorded December 1, 2003, in Official Records Book 1853, Page 1029, of the Public Records of St. Lucie County, Florida (the "Mortgage"), which Mortgage encumbers the land described in Exhibit "A" attached to the Declaration of Condominium of HARBOUR ISLE AT HUTCHINSON ISLAND EAST, A CONDOMINIUM (the "Declaration"), according to the Declaration thereof, hereby consents to and joins in the Declaration.

The undersigned also agrees that the lien of its Mortgage on the land described on Exhibit "A" attached to the Declaration, shall be upon all of the Condominium Parcels of HARBOUR ISLE AT HUTCHINSON ISLAND EAST, A CONDOMINIUM, according to the Declaration thereof, together with all of the appurtenances, including, but not limited to, any Common Elements appurtenant to the Condominium Parcels so encumbered and to the undivided shares of the Common Elements, and shall be subordinate to the terms and conditions of the Declaration.

This instrument is executed by the undersigned for the purpose of complying with and pursuant to Florida Statutes Section 718.104(6).

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

WITNESSES:

FIDELITY FEDERAL BANK & TRUST

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

Address: 205 Datura Street  
West Palm Beach, FL 33401

STATE OF FLORIDA            )  
  ): ss  
COUNTY OF PALM BEACH)

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared \_\_\_\_\_, as \_\_\_\_\_ of FIDELITY FEDERAL BANK & TRUST, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did not take an oath.

WITNESS my signature and official seal at \_\_\_\_\_, in the County of Palm Beach, State of Florida, the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires: \_\_\_\_\_

**JOINDER OF MORTGAGEE TO DECLARATION OF CONDOMINIUM**

Jack B. Owen, Jr., Trustee under 689.701 [689.071] of the Causeway Island Trust dated June 29, 2001, the owner and holder of a mortgage encumbering the land described in Exhibit "A" attached to the Declaration of Condominium of HARBOUR ISLE AT HUTCHINSON ISLAND EAST, A CONDOMINIUM (the "Declaration"), according to the Declaration thereof, hereby consents to and joins in the Declaration.

The undersigned also agrees that the lien of its mortgage on the land described on Exhibit "A" attached to the Declaration, shall be upon all of the Condominium Parcels of HARBOUR ISLE AT HUTCHINSON ISLAND EAST, A CONDOMINIUM, according to the Declaration thereof, together with all of the appurtenances, including, but not limited to, any Common Elements appurtenant to the Condominium Parcels so encumbered and to the undivided shares of the Common Elements, and shall be subordinate to the terms and conditions of the Declaration.

This instrument is executed by the undersigned for the purpose of complying with and pursuant to Florida Statutes Section 718.104(6).

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

WITNESSES:

Jack B. Owen, Jr., Trustee under 689.701  
[689.071] of the Causeway Island Trust  
dated June 29, 2001

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

By: \_\_\_\_\_  
Jack B. Owen, Jr.  
Its: Trustee

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

Address: 4500 PGA Boulevard, Suite 206  
Palm Beach Gardens, FL 33418

STATE OF FLORIDA            )  
  ): ss  
COUNTY OF \_\_\_\_\_)

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared Jack B. Owen, Jr., Trustee under 689.701 [689.071] of the Causeway Island Trust dated June 29, 2001, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did not take an oath.

WITNESS my signature and official seal at \_\_\_\_\_, in the County of \_\_\_\_\_, State of Florida, the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires: \_\_\_\_\_