

AMENDED AND RESTATED  
DECLARATION Declaration

OF of

THE BEACHCOMBER,  
A CONDOMINIUM

~~Crosswind Jupiter South, a Florida partnership (“Fee Owner” or “Owner”), does hereby declare as follows:~~ On August 2, 1984, the original Declaration of the Beachcomber, a Condominium was recorded in Official Records Book 4312, Page 1984, et. seq., of the Public Records of Palm Beach County, Florida, as amended at Official Records Book 4413, Page 1819, Official Records Book 4413, Page 1848, Official Records Book 5597, Page 710, Official Records Book 9947, Page 1177, Official Records Book 10990, Page 846, Official Records Book 11554, Page 1436, Official Records Book 13532, Page 1910, and Official Records Book 16794, Page 1476 (the “Original Declaration”). The Original Declaration is hereby being further amended in part and restated in its entirety.

1. Introduction and Submission.

1.1 The Land. ~~That The Fee Owner owns the fee title to~~ certain land located in Palm Beach County, Florida, as more particularly subject to the Original Declaration described in Exhibit “1-1” annexed hereto (the “Land”), which has been submitted to the condominium form of ownership pursuant to the Original Declaration.

1.2 Submission Statement. The ~~Fee Owner hereby submits the~~ Land and all Improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, have been submitted to the condominium form of ownership and use pursuant to the Original Declaration and this Declaration, hereto and otherwise in the manner provided by the Florida Condominium Act as it exists on the date hereof.

1.3 Name. The name by which this condominium is to be identified is “THE BEACHCOMBER, A CONDOMINIUM” (hereinafter called the “Condominium”).

2. Definitions

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

2.1 “Act” means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as hereafter renumbered.

2.2 “Assessment” means a share of the funds required for the payment of ~~common expenses~~ Common Expenses and other expenses or fees which from time to time is assessed against the Unit Owner.

2.3 “Association” means THE JUPITER BEACHCOMBER CONDOMINIUM ASSOCIATION, INC., a not for profit Florida corporation, the entity responsible for the operation of the Condominium.

~~2.4~~ ~~2.4~~ “Board of Directors” or “Board” means the board of Unit Owners who are elected to be Directors of the Association in the manner determined by and subject to the qualifications set forth in Article 4 of the By-Laws.

- 2.5 “Building” means the structure or structures in which the Units are located, regardless of the number of such structures which may be located on the ~~condominium property~~Condominium Property from time to time.
- ~~2.65~~ “By-Laws” mean the By-Laws of the Association.
- 2.76 “~~Common elements~~Common Elements” mean and include:
- (a) The portions of the ~~condominium property~~Condominium Property which are not included within the Units.
  - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the ~~common elements~~Common Elements.
  - (c) An easement of support in every portion of a Unit which contributes to the support of the Building.
  - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the ~~common elements~~Common Elements.
  - (e) Any other parts of the ~~condominium property~~Condominium Property designated as ~~common elements~~Common Elements in this Declaration.
- 2.87 “~~Common expenses~~Common Expenses” mean all expenses and assessments incurred by the Association for the Condominium and other expenses declared by the Association as ~~common expenses~~Common Expenses.
- 2.98 “~~Common surplus~~Common Surplus” means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the ~~common elements~~Common Elements, above the amount of ~~common expenses~~Common Expenses.
- 2.109 “~~Condominium parcel~~Condominium Parcel” means a Unit together with the undivided share in the ~~common elements~~Common Elements which is appurtenant to said Unit, and when the context permits, the term includes all of the appurtenances to the Unit.
- 2.110 “~~Condominium property~~Condominium Property” means the Land and personal property that are subjected to condominium ownership under this Declaration, all Improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium, and all other property, real, personal and mixed, which may subsequently be made subject to this Declaration as hereinafter described.
- ~~2.124~~ “County” means the County of Palm Beach, State of Florida.
- ~~2.132~~ “Declaration” or “Declaration of Condominium” means this instrument, as it may be amended from time to time.
- ~~2.143~~ “Developer” means CROSSWINDS JUPITER SOUTH, a Florida partnership, which was the original developer of the Land and Improvements, as provided in the Original Declaration. its successors and such of its assigns as to whom or which the rights of Developer hereunder are specifically assigned or accrue under law.
- 2.154 “Improvements” mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the ~~condominium property~~Condominium Property from time to time, including, but not limited to, the Building.

- 2.1~~65~~ “Institutional First Mortgagee” means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, any affiliate of any of the foregoing, or any other lender generally recognized as an institutional-type lender, ~~or the Developer,~~ holding a first mortgage on a Unit or Units.
- 2.1~~76~~ “~~Limited common elements~~Limited Common Elements” mean those ~~common elements~~Common Elements -the use of which are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. Referenced herein to ~~common elements~~Common Elements shall include also all ~~limited common elements~~Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.1~~87~~ “Primary Institutional First Mortgagee” means the Institutional First Mortgagee which owns at any time Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.1~~98~~ “Town” means the Town of Jupiter, Florida.
- 2.20 “Unit” means a part of the ~~condominium property~~Condominium Property which is subject to exclusive ownership.
- 2.21~~49~~ “Residential Unit” means a Unit intended for use as a residence as provided herein.
- 2.2~~20~~ “Unit Owner” or “Owner of Unit” or “Owner” means the record title owner ~~Owner~~ of a ~~condominium parcel~~Condominium Parcel., ~~or, in~~In the case of parcels owned by a trust, corporation or other entity, the Owner shall designate by written certificate an individual to vote for the Unit ~~the~~ Owner, in accordance with the By-Laws. ~~the beneficial Owner of such parcels.~~

### 3. Description of Condominium.

- 3.1 Identification of Units. The land has constructed thereon fourteen (14) Buildings ~~the Building each~~ containing 4 Units, together with a swimming pool and pool house. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on the composite Exhibit 1 “3-1” annexed hereto. The Exhibit 1 “3-1” consists of a the prior surveys of the Land, with a graphic description of the Improvements located thereon, including, but not limited to, the Buildings in which the Units are located and a plot plan thereof, in a composite of the exhibits which were attached to the Original Declaration in the order as recorded and attached to the various instruments comprising the Original Declaration. To the extent that any subsequently recorded page of the Exhibit 1 which conflicts with an early recorded page, that subsequently recorded page shall take priority over and supercede the earlier recorded page. Said Exhibit-1 “3-1”, together with this Declaration, are is sufficient in detail to identify the ~~common elements~~Common Elements and each Unit and their relative locations and approximate dimensions, and constitute the same compilation of surveys as set forth in the prior recorded instruments comprising the Original Declaration. There shall pass with a Unit as appurtenances thereto (a) an undivided share in the ~~common elements~~Common Elements and ~~common surplus~~Common Surplus; (b) the exclusive right to use such portion of the ~~common elements~~Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically, and (d) other appurtenances as may be provided in this Declaration. ~~The condominium property and the number of Units may be expanded as provided in Section 22 hereof.~~

3.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

- (a) Upper and lower boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
  - (i) Upper boundaries. The horizontal plane of the unfinished lower surface of the structural ceiling of the Unit.
  - (ii) Lower boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the Unit.
  - (iii) Interior Divisions. Non-structural interior walls shall not be considered a boundary of the Unit.
- (b) Perimetrical boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (c) Appertures. Where there are appertures in any boundary, including, but not limited to, windows and doors, such boundaries shall be extended to include the interior unfinished surfaces of such appertures, including the frameworks therefore. Exterior surfaces made of glass or other transparent material, and all framings and casings thereof, shall be deemed part of the boundaries of the Unit.
- (d) Conflicts or Ambiguities. In the event there is a conflict between the above textual description and the surveys identifying the Condominium as attached to the Declaration set forth as Exhibit 3-1 (and any future amendments thereto, or additions to the surveys with respect to Phase Two), said surveys shall control, except with respect to the matters described in paragraph (c) above if not shown on such surveys.

3.3 ~~Limited Common Elements~~Limited Common Elements. Units shall have, as ~~limited common elements~~Limited Common Elements appurtenant thereto:

- (a) Patios, Balconies and Terraces. Any patio, balcony or terrace as to which direct and exclusive access shall be afforded to any particular Unit shall be a limited common element of such Unit.
- (b) Parking Spaces. ~~Each Unit has appurtenant thereto The Developer will assign to each Unit at closing~~ the exclusive right to use ~~not less than one (1) parking space, as may have been assigned by the Developer.~~ Any such ~~Such~~ parking space shall be a limited common element of the Unit with respect to which the space is assigned. Once assigned, such exclusive right to use may not thereafter be changed without the written consent of the Association and shall pass with title to the Unit. To the extent that a Unit does not have assigned to it one assigned parking space, the Association shall have the right to assign such Unit one parking space. No Unit Owner shall park a vehicle, nor permit their invitees to park a vehicle, across or upon more than one designated space, as lined or designated for the parking of one vehicle.

Notwithstanding the foregoing, prior to the date of this amended Declaration, one or more Units have received ~~The Developer may also offer for sale~~ the exclusive right to use one additional parking spaces (an "Additional Space"). ~~The Developer is entitled to retain any fee it charges in connection therewith. If such right with~~

~~respect to an additional space is sold, such space~~ Such Additional Space shall also be and remain a limited common element of the applicable Unit, and may not be assigned or sold to any other party without the prior written approval of the Association. ~~but such space may thereafter be assigned freely to other Unit Owners as an appurtenance to a particular Unit and the form of assignment given by the Developer shall so state. All such spaces shall only entitle the Unit Owner to the exclusive right to use same. If not previously assigned prior to the conveyance of the Unit to which it is an appurtenance, such additional space shall automatically become a limited common element of any other Unit owned by the Owner of the Unit so conveyed, if any, but if no such other Unit is owned by such Owner, such spaces shall pass with title to the last Unit conveyed.~~

The Association shall have the right to grant, upon such terms and conditions as deemed appropriate by the Board, a revocable license to a Unit Owner for the exclusive right to use a parking space, which parking space be a limited common element of the applicable Unit during the term of the license.

- (c) Storage. The exclusive right to use storage spaces which are appurtenant assigned by the Developer to a ~~to certain respective Units Unit~~ as a limited common element, which storage spaces assignment may not thereafter be assigned or changed without the written consent of the Association, and such storage spaces shall pass with title to the Unit.

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

- (a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the ~~common elements~~ Common Elements.
- (b) Utility Services; Drainage. Easements are reserved under, through and over the ~~condominium property~~ Condominium Property as may be required for utility and other services and drainage in order to serve the condominium; provided, however, such easements running through a Unit shall be limited to those provided in the plans and specifications for the Building, or existing in the Building as constructed or reconstructed, unless approved in writing by the affected Unit Owner. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other services or drainage facilities or the use of these easements. The Board of Directors of the Association or its designees shall have a right of access to each Unit to inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, service and drainage facilities, and ~~common elements~~ Common Elements contained in the Unit or elsewhere in the ~~condominium property~~ Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved, provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days notice.
- (c) Encroachments. If (a) portion of the ~~common elements~~ Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the ~~common elements~~ Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements,

- (ii) settling or shifting of the Improvements, (iii) any alteration or repair to the ~~common elements~~Common Elements made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements (or any portion thereof) or of any Unit after damage by fire or casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the ~~common elements~~Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the easement so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks and other portions of the ~~common elements~~Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the ~~common elements~~Common Elements as from time to time may be paved and intended for such purposes.
- (e) Association Construction, Repairs and Maintenance. The ~~Association Developer (including its designees, contractors, successors and assigns)~~ shall have the right ~~in its (and their) sole discretion~~ from time to time to enter the ~~Condominium Property~~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 ~~Unit Owner Association~~ fails to do so, and for the abatement, prevention or correction of any violations of applicable laws, codes or ordinances, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the Unit Owners of the ~~condominium property~~Condominium Property.
- (f) ~~Developer and Manager Use. The Developer (regardless of whether it controls Units) and any manager engaged by any Unit Owner or the Association, their designees, successors and assigns, shall have the right to use any unoccupied Units and all parts of the common elements for model apartments and sales offices, to show model apartments and common elements to prospective purchasers and tenants of Units, to erect other promotional material, to advertise Units for sale or lease, and to use the common elements (including, without limitation, office space) for their respective administrative and management functions prior and subsequent to the sale of the Units, as appropriate.~~
- (g) ~~Additional Easements. The Developer (so long as it controls and Units) and the Association each~~ shall have the right to grant such additional electric, gas, other utility or service or other easements, or relocate any existing utility, service or other easements or drainage facilities, in any portion of the ~~condominium property~~Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the ~~condominium property~~Condominium Property, as the ~~Developer or the~~ Association shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of one or more of the Unit Owners, or for the purpose of carrying out any provision of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

~~3.5 Joint Developers. To the extent that ownership of Phase Two becomes vested in any person or entity other than Developer (or the Owner of behalf of Developer), by reason of a foreclosure of a mortgage on any one or both of such Phases or a deed in lieu of foreclosure, such person or entity shall be deemed the Developer hereunder and under applicable law with respect to the Phase so owned by such person or entity (but not with respect to the Phase not so owned).~~

4. Restraint Upon Separation and Partition of Common Elements.

The undivided share in the ~~common elements~~Common Elements and ~~common surplus~~Common Surplus which is appurtenant to a Unit, and, except as provided to the contrary in Section 3 hereof, the exclusive right to use all appropriate appurtenant ~~limited common elements~~Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the ~~common elements~~Common Elements and ~~common surplus~~Common Surplus cannot be conveyed or encumbered except together with the Unit. The respective share in the ~~common elements~~Common Elements appurtenant to Units shall remain undivided, and no action for partition of the ~~common elements~~Common Elements, the ~~condominium property~~Condominium Property, or any part thereof, shall lie except as provided herein.

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

5.1 Percentage Ownership and Shares. The undivided percentage interest in the ~~common elements~~Common Elements and ~~common surplus~~Common Surplus, and the percentage share of the ~~common expenses~~Common Expenses, appurtenant to each Unit (as well as other Units which may subsequently be added to the Condominium), is set forth in Exhibit "2" annexed hereto.

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

6. Amendment of the Declaration. Except as elsewhere provided herein, this Declaration may be amended as follows:

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

- (a) ~~not less than a majority of the votes of the Unit Owners~~ owners of the Association represented at a meeting in person or by proxy at which a quorum thereof has been attained owning not less than 50% of the Units and by not less than 66<sup>2</sup>/<sub>3</sub>% ~~of the Units~~ of the Board of Directors of the Association; or
- (b) ~~After control of the Board is turned over to Unit Owners other than the Developer, Unit Owners owning~~ not less than 80% of the ~~Unit Owners~~ Units of the Association represented in person or by proxy at a meeting at which a quorum has been attained; or
- (c) not less than 100% of the Board of Directors. ~~;~~ ~~or~~

~~(d) Not less than 50% of the entire membership of the Board of Directors in the case of amendments to the section hereof entitled "Insurance" that are reasonably required by insurers or Institutional First Mortgagees.~~

6.2 ~~By the Developer. The Developer (joined by the Fee Owner if it is then the record title holder of unsold Units), during the time the Developer is in control of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association to correct an omission or error or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would, in the opinion of the Developer, materially adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing. The execution and recording of any amendment by the Developer (and the Fee Owner, if necessary) pursuant hereto shall be conclusive evidence that the amendment does not materially adversely affect substantial property rights of Unit Owners who did not join in or consent to such execution, and any such amendment shall be effective as provided below unless subsequently rescinded.~~

~~Without limiting the generality of the foregoing, the Developer (joined by the Fee Owner, if necessary) shall have the absolute right to amend the Declaration to submit to condominium ownership under this Declaration any and all Phases described in Section 22 hereof. Each such amendment shall contain a statement submitting the appropriate property, and all Units and Improvements thereon, to the condominium form of ownership under and pursuant to this Declaration, and shall contain as an exhibit thereto the survey and surveyor's certificate, with respect to such property, complying with applicable law. The consent of Unit Owners or the Association shall not be required to effect any such amendments.~~

~~6.3 Execution and Recording. Any amendment, other than amendments made by the Developer (and the Fee Owner, if necessary) alone pursuant to the Act or to this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed in the form required for the execution of a deed. Amendments by the Developer (and the fee Owner, if necessary) must be evidenced in writing by a certificate of the Association is not required. An amendment of the Declaration is effective when properly recorded in the public records of the County.~~

6.34 Proviso. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the ~~common expenses~~Common Expenses and owns the ~~common elements~~Common Elements and ~~common surplus~~Common Surplus, unless the record Owners(s) thereof and all record owners of mortgages or other liens thereon shall join in the execution of the amendment. No amendment ~~as to the Sections hereof regarding Insurance (Section 14), Reconstruction or Repair After Fire or Other Casualty (Section 15) or Condemnation (Section 16)~~ may be adopted which would adversely affect the interest of ~~the Developer or~~ any Institutional First Mortgagee without the written consent of ~~the Developer or~~ such Institutional First Mortgagee(s), ~~as appropriate.~~

## 7. Maintenance and Repairs.

7.1 Units. All maintenance, repairs and replacements of, in or to any Unit and ~~limited common elements~~Limited Common Elements appurtenant thereto (except for paving of assigned parking spaces, and except for such portion of balcony/patios as described further herein), whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, glass, and the

electrical, plumbing, heating and air-conditioning fixtures, if any, within the Unit or belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. Each Unit Owner shall be responsible for the condition of their respective Unit and appurtenant Limited Common Elements, and shall be liable for the cost of repair and maintenance thereof (except for paving of assigned parking spaces, and except for such portion of balcony/patios as described further herein), regardless of how or when any such condition arose, whether due to the action or inaction of Unit Owner or the Unit Owner's predecessor in title. Regarding the external doors, ÷

~~The~~ the Unit Owner Association is responsible for:

All maintenance and repair of all external doors, the front entrance, the kitchen, and storage doors, and their hardware and ~~external~~ frames; and:

100% of the cost of replacement of the kitchen and storage doors, and their hardware and ~~external~~ frames.

~~The Homeowner is responsible for:~~

~~All maintenance and repair of the inside of all external doors, their hardware and internal molding.~~

All external doors, frames and hardware must meet the architectural standards of the Community.

Regarding any balcony, patio, or terrace, ~~the following shall govern:~~

~~The~~ the Association is responsible only for the concrete repairs necessary for structural repairs, normal spalling and balcony replacement, other than any such work necessitated by the fault of the Owner of the Unit adjacent to the subject balcony, patio or terrace. All other repairs, maintenance, replacement of any work on or related thereto are the responsibility of the Unit Owner Homeowner, including without limitation, repairs and maintenance to all screens, sliding doors, tile, finishes, ceilings, railings and enclosures upon or attached to any balcony, patio or terrace.

- 7.2 ~~Common Elements~~ Common Elements. Except to the extent proceeds of insurance are made available therefore, all maintenance, repairs and replacements in or to the ~~common elements~~ Common Elements (other than certain ~~limited common elements~~ Limited Common Elements as provided above) shall be performed by the Association, and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, ~~common expense~~, except to the extent the need for such maintenance, repairs or replacements was either caused or created by one or more Unit Owners or their predecessor in interest, or arose arising from or was necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners, which cost and expenses shall be, to the extent permitted by law, levied and collected as an Assessments against the Unit.
8. Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors, the ~~common elements~~ Common Elements, or any of them, shall require capital additions, alterations, or improvements (as distinguished from repairs and replacements) costing in excess of \$150,000 ~~\$100,000~~ in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, or improvements shall have been approved by ~~(i)~~ a majority of the Unit Owners voting in person or by proxy at a meeting at which a quorum is attained, ~~and (ii)~~ the Primary Institutional First Mortgagee. Any such additions, alterations or improvements to such ~~common elements~~ Common Elements, or any of them, costing in the aggregate \$150,000 ~~\$100,000~~ or less in a calendar year may be made

by the Association without approval of the Unit Owners ~~or any Institutional First Mortgagee~~. The cost and expense of any such additions, alterations, or improvements to such ~~common elements~~ Common Elements shall constitute a part of the ~~common expenses~~ Common Expenses and shall be assessed to the Unit Owners as ~~common expenses~~ Common Expenses. For purposes of this section, (i) "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year, and (ii) the stated threshold sum of \$150,000 shall be subject to increase by a multiplier of 1.02 each year commencing in the year 2010.

9. Additions, Alterations or Improvements by Unit Owners.

~~9.1 Consent of the Board of Directors.~~ No Unit Owner shall make any structural addition, alteration or improvement in or to the Unit Owner's his Unit, or any alteration to ~~limited common elements~~ Limited Common Elements, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or ~~limited common elements~~ Limited Common Elements within forty-five (45) thirty (30) days after receipt of such request, together with applicable plans, specifications and all relevant information, and after all additional information requested by the Association is received, and the failure to do so within the stipulated time shall constitute the Board's consent to the proposed addition, alteration or improvement. All such additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and with the requirements imposed by the Association in its approval. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, to hold the Association and all other Unit Owners harmless from any liability and expenses arising therefrom, and said Unit Owner, and the Owner's successors and assigns, shall be solely responsible for the maintenance, repair and insurance thereof during and after the date of installation or construction thereof as may be required by the Association.

~~9.2 Additions, alterations or improvements by Developer.~~ The foregoing restrictions of this Section 9 shall not apply to Developer-controlled Units. ~~The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (a) make alterations, additions or improvements, structural and nonstructural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit controlled by it and all common elements (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the improvements) and (b) provide, expand, modify and/or eliminate recreational facilities.~~

10. ~~Reserved. Changes in Developer-owned Units.~~ Without limiting the generality of Section 9.2 above, ~~Developer shall have the right, without the vote or consent of the Association, to (i) make alterations, additions, or improvements in, to and upon Units controlled by Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-controlled Units; (iii) change the size and/or number of Developer-controlled Units by subdividing one or more Developer-controlled Units by subdividing one or more Developer-controlled Units into two or more separate Units, combining separate Developer-controlled Units (including those resulting from such subdivision or otherwise) into one or more Units, or otherwise; and (iv) reapportion among the Developer-controlled Units affected by such change in size or number pursuant to the preceding clause their appurtenant interests in the common elements and share of the common expenses; provided, however, that the percentage interests in the common elements of any Units (other than Developer-controlled Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all~~

~~governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter common elements adjacent to such Units, create additional common elements and/or incorporate portions of common elements in Units, provided that such relation and alteration does not materially affect the value of the Units of Unit Owners other than the Developer. Any amendments to this Declaration required by actions taken pursuant to this paragraph 10 may be effected by the Developer (and the Fee Owner, if necessary) alone. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.~~

11. Operation of the Condominium by the Association; Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association (~~respectively, Exhibits "4" and "5" annexed hereto~~) as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, and all the powers of a Florida corporation not for profit, including, without limitation:
- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any ~~common elements~~Common Elements therein, or for making emergency repairs therein necessary to prevent damage to the ~~common elements~~Common Elements or to any other Unit or Units, or to abate any violation of applicable laws, codes or ordinances, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed ~~to the Declaration~~hereto, and the rules and regulations adopted pursuant to such documents, as the same may be amended from time to time. Each Unit Owner shall provide the Association with a key and any security code access information, so that the Association shall have the ability to access each Unit for the aforementioned purposes. In the event a Unit Owner fails to provide such key and access information within twenty (20) days following written request, the Unit Owner shall be subject to such fine as may be established by the Board.
  - (b) The power to make and collect assessments and other charges against Unit Owners and to lease, maintain, repair and replace the ~~common elements~~Common Elements.
  - (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior written request.
  - (d) The power to contract for the management and maintenance of the ~~condominium property~~Condominium Property and to authorize one or more ~~a~~ management agents (~~who may be an affiliate of the Developer~~) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the ~~common elements~~Common Elements with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium ~~condominium~~ documents and the Act, including, but not limited to, the making of assessments, promulgation of rules and execution of contracts on behalf of the Association.
  - (e) ~~Subsequent to the recording of this Declaration, the Association, when~~ When authorized by the majority of the total votes of the Unit Owners members of the Association ~~and approved by the Primary Institutional First Mortgagee~~, shall have the power to acquire and enter into agreements for acquisition of fee interests, leaseholds, memberships, beneficial interests and other possessory, use or other interests in lands or facilities, including but not limited to ~~country clubs, golf courses, marinas, and other~~ recreational facilities; whether or not contiguous to the lands of the Condominium,

intended to provide for the use or benefit of the Unit Owners on an exclusive or non-exclusive basis. The expense of ownership, rental, membership fees, operations, replacements, and other undertakings in connection therewith shall be ~~common expenses~~Common Expenses.

(f) The power to adopt and amend rules and regulations covering the details of the operation and use of the ~~Condominium property~~Condominium Property.

(g) The power to charge a fee for the temporary exclusive use of any Common Elements or Condominium Property by a Unit Owner having a right to such use.

(h) All of the powers which a corporation not for profit in the State of Florida may exercise.

In the event of conflict between the powers and duties of the Association as set forth in the Declaration, Articles of Incorporation and By-Laws, the Declaration shall take precedence over the Articles of Incorporation and By-Laws, and the Articles of Incorporation shall take precedence over the By-Laws, and the By-Laws shall take precedence over the applicable rules and regulations. Notwithstanding anything to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

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

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

11.3 Approval or disapproval of matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of record Owners is specifically required by this Declaration or the By-Laws.

11.4 Action of Association; Interpretation. Unless otherwise specifically provided to the contrary herein or in any of the exhibits attached hereto, the Association shall act through its officers in accordance with the decisions of the Board of Directors. Unit Owners shall not have any power or authority to approve or disapprove actions unless otherwise specifically required hereunder or under any of the exhibits attached to the Declaration ~~hereto~~. Officers need not have specific Board authority for actions taken by such officers in the ordinary course of business. When an approval or action of the Association is permitted to be given or taken hereunder, 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. The Board shall be responsible for interpretation adopted of this Declaration and its exhibits and an opinion of counsel stating that an interpretation adopted by the Board is not unreasonable shall establish the validity of such interpretation.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, NOR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY INCLUDING, WITHOUT LIMITATION, OCCUPANTS AND THEIR, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

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

(b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, THE COUNTY, THE TOWN AND/OR ANY OTHER JURISDICTION OR AGENCY, THE COVENANTS, CONDITIONS, RESTRICTIONS OR RULES OF ANY OTHER ASSOCIATION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

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

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

AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, MANAGERS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

12. Determination of Common Expenses and Fixing of Assessments Therefore. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of assessments of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the assessment payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The ~~common expenses~~Common Expenses shall include the expenses of the operation, maintenance, repair and replacement of the ~~common elements~~Common Elements, costs of carrying out the powers and duties of the Association, and any other

expenses designated as ~~common expenses~~Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association or by the Association. The Budget shall include reserves as required by the Act. Except as may be provided by law, any working capital contributions may be used as the Board shall determine from time to time and need not be restricted to initial expenses. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated.

Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws. Anything to the contrary herein notwithstanding, the Association shall have the power to specially charge and assess one or more Unit Owners (without being obligated to similarly charge and assess all other Unit Owners) for expenses incurred by the Association solely for the benefit of, or as a result of actions or omissions of, such Owner or Owners as the Board deems appropriate from time to time. Once imposed, such special charges and assessments shall be deemed to be assessments for ~~common expenses~~Common Expenses in respect of such Unit or Units only for purposes of this Declaration, the exhibits of the Declaration attached hereto and the Act.

13. Collection of Assessments.

13.1 Liability for assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while ~~in title as he is~~ the Unit Owner. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for ~~the Unit's his~~ share of the ~~common expenses~~Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for assessments may not be avoided by waiver of the use or enjoyment of any ~~common elements~~Common Elements or by the abandonment of the Unit for which the assessments are made.

13.2 Default in payment of assessments for ~~common expenses~~Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the due date until paid. The Association has a lien on each ~~condominium parcel~~Condominium Parcel for any unpaid assessments on such ~~Condominium Parcel~~parcel, with interest and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien. The lien is effective from and after recording a claim of lien in the Public Records of the County, stating the description of the ~~condominium parcel~~Condominium Parcel, the name of the record Owner, the amount due and the due dates. The lien is in effect until all sums secured by it (or such sums as to which the Association shall agree by way of settlement) have been fully paid or until barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, late fees and costs and attorneys fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. ~~includes only assessments, which are due when the claim is recorded.~~—A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

13.3 Notice of intention to foreclose lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the

unpaid assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

13.4 Appointment of receiver to collect rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.

13.5 Institutional First Mortgagee. In the event an Institutional First Mortgagee shall obtain title to the Unit as a result of foreclosure of its mortgage, or as a result of a deed given in lieu of foreclosure, such Institutional First Mortgagee, its successors and assigns, shall not be liable for the share of ~~common expenses~~Common Expenses or assessments or other charges by the Association pertaining to such ~~condominium parcel~~Condominium Parcel or chargeable to the former Unit Owner of such ~~Condominium parcel~~Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu, unless such share is secured by a claim of lien that is recorded prior to the recording of the foreclosed mortgage. However, the Institutional First Mortgagee's liability as aforesaid shall include, but shall be limited to, assessments coming due during the period ending with the acquisition of title as aforesaid and commencing thirty (30) days after the date the Institutional First Mortgagee received the last payment of principal or interest on the debt secured by the mortgage and, further, in no event shall such liability exceed (i) assessments for a period of more than six (6) months prior to acquisition of title, or (ii) one percent (1%) of the original mortgage debt, whichever is less. Such unpaid share of ~~common expenses~~Common Expenses or assessments or other charges shall be deemed to be ~~common expenses~~Common Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.

~~13.6 Developer's liability for assessments. The Developer shall be excused from the payment of the share of the common expenses and assessments relating to Units in Phase One which it is offering for sale, for a period beginning with the recording of this declaration and ending no later than the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first Unit in such Phase occurs. However the Developer must pay the portion of common expenses incurred during that period which exceeds the amount assessed against other Unit Owners. The Developer shall be liable for unpaid assessments on Units in each Phase owned by it after the expiration of the four month period.~~

~~The Fee Owner shall have no personal liability for the payment of assessments against Units for which it holds record title, and recourse may only be had against the appropriate Units so held by the Fee Owner for the collection of unpaid assessments due with respect to each such Unit.~~

13.713.6 Possession of Unit. Any person who acquired an interest in a Unit, except Institutional First Mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including, without limitation, persons acquiring title by operation of law, shall not be entitled to

occupancy of the Unit or enjoyment of the ~~common elements~~Common Elements until such time as all unpaid assessments and other charges due and owing by the former Owner, if any, have been paid.

13.813.7 Certificate of unpaid assessments. Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid assessments ~~applicable to the against him with respect to his~~ Unit. Within fifteen (15) days after receipt of a written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all assessments and other moneys owed to the Association by the Unit Owner with respect to the Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association or its management may charge a reasonable fee for preparation of the certificate.

14. Insurance. Insurance covering the Condominium shall be governed by the following provisions:

14.1 Purchase, custody and payment of policies.

- (a) Purchase. All insurance policies covering the ~~condominium property~~Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) Approval. Each insurance policy, the agency and company issuing the policy, and the Insurance Trustee (if appointed), as hereinafter designated, shall be subject to the approval of the Primary Institutional First Mortgagee, only if requested.
- (c) Names insured. The named insured shall be the Association individually and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them.
- (d) Custody of policies and payment of proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee, and all policies and endorsements thereto shall be deposited with the Insurance Trustee.
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee included in the mortgagee roster who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replace, whichever date shall first occur.
- (f) Personal property and liability. Unit Owners ~~shall may~~ obtain insurance coverage as required by law at their own expenses, and at their own discretion, such coverages upon their personal property and for their personal liability and living expense. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability, rent interruption and for any other risks inherent.
- (g) Unit Owner's Casualty Coverage. Every Unit Owner shall obtain a hazard insurance policy which shall contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. Such policies must include special assessment coverage of no less than \$2,000 per occurrence, or for such other amounts as

required by law. An insurance policy issued to an individual Unit Owner providing such coverage does not provide rights of subrogation against the Association. Unit Owners are responsible for the cost of reconstruction of any portions of the Condominium Property for which the Unit Owner is required to carry casualty insurance, and any such reconstruction work undertaken by the Association shall be chargeable to the Unit Owner and enforceable as an Assessment. The Association must be an additional named insured and loss payee on all casualty insurance policies issued to Unit Owners in the Condominium operated by the Association.

- (h) Evidence of Coverage. Each Unit Owner shall provide to the Association evidence of a currently effective policy of hazard and liability insurance upon written request by the Association, but not more than once per year. Upon the failure of an Owner to provide a certificate of insurance issued by an insurer approved to write such insurance in Florida within thirty (30) days after the date on which a written request is delivered, the Association may purchase a policy of insurance on behalf of such Owner. The cost of such a policy, together with reconstruction costs undertaken by the Association but which are the responsibility of the Unit Owner, may be collected in the manner provided for the collection of Assessments.
- (i) Limited Common Elements. All improvements or additions to the Condominium Property that benefit fewer than all Unit Owners shall be insured by the Unit Owner or Owners having the use thereof, or may be insured by the Association at the cost and expense of the Unit Owners having the use thereof.

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

- (a) Casualty. The Building (including all of the Units and the fixtures, installations or additions laying within the boundaries of the Units initially installed ~~and required by the Act to be insured under the Association's policies~~ and ~~common elements~~Common Elements therein, but not including furniture, furnishings, or other personal property supplied or installed by Unit Owners or tenants of Unit Owners, ~~nor Unit floor, wall or ceiling coverings, electrical fixtures, appliances, air conditioning/heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing~~) and Improvements on the ~~common elements~~Common Elements from time to time, together with all service machinery contained therein, shall be insured in an amount not less than ~~full insurable value, 100% of the~~ replacement cost, or ~~similar coverage, value thereof,~~ excluding foundation and excavation costs, for the portions of the Condominium Property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications, and all alterations and additions thereto, but the policy may contain reasonable deductible limits, all as determined from time to time by the Board of Directors of the Association. Such coverage shall afford protection against:
  - (i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
  - (ii) Such other risks as from time to time are customarily covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief.

The replacement cost of the Condominium Property to be insured shall be as determined by an independent insurance appraisal or update of a prior appraisal. The full insurable value shall be determined at least once every 36 months.

- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the ~~condominium—property~~Condominium Property or adjoining driveways, or any work, matters or things related to the ~~condominium—property~~Condominium Property or this Declaration and its exhibits, which such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$300,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. Workers Workmen’s—compensation and other mandatory insurance, when applicable.
- (c) Machinery insurance.
- (d) Plate glass insurance.
- (e) Flood insurance, if ~~required by the Primary Institutional First Mortgagee or if~~ the Association so elects.
- (f) Fidelity insurance covering all directors, officers and employees of the Association and managing agents who handle Association funds. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time.
- (g) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer’s right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) the clause that reserves to the insurer the right to pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, or by a member of the Board of Directors of the Association, a committee of the Board of Directors, or by one or more Unit Owners.

14.3 Additional provisions. All policies of physical damage insurance shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insureds, including all mortgagees of Units. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the Building and the insured Improvements on the ~~common—elements~~Common Elements (exclusive of foundations), including all of the Units and all of the ~~common—elements~~Common Elements therein, without deduction for depreciation, for the purpose of determining the amount of fire insurance to be effected pursuant to this Section.

14.4 Premiums; Deductibles. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more Units or their

appurtenances or of the ~~common elements~~Common Elements by particular Unit Owners shall be assessed against and paid by such Owners.

The Board of Directors of the Association may include such level of deductibles as determined by Board. The deductibles shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the Condominium Property is situated. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.

The Board shall establish the amount of deductibles based upon the level of available funds and predetermined Assessment authority at a meeting of the Board. Such meeting shall be open to all Unit Owners. The notice of such meeting must state the proposed deductible and the available funds and the Assessment authority relied upon by the Board, and estimate any potential Assessment amount against each Unit, if any. Such meeting may be held in conjunction with a meeting to consider the proposed budget or an amendment thereto.

Notwithstanding anything stated to the contrary herein, in the event of a casualty resulting from the action or inaction of a Unit Owner or the Unit Owner's guests or invitees, the insurance deductible shall be borne by that Unit Owner.

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

(a) Common Element~~element~~. Proceeds on account of damage to the ~~common elements~~Common Elements shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the ~~common elements~~Common Elements appurtenant to each Unit.

(b) Units. Proceeds on account of damage to Units shall be held in the following undivided shares:

(i) When the Building is to be restored – for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

(ii) When the Building is not to be restored – an undivided share for each Unit Owner, such share being the same as the undivided share in the ~~common elements~~Common Elements appurtenant to the respective his-Unit.

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

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

- (a) Expense of the insurance trust. All expenses of the Insurance Trustee shall be first paid or provision made therefore.
- (b) Reconstruction or repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgages 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.~~
- (c) Failure to reconstruct or repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners. ~~This is a covenant for the benefit of any mortgagee of a unit and may be enforced by them.~~
- (d) Certificate. In making distribution to Unit Owners and their mortgages, the Insurance Trustee may rely upon a certificate of the Association made by its president and secretary as to the names of the Unit Owners and their mortgages and their respective shares of the distribution.

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

14.8 Unit Owners' personal coverage. The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within ~~the Owner's his~~ Condominium Unit nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner if such Owner so desires to purchase and pay for insurance as to all such and other risks.

14.9 Benefit of mortgages. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgages of Condominium Units and may be enforced by such mortgagees.

~~14.9~~14.10 Board Acting as Insurance Trustee. The Board of Directors of the Association shall have the option, in its discretion, of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

14.11 Self-Insurance Fund and Alternative Coverage. Upon approval by the Board of Directors of the Association, the Association may provide adequate hazard insurance through a self-insurance fund that complies with the requirements of the Act, as amended from time-to-time. The Association may also provide adequate hazard insurance coverage with participation within a group of no fewer than three communities as permitted by law pursuant to the Act, as amended from time-to-time.

~~15.0~~15. Reconstruction or Repair After Fire or Other Casualty.

- 15.1 Determination to reconstruct or repair. In the event of damage to or destruction of the Building and Improvements as a result of fire or other casualty (unless 75% or more of the Building is destroyed or substantially damaged and Unit Owners owning 80% or more of the Units and interests in the ~~common elements~~Common Elements elect not to proceed with repairs or restoration ~~and the Primary Institutional First Mortgagee approves such election~~), the Board of Directors shall arrange for the prompt repair and restoration of the Building (including all ~~common elements~~Common Elements in any damaged Units contained therein, and the bathroom and kitchen fixtures initially installed therein by the Developer, but not including furniture, furnishings, or other personal property supplied or installed by any Unit Owner or a tenant of a Unit Owner), and the Insurance Trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If 75% or more of the Building is substantially damaged or destroyed and if Unit Owners owning 80% of all Units and interests in the ~~common elements~~Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof ~~and the Primary Institutional First Mortgagee approves such resolution~~, the ~~condominium property~~Condominium Property will not be repaired and shall be subject to an action for partition instituted by any Unit Owner, mortgagee or lienor, as if the ~~Condominium property~~Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the ~~common elements~~Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of the Unit Owner's ~~his~~ share of such fund all mortgages and liens on such ~~his~~ Unit in the order of priority of such mortgages and liens. Whenever in this Section the words "promptly repair" are used, it shall mean repairs are to begin not more than sixty (60) days from the date the Insurance Trustee notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work and not more than ninety (90) days after the Insurance Trustee notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay said estimated costs of such work. The Insurance Trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired. In the event the Unit Owners vote to opt out of the repairs and restoration, as set forth above, the Association shall record a notice setting forth the date of the opt-out vote and the page of the official records book on which the Declaration is recorded. The decision to opt out is effective upon the date of recording of the notice in the public records by the Association. If opting out, the Association may reverse that decision by the same vote of the Unit Owners as required herein, and notice thereof shall be recorded in the public records.
- 15.2 Plans and specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the Building containing Units, by the Owners of not less than 80% of the ~~common elements~~Common Elements, including the Owners of all Units (and their respective mortgages), the plans for which are to be altered.
- 15.3 Special Responsibility. If the damage is ~~only~~ to those parts of one or more Units for which responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for reconstruction and repair after casualty, which shall be effected promptly and in accordance with guidelines established by the Board of Directors. All such work which is the responsibility of a Unit Owner may be conditioned upon the approval by the Association of the repair methods and the

qualifications of the proposed contractor. The Unit Owner shall obtain all required governmental permits and approvals prior to commencing any such work. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

15.4 Estimate of costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

15.5 Non-Liability for Certain Improvements. The Association is not obligated to pay for any reconstruction or repair expenses due to casualty loss to any improvements installed by a current or former Owner of a Unit, or by the original Developer, if the improvement benefits only the Unit for which it was installed and is not part of the standard improvements installed by the Developer on all Units as part of original construction, whether or not such improvement is located within the Unit. This provision does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for any such improvements.

~~15.5~~15.6 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if any time during the reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to ~~common elements~~Common Elements shall be in proportion to the Owner's share in the ~~common elements~~Common Elements, and on account of damage to Units alone, in proportion to the cost of repairing the damage suffered by each Unit Owner as determined by the Association (without regard to improvements which may have been made to certain Units by the Unit Owners thereof). Notwithstanding the foregoing, the following exceptions shall apply to funds required in excess of insurance proceeds constituting Assessments upon all the Unit Owners:

(a) A Unit Owner is responsible for the costs of repair or replacement of any portion of the Condominium Property not paid by insurance proceeds, if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the Declaration or the rules of the Association by a Unit Owner, the members of his or her family, Unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of any insurer of the Association.

(b) The provisions of subparagraph (a) regarding the financial responsibility of a Unit Owner for the costs of repairing or replacing other portions of the Condominium Property also apply to the costs of repair or replacement of personal property of other Unit Owners or the Association, as well as other property, whether real or personal, which the Unit Owners are required to insure.

(c) To the extent the cost of repair or reconstruction for which a Unit Owner is responsible under this provision is reimbursed to the Association by insurance proceeds, and, to the extent the Association has collected the cost of such repair or reconstruction from the Unit Owner, the Association shall reimburse the Unit Owner without the waiver of any rights of subrogation.

(d) The Association is not obligated to pay for repair or reconstruction or repairs of casualty losses as a Common Expense if the casualty losses were known or should have been known to a Unit Owner and were not reported to the Association until after the insurance claim of the Association for that casualty was settled or resolved with finality, or denied on the basis that it was untimely filed.

15.615.7 Construction funds. The funds for payment of the costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner.

- (a) Association. If the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair, which is the responsibility of the Association, is more than \$100,000.00, then upon approval by the Board of Directors of the Association, the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.
- (b) Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from collections of assessment against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
  - (i) Association – lesser damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$100,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
  - (ii) Association – major damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$100,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
  - (iii) Unit Owner. If there is a balance of insurance proceeds after payment of costs of reconstruction and repair that is the responsibility of the Association, this balance may be used by the Association to effect repairs to Units or may be distributed to Owners of damaged Units who have the responsibility for reconstruction and repair of their Units. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage in each damaged Unit bears to the total of such estimated costs in all damaged Units as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs for his Unit. All proceeds must be used to effect repairs to Units. Any balance remaining after such repairs have been affected shall be distributed to the affected Unit Owners and their mortgagees jointly.
  - (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a

construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner which is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

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

15.715.8 Insurance Trustee. Anything to the contrary in this Declaration notwithstanding, the appointment of an insurance trustee is optional on the part of the Association. If no such trustee is appointed, the Association shall undertake directly all responsibilities of the insurance trustee provided for in this Declaration.

15.815.9 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

16.016. Condemnation.

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

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

16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided for insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made useable in the manner provided below. The proceeds of the awards and special assessments shall be used for those purposes and shall be disbursed in the manner provided

for disbursement of funds by the Insurance Trustee (if appointed) after a casualty.

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

- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.
- (b) Distribution of Surplus. The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees of record.
- (c) Adjustment of Shares in ~~Common Elements~~Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the ~~common elements~~Common Elements and of the ~~common expenses~~Common Expenses appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the ~~common elements~~Common Elements shall be restated as percentages of the total of the new shares as reduced by the taking.

16.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable, 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:

- (a) Payment of Award. The award shall be paid first to all Institutional First Mortgages in an amount sufficient to pay off their mortgages due from these Units which are not habitable; second to the Association for any due and unpaid assessments; third jointly to the Unit Owners and mortgagees of Units in an amount not to exceed the market value of the Unit immediately prior to the taking (with credit being given for payments previously reserved for Institutional First Mortgagees); and the balance, if any, to repairing and replacing the ~~common elements~~Common Elements.
- (b) Addition to ~~Common Elements~~Common Elements. The remaining portion of the Unit, if any, shall become part of the ~~common elements~~Common Elements and shall be placed in a condition for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association, if possible, provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required for further improvement of the ~~common elements~~Common Elements and as provided in subparagraph (d) below.
- (c) Adjustment of Shares in ~~Common Elements~~Common Elements. The shares in the ~~common elements~~Common Elements appurtenant to the Units that continue as part of the ~~Condominium~~condominium shall be adjusted to distribute the ownership of the ~~common elements~~Common Elements among the reduced number of Unit Owners. This shall be done by restating the shares of continuing Unit Owners in the ~~common elements~~Common Elements as follows:

- (i) Add the total percentages of all Units of continuing Owners prior to the adjustment, but after adjustments made in accordance with Section 16.4(c) hereof (the “Percentage Balance”);
- (ii) Divide said percentage of each Unit of a continuing Owner by the Percentage Balance.

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

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

16.6 Taking of ~~Common Elements~~Common Elements. Awards for the taking of ~~common elements~~Common Elements shall be used to make the remaining portion of the ~~common elements~~Common Elements useable in the a manner approved by the Board of Directors of the Association; provided, that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for further improvement of the ~~common elements~~Common Elements. The balance of the awards for the taking of ~~common elements~~Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the ~~common elements~~Common Elements after adjustment of these shares on account of the condemnation. If there is a mortgagee of a Unit, the distribution shall be paid jointly to the Owner and the mortgagee of the Unit.

16.7 Amendment of Declaration. The changes in Units, in the ~~common elements~~Common Elements and in the ownership of the ~~common elements~~Common Elements that are affected by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Association.

~~17.017.~~ Occupancy, and Use Restrictions and Fines. In order to provide for congenial occupancy of the ~~econdominium property~~Condominium Property and for the protection of the values of the Units, the use of the ~~econdominium property~~Condominium Property shall be restricted to and shall be in accordance with the following provisions:

- 17.1 Occupancy. Each Residential Unit shall be used as a residence only, except as otherwise herein expressly provided. A Residential Unit owned by an individual, corporation, partnership, limited liability company or other entity, trust or other fiduciary may only be occupied by the following persons, and such persons' families and guests: (i) the individual Unit Owner, (ii) an officer, director, stockholder, member, manager or employee of such corporation, limited liability company or other entity, (iii) a partner or employee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under a lease ~~or sublease~~ of the Unit (as described below), as the case may be. Occupants of a leased ~~or subleased~~ Residential Unit must be the following persons, and such persons' families and guests: (i) an individual lessee ~~or sublessee~~, (ii) an officer, director, stockholder, member, manager or employee of a corporate or entity lessee ~~or sublessee~~, (iii) a partner or employee of a partnership lessee ~~or sublessee~~, or (iv) a fiduciary or beneficiary of a fiduciary lessee ~~or sublessee~~. Under no circumstances may more than one family reside in a Residential Unit at one time. "Families" or words of similar import used herein shall be deemed to include spouse, parents, parents-in-law, brothers, sisters, children and grandchildren. The Board of Directors shall have the power to authorize occupancy of a Residential Unit by persons in addition to those set forth above. ~~The provisions of this subdivision 17.1 shall not be applicable to Units used by the Developer for model apartments, sales offices or management services, nor to Commercial Units.~~
- 17.2 Pets. Two household pets ~~One dog~~ (each not to exceed 29 pounds in weight at maturity), whether it be a one cat, dog, bird or ~~one~~ other household pet (as defined by the Board) may be kept by each Residential Unit Owner, provided they are not kept, bred or maintained for any commercial purpose, do not become a nuisance or annoyance to neighbors and are kept, transported and walked (where appropriate) in accordance with applicable rules and regulations. Each Owner shall pick up any of their pet's ~~No pets may be permitted to have~~ excretions on the ~~common elements~~ Common Elements, or ~~limited common elements~~ Limited Common Elements, ~~nor are~~ No pets permitted in the pool area. ~~on any recreation property.~~ Tenants and persons other than the Unit Owner are not permitted to maintain any pets in a Unit.
- 17.3 Exterior Alterations. No Unit Owner shall cause or allow improvements or changes to the exterior of a Unit, ~~limited common elements~~ Limited Common Elements appurtenant thereto or the Building, including, but not limited to, painting or other decoration of any aesthetic nature, the installation of electrical wiring, television antenna, machines or air conditioning units which may protrude through the walls or roof of the building or in any manner change the appearance of any portion of the Building, without obtaining the prior written consent of the Association. No Unit Owner shall install or permit to be installed any satellite dish or other antenna on, nor permit any drilling through, any Common Elements, without the written approval of the Association. No such satellite or other antenna shall extend beyond boundaries of a Unit, nor beyond the boundaries of a Limited Common Element exclusively appurtenant to such Unit, without the written approval of the Association. To the extent permitted by law, the installation or use of any satellite dish or other antenna exterior of a Unit shall be subject to the approval of the Association.
- 17.4 Use of Common Elements. Subject to the granting of easements for the use or benefit of the Association or Unit Owners, the Common Elements ~~The common elements~~ shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.
- 17.5 Nuisances. No nuisances shall be allowed on the ~~condominium property~~ Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to Unit Owners ~~residents~~ or occupants or

which interferes with the peaceful possession or proper use of the ~~condominium property~~Condominium Property by Unit Owners, residents or occupants.

17.6 No Improper Uses. No immoral, improper, offensive, hazardous or unlawful use shall be made of the ~~condominium property~~Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction there over, and of the Association, shall be observed. Violations of laws, orders, rules, regulations or requirements relating to any portion of the ~~condominium property~~Condominium Property (including, but not limited to, applicable weight restrictions), shall be complied with by, and at the sole expense of, the party obligated to maintain or repair such portion of the ~~condominium property~~Condominium Property, as elsewhere herein set forth.

~~17.7 Leasing. No portion of a Residential Unit (other than an entire Residential Unit) may be rented. All leases shall be subject to the provisions of Article 18 herein. approval of the Association, which, to the extent lawful, may reject a proposed lease for any reason. In no event shall any lease be approved for a term of less than 30 days. Leases of Units shall be made on such forms as the Board shall require and shall permit the Association to cancel the lease in the event a tenant violates any applicable provision hereof or of any of the exhibits hereto. All leases are hereby made subordinate to any claim of lien of the Association for unpaid assessments regardless of when such lien is filed. The Unit Owner shall be jointly and severally liable to the Association along with the tenant for any damages caused by the tenant.~~

17.8 Exterior Improvements. No Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including awnings, flooring, signs, storm shutters, screens, furniture, fixtures and equipment), nor to plant or grow and type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association. Each Unit Owner desiring to install hurricane shutters shall comply with the color, style and other standards as adopted by the Board. The Unit Owner shall file with the Association a certificate verifying that the installation of the shutters has been in compliance with applicable codes and manufacturer's specifications. Each Unit Owner shall be responsible for the maintenance, repair and replacement of such shutters. The Association may operate such shutters when necessary to preserve and protect Condominium Property or Common Elements.

17.9 No Time Share Estates. No Unit may be divided into any time share estate or estates (as defined by the Act) or similar interval or periodic ownership plan.

17.10 Weight and Sound Restrictions. No heavy object may be placed anywhere in the Unit or on any of the ~~common elements~~Common Elements (including, but not limited to, the ~~limited common elements~~Limited Common Elements) without the prior written approval of the Association, which approval may be denied for any reason. Without limiting the generality of the foregoing, ceramic tile or other heavy and/or hard floor surfacing may not be installed above the first floor level without the prior written approval of the Association and must be sound attenuated. Persons violating this restriction shall be held strictly liable for all resulting damages. No Unit Owner shall create, cause or permit such levels of sound to emanate from their Unit or upon the Common Property which shall unreasonably interfere with the peaceful enjoyment of the other Unit Owners or which shall constitute a nuisance to the other Unit Owners. Violations will also void applicable Developer warranties.

17.11 Applicability. ~~The foregoing restrictions shall not apply to the Developer nor institutional first mortgages, nor to Units owned by them or their affiliates.~~The Association is ~~also~~ empowered to exempt certain other

~~Owners or Units owned by them or their affiliates. The Association is also empowered to exempt other Owners or Units from certain specific restrictions for good cause shown. Without limiting the generality of the foregoing, Commercial Units may also be exempted by the Developer from certain specific restrictions contained herein and elsewhere in this Declaration and its exhibits to the extent such restrictions, in the opinion of the Developer, interfere with normal requirements for the operation of commercial enterprises under similar circumstances.~~

17.12 Fines for Violations. The Association is authorized to levy such fines as authorized by the Board for the failure of a Unit Owner, or a Unit's occupant, licensee or invitee, to comply with any provision of the Declaration, By-Laws or rules and regulations of the Association, as permitted by law, per incident and on the basis of each day of a continuing violation. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the Unit Owner and, if applicable, its licensee or invitee. The hearing must be held before a committee of other Unit Owners as appointed by the Board, who are not Board Members and do not reside within the Unit of a Board Member. If the committee does not agree with the fine, the fine may not be levied. The provisions of this subsection granting the right to a hearing shall not apply to an unoccupied Unit.

18. Selling, Leasing and Mortgaging of Units. No Unit Owner ~~other than the Developer~~ may sell or lease ~~thier his~~ Unit except by complying with the following provisions:

18.1 Notification to Association. The Unit Owner shall notify the Association in writing of the Owner's intention to sell or lease the Owner's Unit, and furnish the Association with such notification, and a copy of the contract for sale or the lease, whichever is applicable.

18.2 Lease Requirements. No portion of a Residential Unit (other than an entire Residential Unit) may be rented; provided however, that a Unit Owner may lease a parking space or storage space to another Unit Owner for a term not to exceed one (1) year. All leases shall be subject to the prior written approval of the Association, which, to the extent lawful, may reject a proposed lease for any reason. No Unit Owner shall lease or grant any rights to occupy a parking space or storage space appurtenant to a Unit except to another Unit Owner. Any such lease or agreement for use of a parking space or storage space shall be registered with the Association. In the event a Unit Owner fails to comply with such registration, the Unit Owner shall be subject to such fine as may be established by permitted by the Declaration and as permitted by law. In the event that the a Unit Owner leases or grants the right to use a parking space or storage space to a party who is not a Unit Owner, the Association shall have the right to evict the occupant or lessee, with the Unit Owner to bear all costs of eviction, including reasonable attorney fees, all of which may, to the extent permitted by law, be levied and collected as Assessments against the Unit.

18.3 Lease Restrictions. In no event shall any lease be for a term of less than 75 days, and in no event shall a Residential Unit be leased more than two (2) times in any calendar year. In the event that a Residential Unit is leased for a term of six (6) months or more, such lease shall include the use of the parking space and storage unit appurtenant to the Residential Unit. No parking space or storage unit shall be leased separate from a Residential Unit except to another Unit Owner for a term not to exceed one (1) year. All leases are hereby made subordinate to any claim of lien of the Association for unpaid assessments regardless of when such lien is filed.

18.4 Lease Form. Any and all lease agreements between an Owner and a lessee shall be in writing, and shall be made on such form(s) as the Board shall require. All lease agreements shall provide (i) for a term of not less than

seventy-five (75) days, (ii) that the lessee shall be subject in all respects to the terms and provisions of this Declaration and any of the rules and regulations of the Association, (iii) that any failure by the lessee under such lease agreement to comply with such terms and conditions shall be a material default and breach of the lease agreement; (iv) that the Association shall have the right to cancel the lease in the event a tenant violates any applicable provision of the Declaration or of any of the rules and regulations of the Association; (v) in the event that the Unit Owner is delinquent in payment of an Assessment, fine or other charge due to the Association for more than thirty (30) days, the Association may notify the lessee in writing of the delinquency and in such event, the lessee shall be obligated to commence payment all future rent payments to the Association until the Association notifies lessee in writing that the delinquent assessments, fines or other charges are paid in full to the Association, at which time the lessee may resume payments of rent to the Unit Owner; and (vi) the Unit Owner shall not have the right to evict the lessee for nonpayment of rent during such time that the lessee is paying rent to the Association pursuant to this provision, and in the event that the lessee fails to pay the rent to the Association as required herein, the Association shall have the authority to evict the lessee. In the event that the Association pursues an eviction of lessee in accordance with the foregoing provision, the Unit Owner shall be obligated to reimburse the Association for reasonable attorneys fees and costs incurred by the Association related to such eviction. The lease agreement shall also state who will be responsible for the assessments as stated above, although under no circumstances shall the Unit Owner be relieved of any responsibility for payment of the assessments and compliance with the terms and provisions of this Declaration, and it shall be the obligation of the Unit Owner to supply the Board of Directors with a copy of said written lease agreement prior to the lessee occupying the Unit. Unless otherwise permitted in this Declaration, a Unit Owner, by leasing the Unit, automatically delegates the Owner's right of use and enjoyment of the Common Elements, common areas and facilities of the Condominium Property to the lessee; and in so doing, said Unit Owner relinquishes said rights during the term of the lease agreement.

18.5 Unit Owner Liability; Remedies In Event of No Lease Approval. The Unit Owner shall be jointly and severally liable to the Association along with the lessee for any damages caused by the lessee, and any such liability against the Unit Owner may be levied and, to the extent permitted by law, collected as an Assessment against the Unit. In the event that the lease application is denied, or in the event approval by the Association is not obtained prior to a lessee moving into the Unit, the Association shall have the rights, in addition to any remedies permitted by law, to (i) evict the lessee, with the Unit Owner to bear all costs of eviction, including reasonable attorney fees, all of which may, to the extent permitted by law, be levied and collected as Assessments against the Unit, and (ii) levy the Unit Owner a fine as permitted by the Declaration and pursuant to law, per incident and on the basis of each day of a continuing violation.

18.6 Leased Unit Occupants. In any Unit subject to a lease, any person other than a member of the immediate family (the term "immediate family" to be defined as parents, children, siblings, grandparents and grandchildren) who wishes to stay at a Unit for a period of at least fourteen (14) days must make application for approval as set forth herein as if the transaction were a lease, paying the application fee as required by the Association. Members of the immediate family who wish to stay at a Unit, for a period of at least fourteen (14) days must also make application, but need not pay the application fee.

18.7 Association Investigation; Application Fees; Deposits. Each Unit Owner shall have an affirmative duty to keep the Association fully advised of (i) any possible changes in occupancy or ownership of the Unit for the purpose of facilitating the management of the Association's membership records, and (ii) a current mailing address for the Unit Owner if other than

the Unit. The Association shall have the right to approve or disapprove prospective purchasers or lessees. Any transaction which is conducted without compliance with this Article, may be voidable by the Association. The Association may conduct an investigation of the prospective purchaser or lessee to evaluate that party's ability to keep current with the financial obligations imposed by the Association and to insure that the applicant furthers the purposes herein set forth. The Association shall not discriminate based upon race, sex, national origin, color, religion, familial status, handicap or any other factor restricted by law. The Association may charge an administrative fee as established by the Board of Directors from time to time for each application and renewal to sell or lease the Unit, payable by the prospective purchaser, lessee or Unit Owner. The Association may impose a reasonable security deposit, in such sum as determined by the Board of Directors from time to time, payable by the Unit Owner or the lessee, as security for damage to any Common Elements or Condominium Property, or as partial payment of fines or other charges for violations of the Declaration or rules and regulations of the Association by the occupants of the Unit.

18.8 Compliance with Declaration, By-Laws and Rules. In the event that a Unit Owner is delinquent in paying any assessments or the Unit Owner or the Owner's purchaser, family, guests, agents, licensees or invitees, are not in compliance with any provisions of the Declaration, By-Laws or the rules and regulations of the Association, the Association has the right to disapprove of any sale, and in the case of a lease, the right to disapprove of and to void any lease at any time prior to or during the leasehold tenancy, until any delinquent assessment is paid and/or until any violation of any provision of said Declaration, By-Laws or applicable rules and regulations is corrected. In addition, and not by way of limitation, the Association maintains the right to disapprove of any prospective purchaser or lessee who, in its opinion, may not be able to meet the ongoing assessments and requirements of the Declaration, By-Laws, and rules and regulations of the Association.

~~Right of first refusal. Any Unit Owner who receives a bona fide offer to purchase or lease his Unit (such offer to purchase or lease a Unit, as the case may be, is called an "Outside Offer," the party making any such Outside Offer is called an "Outside Offeror," and the Unit Owner to whom the Outside Offer is made is called as "Offeree Unit Owner"), which he intends to accept shall give notice by registered mail to the Board of Directors of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the term of the proposed transaction and such other information as the Board of Directors may reasonably require. The giving of such notice to the Board of Directors shall constitute an offer by such Unit Owner to sell his Unit or to lease his Unit to the Association or its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation by the Unit Owner who has received such Outside Offer to the Association that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Board of Director may reasonably have requested. Not later than thirty (30) days after receipt of such notice together with such further information as may have been requested, the Association or its designee may elect, by sending written notice to such Offeree Unit Owner, before the expiration of said thirty (30) day period, by certified mail, to purchase such Unit or to lease such Unit, as the case may be, upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner.~~

~~In the event the Association shall timely elect to purchase such Unit or to lease such Unit or to cause the same to be purchased or leased by its designee, title shall close or a lease shall be executed at the office of the attorneys for the Condominium, in accordance with the terms of the Outside Offer herewith, within forty five (45) days after the giving of notice by the Association of its election to accept such offer. If, pursuant~~

~~to such Outside Offer to purchase said unit, the Outside Offeror was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, the Association may purchase the Unit and assume or take title to the Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Unit Owner, if such Unit is to be sold, shall convey the same to the Association, or to its designee by statutory warranty deed, with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sales. Real estate taxes, mortgage interest if any and common expenses shall be apportioned between the Offeree Unit Owner and the Association, or its designee, as of the closing date. In the event such Unit is to be leased, the Offeree Unit Owner shall execute and deliver to the Board of Directors or to its designee a lease between the Offeree Unit Owner, as landlord, and the Association, or its designee, as tenant, covering such Unit, for the rental and term contained in such Outside Offer.~~

~~In the event the Association or its designee shall fail to accept such offer within thirty (30) days after receipt of notice as aforesaid, the Offeree Unit Owner shall be free to accept the Outside Offer within sixty (60) days after (i) notice of refusal is sent, to (ii) the expiration of the period in which the Association or its designee might have accepted such offer, as the case may be. In the event the Offeree Unit Owner shall not, within such a sixty day period, accept in writing the Outside Offer or if the Offeree Unit Owner shall accept the Outside Offer within such sixty day period but such sale or lease, as the case may be, shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set forth closing thereunder, then, should such Offeree Unit Owner thereafter elect to sell such Unit or to lease such Unit, as the case may be, the Offeree Unit Owner shall be required to again comply with all the terms and provisions of this Section.~~

~~Any deed to an Outside Offeror shall provide that the acceptance thereof by the grantee shall be deemed to constitute an assumption of the provisions of the Declaration, the By Laws and the Rules and Regulations, as the same may be amended from time to time.~~

~~Any lease executed in connection with the acceptance of any Outside Offer to lease a Unit shall be consistent herewith and with the By Laws and rules and regulations and shall provide that (i) it may not be modified, amended, extended or assigned, without the prior consent in writing of the Board of Directors, (ii) the tenant shall not assign his interest in such lease or sublet the demised premises or any part thereof without the prior consent in writing of the Board of Directors, and (iii) the Board of Directors shall have the power, but shall not be obligated, to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of (a) a default by the tenant in the performance of its obligations under such lease, or (b) a foreclosure of the lien granted under the Act.~~

~~Except as hereinbefore set forth, the form of any such lease executed by the Association or an Outside Offeror shall contain such other provisions as shall be approved in writing by the Board of Directors. Any lease executed by the Association as tenant shall provide that the Association may enter into a sublease of the premises without the consent of the landlord.~~

~~Any purported sale or lease of a Unit in violation of this Section shall be voidable at any time at the election of the Association and if the Board of Directors shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to evict the purported tenant or Owner. Said Unit Owner shall reimburse the Association for all expenses (included attorneys' fees and disbursements) incurred in connection with such proceedings.~~

- ~~The foregoing restrictions on leasing shall be in addition to the restrictions set forth in Section 17.7 hereof. Anything to the contrary herein notwithstanding, to the extent lawful and as set forth in Section 17.7, if a lease is rejected, the Association shall not be obligated to lease the Unit from the Offeree Unit Owner pursuant hereto. The provisions of this Section 18.1 respecting leases shall only apply if the lease is not rejected first under Section 17.7.~~
- ~~18.2 Consent of Unit Owners to purchase or lease of Units by the Association. The Association shall not exercise any option hereinabove set forth to purchase or lease any Unit without the prior approval of Owners of a majority of the Units present in person or by proxy and voting at a meeting at which a quorum is present.~~
- 18.93 No severance of ownership. No part of the undivided interest in the ~~common elements~~Common Elements appurtenant to any Unit may be sold, conveyed or otherwise disposed of, except as part of a sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the ~~common elements~~Common Elements.
- ~~18.4 Release by the Association of right of first refusal. The right of first refusal contained in Section 18.1 may be released or waived by the Association only in the manner provided in Section 18.5. In the event the Association shall release or waive its right to first refusal as to any Unit, such Unit may be sold, conveyed or leased, free and clear of the provisions of said Section 18.1.~~
- 18.105 Certificate of Approval or Disapproval~~termination of right of first refusal.~~ Upon receipt of a written copy of the contract for sale or lease, as applicable, together with an application for approval from the Association, the Association shall, within twenty (20) business days, issue a certificate indicating the Association's approval or disapproval of the transaction. In the event of a sale, it shall then be the responsibility of the purchaser of the Unit, to furnish the Association with a recorded copy of the deed of conveyance indicating the new Owner's mailing address for all future maintenance bills and other correspondence from the Association. ~~Notwithstanding the foregoing, prior to the issuance by the Association of a certificate indicating the Association's approval of the transaction, the purchaser or lessee, as applicable, shall be required to execute a copy of the rules and regulations of Association, acknowledging that the purchaser or lessee, as applicable, takes title or occupancy subject to those rules and regulations which said purchaser or lessee agrees to abide by. The Association shall then retain one signed copy in the Association's records.~~ A certificate executed and acknowledged by ~~an Officer the secretary~~ of the Association stating that the provisions of ~~Article Section 18.1~~ have been met by a Unit Owner ~~or stating that the right of first refusal contained therein has been duly released or waived by the Association and that, as a result thereof, the rights of the Association thereunder have terminated,~~ or approving the specific sale or lease, shall be conclusive upon the Association and the Unit Owners in favor of all persons who rely on such certificate in good faith. ~~The Board of Directors shall furnish such certificate upon request to any Unit Owner in respect to whom the provisions of such Section have, in fact, terminated. Upon adoption by the Board, a No~~ fee shall be charged by the Association in connection with the furnishing of such certificate ~~in excess of the expenditures reasonably required for same,~~ and this expense shall not exceed the maximum amount allowed under the Act, as amended from time to time. No charge shall be made in connection with an extension or renewal of a lease. ~~The amount of the fee may be included in the certificate. If the certificate is requested in writing in conjunction with the sale or mortgage of a Unit, but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought, the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the Unit Owner, the fee for the certificate shall be refunded to that payor who is not the Unit Owner within thirty (30) days~~

after receipt of the written request. The refund is the obligation of the Unit Owner, and the Association may collect it from that Owner in the same manner as an Assessment.

~~18.6 Financing of purchase of Units by the Association. The purchase of any Unit by the Association shall be on behalf of all Unit Owners. If the available funds of the Association are insufficient to effectuate any such purchase, the Board of Directors may levy an assessment against each Unit Owner (other than the Offered Unit Owner), in proportion to his share of the common expenses, and/or the Board of Directors may, in its discretion, finance the acquisition of such Unit; provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the condominium property other than the Unit to be purchased.~~

~~18.7 Exceptions. The provisions of Section 18.1 shall not apply with respect to any lease, sublease, sale or conveyance of any Unit by (a) the Unit Owner thereof to his spouse, adult children, parents, parents in law, adult siblings or to any one or more of them, (b) the Developer (or the Owner on behalf of the Developer), (c) the Association, (d) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of foreclosure, (e) an Institutional First Mortgagee (or its assigns) deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18.0.~~

18.118 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this ~~Article 18~~Section 18.0.

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

19.0 Compliance and Default. Each Unit Owner and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto or otherwise applicable to the Declaration, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. Each Owner shall comply with the dispute resolutions procedures as set forth in Section 14 of the Articles. The Association (and a Unit Owner, if applicable) shall be entitled to the following relief in addition to the remedies provided by the Act and by law.

19.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees, licensees or lessees, but only to the extent such expense is not met by the proceeds of insurance collected by the Association.

~~19.2~~ Unauthorized Operations. No Unit Owner, in their capacity as a Unit Owner, shall direct any employee, agent, contractor or staff of the Association to take any action or perform any work on behalf or at the expense of the Association. The Association's officers and management shall be the only parties with authority to direct or authorize any work to be performed for the Association. In the event that any Unit Owner improperly directs or authorizes any such action or work to be performed, said Unit Owner shall be liable for the cost and expense of any such action or work, and shall be subject to fine by the Association for each such incident.

~~19.3~~19.2 Default. In the event a Unit Owner fails to maintain his Unit in the manner herein required, or otherwise fails to observe or perform the requirements of this Declaration and its Exhibits ~~or the Act,~~ the By-Laws,

the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, the Association ~~or any Unit Owner~~ shall have the right to proceed in a court of law or equity to seek compliance, and the Association may take any other action including, but not limited to, imposing fines, as provided in this Declaration, any of the exhibits attached ~~to the Declaration hereto~~, the Act or otherwise as permitted by law. The Association shall also have the right to assess the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit or Unit Owner in compliance herewith, and to collect such assessment and have a lien therefore as elsewhere herein provided. In addition, the Association shall have the right, for itself and its employees and agents, to enter the Unit and perform any necessary work to enforce compliance with the above provisions and, as provided above, to charge the Unit Owner with the cost thereof by way of assessment or otherwise.

19.419.3 Costs and attorneys' fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits to the Declaration annexed hereto, the By-Laws, the Articles, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees and attorneys fees' incurred for collection efforts by the Association) as may be ~~determined~~ awarded by the court. In the event of a violation by a Unit Owner of the requirements of the Act, this Declaration, the exhibits to the Declaration, the By-Laws, the Articles, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the Association shall be entitled to recover from such Unit Owner such reasonable attorneys fees and costs incurred by the Association prior to the filing of any litigation or other proceeding.

19.519.4 No waiver of rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their rights to do so thereafter.

20. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the ~~condominium property~~ Condominium Property from the provisions of the Act is authorized by a vote of Owners owing at least 80% of the ~~common elements~~ Common Elements, and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as foresaid, the ~~condominium property~~ Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the ~~common elements~~ Common Elements; provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out his share of such net all proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its president and secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County. This section may not be amended without the consent of all Institutional First Mortgagees ~~and the Developer so long as it owns any Unit.~~

21. Additional Rights of Institutional First Mortgagees. In addition to all other rights herein set forth, Institutional First Mortgagees shall have the right, upon written request to the Association, to:

21.1 Examine the Association's books;

- 21.2 Receive notice of Associations meetings and attend such meetings;
- 21.3 Receive notice of an alleged default by any Unit Owner for which such Mortgagee owns a mortgage which is not cured within (30) days of notice to such Unit Owner; and
- 21.4 Receive notice of any substantial damage or loss to any portion of the ~~Condominium Property~~ Condominium Property.

22. ~~Phase Development. The Land described in Exhibit 1-1 attached hereto and all Units and Improvements constructed thereon is Phase One of the Condominium. The Developer shall have the right, but shall not be obligated, to expand the Condominium by adding thereto Phase Two. Phase Two, if constructed and added to the Condominium, will include 52 Units (subject to increase or decrease as provided in Section 10 hereof). A legal description of the land on which Phase Two will be constructed (if so constructed) is set forth on Exhibit 1-2 attached hereto, and a proposed survey plot plan showing the approximate location and general size of the proposed Units and Improvements in Phase Two is set forth as Exhibit 3-2 attached hereto.~~

~~As provided on Exhibit 2, each Unit in Phase One, and in Phase Two (if added to the Condominium), shall have as an appurtenance thereto an undivided percentage ownership in the common elements (and shall share in the common expenses and common surplus in the same percentage). Exhibit 2 also sets forth the applicable percentages for each Unit in Phase One only and in Phase One and Two (if so added).~~

~~All recreational facilities constructed on either of the Phases which is made part of the Condominium shall be deemed to be part of the common elements of the condominium. It is contemplated that Phase One will not contain any recreational facilities. Phase Two, if constructed, will contain a swimming pool and cabana house and no other recreational facilities.~~

~~Each Unit which is made a part of the Condominium shall have, as elsewhere herein provided, as an appurtenance thereto, one vote on all Association matters which require the vote of Unit Owners and each Unit Owner shall be a member of the Association. Voting rights are not otherwise dependent on whether or not Phase Two is developed and added as part of the Condominium.~~

~~The following table shows, for both Phases, the time period within which they must be completed, if they are to be added to the Condominium:~~

<u>Phase</u>	<u>Deadline</u>
<del>Phase One</del>	<del>December 31, 1983</del>
<del>Phase Two</del>	<del>December 31, 1985</del>

~~The foregoing deadlines are subject, however, to extensions for any construction delays cause by any factors beyond the control of the Developer, including, but not limited to, governmental delays in providing required approvals and the inability to obtain materials.~~

~~The foregoing deadlines are subject, however, to extensions for any construction delays caused by any factors beyond the control of the Developer, including, but not limited to, governmental delays in providing required approvals and the inability to obtain materials.~~

~~The Developer shall notify owners of existing Units of the commencement of, or the decision not to add, one or more of the Phases. Notice shall be given by certified mail addressed to each Owner at the address of his Unit, or hi last known address. If Phase Two is not built, the Units which are built and made part of the Condominium are entitled to 100 percent of all common elements within Phase One.~~

~~Phase Two may be added to the Condominium by an amendment to the Declaration which may be effected by the Developer (joined by the Fee Owner, if necessary) alone without the consent or joinder of Unit Owners other than the Developer or of the Association, as described in paragraph 6.2 hereof.~~  
~~No time share estates are permitted in any Phase.~~

~~In addition to the impacts previously described (i.e., reduction in the applicable percentage for each Unit, dilution of voting power, expansion of the condominium property and increase in the number of Units), the following is a summary of certain other material impacts which the addition of Phase Two will have on Phase One.~~

- ~~1. The aggregate common expenses attributable to the maintenance, operation and management of the Condominium will be increased.~~
- ~~2. Unit Owners in new Phase Two will be required to contribute to the above expenses relating to the common elements of the old Phase One, and vice versa. Such expenses may reasonably be anticipated to be higher with respect to the old Phase (as a result of age) and, therefore; Unit Owners in the new Phase may be contributing a somewhat disproportionately higher share of the common expenses of the entire Condominium. Certain economies in common expenses.~~
- ~~3. Insurance burdens will be increased, as will the risk of injuries or damages to property occurring on the common elements (by reason of the fact that the common elements will be more extensive).~~
- ~~4. The intensity of use of recreational facilities will be increased.~~

~~All descriptions, representations, plans, exhibits and schedules set forth herein, or in the documents attached hereto, relating to any Phase are subject to modification in whole or in part by the Developer. All rights, benefits and privileges reserved to the Developer under this Declaration of Condominium or the Act with respect to Phase One shall also be applicable to Phase Two.~~

~~Anything to the contrary herein notwithstanding, the Developer is not obligated to develop, develop in the manner now contemplated and/or add Phase Two to the Condominium, and is otherwise free to deal with Phase Two as Developer deems appropriate in its sole discretion. All Unit Owners hereby consent to all changes which may be required to be made herein or in any of the exhibits attached hereto (including, but not limited to, changes in applicable percentage shares as currently set forth on Exhibit 2 hereto) by reason of changes in the design of Phase Two if the Developer constructs Phase Two and wishes to add to the Condominium.~~

23. Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws and rules and regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual (although subject to amendment from time to time) and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Unit Owners of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, their successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public or third parties (unless expressly provided to the contrary herein). All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and the Articles, By-Laws and rules and regulations, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and rules and regulations of the Association and any applicable management contract (whether or not recorded), by such Unit Owner, tenant or occupant.

2324. Additional Provision

2324.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association c/o its office at the Condominium~~econdominium~~, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium ~~econdominium~~ address of such Unit Owner, or such other address as may have been designated by such Unit Owner ~~him~~ from time to time, in writing, to the Association. All notices to mortgagees of Units registering with the Association shall be sent by certified mail (return receipt requested) to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of change of address, which shall be deemed to have been given when received.

2324.2 Exhibits. There is hereby incorporated in this Declaration any materials contained in the exhibits annexed hereto which under the Act are required to be part of the Declaration.

2324.3 Signature of President and Secretary. Wherever the signature of the president of the Association is required hereunder, the signature of an assistant secretary may be substituted therefore, provided that the same person may not execute any single instrument on behalf of the Association in to separate capacities.

2324.4 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits of the Declaration ~~annexed hereto~~ or the rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

2324.5 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the exhibits of this Declaration ~~annexed hereto~~, or the rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof.

2324.6. Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, irrespectively of the number of violations or breaches which may occur.

2324.7 Ratification. Each Unit Owner by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) and each occupant by reason of his occupancy shall be deemed to have acknowledged and agrees that all the provisions of this Declarations, the Articles and By-Laws of the Association, applicable rules and regulations and applicable management contracts are fair and reasonable in all materials respects.

2324.8 Gender, Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of gender shall be deemed to include all or no genders.

2324.9 Captions. The captions herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope if the particular section or any provision thereof.

~~24.10 Developer's Units.— To the extent the Fee Owner is the fee simple owner of Units, for purposes of this Declaration and its exhibits, such Units shall be deemed owned by Developer. Accordingly, reference herein to Units owned by the Developer shall be understood to include all Units owned by the Fee Owner.~~

~~24.11 No Personal Liability. The Fee Owner is executing this Declaration solely in the capacity as fee owner and is not the Developer of the Condominium for any purpose. No personal liability of any kind shall apply to the Fee Owner for any reason. Without limiting the generality of the foregoing, the Fee Owner shall have no personal liability for the payment of any assessments against Units owned by it. Recourse against the Fee Owner shall, therefore, be limited absolutely to the property held by the Fee Owner, if any.~~

~~Article 25. — In order to assure a community of congenial residence and to thus protect the value of the Units, and to further the continuous development of the properties, the sale or lease of a Unit shall be subject to the following provisions:~~

~~A) — The Unit owner shall notify the Association in writing of his intention to sell or lease his Unit, and furnish the Association with such notification, and a copy of the Contract for Sale or Lease, whichever is applicable.~~

~~B) — Any and all lease agreements between an owner and a lessee of such owner's Unit shall be in writing, shall provide for a term of not less than ninety (90) days, and must provide that the lessee shall be subject in all respects to the terms and provisions of this Declaration of Covenants and Restrictions and that any failure by the Lessee under such lease agreement to comply with such terms and conditions shall be a material default and breach of the lease agreement. A Unit may not be leased more than twice per calendar year. A sublease of a Unit shall be subject to all of the provisions of this Declaration concerning the making of a lease, and a sublease shall count as a separate lease for purposes of determining the number of leases for a Unit in any calendar year. The lease agreement shall also state who will be responsible for the assessments as stated above, although under no circumstances shall the Unit owner be relieved of his responsibility for the assessments and compliance with the terms and provisions of this Declaration of Covenants and Restrictions, and it shall be the obligation of all Unit owners to supply the Board with a copy of said written agreement prior to the lessee occupying the premises. Unless provided to the contrary in a lease agreement, a Unit owner, by leasing his Unit, automatically delegates his right of use and enjoyment of the common area and facilities to his lessee; and in so doing, said Unit owner relinquishes said rights during the term of the lease agreement. In the event that the application is denied, or is not obtained prior to tenants moving into the Unit, the Association shall have the right to evict the tenant, with the Unit Owner to bear all costs of eviction, including reasonable attorney fees.~~

~~C) — In any Unit subject to a lease, any person other than a member of the immediate family (the term "immediate family" to be defined as parents, children, siblings, grandparents and grandchildren) who wishes to stay at a Unit for a period of at least fourteen (14) days must make application for approval as set forth herein as if the transaction were a lease, paying the application fee. Members of the immediate family who wish to stay at a Unit, for a period of at least fourteen (14) days must also make application, but need not pay the application fee. If approved, all visitors will receive a guest pass to be placed in the windshield of their car, and a pool pass, each of which will require a ten (\$10.00) dollar deposit, which will be returned upon return of the pass.~~

~~D) — Upon receipt of a copy of the Contract for Sale or Lease and an application from the Association, the Association shall, within twenty (20) business days, issue a certificate indicating the Association's approval or disapproval of the transaction. In the event of a sale, it shall then be the responsibility of the purchaser of the Unit, to furnish the Association with a recorded copy of the Deed of conveyance indicating the owner's mailing address~~

~~for all future maintenance bills and other correspondence from the Association. Provided, however, prior to the issuance by the Association of a certificate indicating the Association's approval of the transaction, the purchaser or lessee shall be required to execute a copy of the rules and regulations of The Jupiter Beachcombers Condominium Association, Inc., acknowledging that he takes title subject to those rules and regulations which he agrees to abide by. The Association shall then retain one signed copy in the Association's records, and furnish one copy to the purchaser or lessee.~~

~~E)——It is the intent of this Paragraph to impose an affirmative duty on the Unit owner to keep the Association fully advised of any possible changes in occupancy or ownership for the purpose of facilitating the management of the Association's membership records and it is the further intent to create the right, on the part of the Association, to approve or disapprove prospective purchasers or lessees. As this Article is a portion of the Declaration of Covenants and Restrictions which runs with the land, and transaction which is conducted without compliance with this Article, may be voidable by the Association. The Association may conduct an investigation of the prospective purchaser or lessee to evaluate that party's ability to keep current with the financial obligations imposed by the Association and to insure that the applicant furthers the purposes herein set forth. The Association shall not discriminate based upon race, sex, national origin, color or and other factor restricted by law. The Association may charge an administrative fee of up to Sixty (\$60.00) Dollars for each application and renewal to sell or lease the Unit, payable by the prospective purchaser, lessee or owner. The Association may impose a reasonable security deposit upon lessees in conjunction with the use of the common areas and establish reasonable rules and regulations concerning, but not limited to, automobile registration and parking stickers and facilities passes.~~

~~F)——In the event that a Unit owner is delinquent in paying any assessments or the Unit owner or his Purchaser, family, guests, agents, licensees or invitees, are not in compliance with any provisions of the Declaration of Covenants and Restrictions, the Association has the right to disapprove of any sale; and in the case of a lease, the right to disapprove of and to void any lease at any time prior to or during the leasehold tenancy, until any delinquent assessment is paid and/or until any violation of any provision of said Declaration of Covenants and Restrictions is corrected. In addition, and not by way of limitation, the Association maintains the right to disapprove of any prospective Purchaser or Lessee who, in its opinion, does not further the community of congenial residence and/or may not be able to meet the ongoing assessments and requirements.~~

IN WITNESS WHEREOF, the undersigned President and Secretary of the Association have executed this Amended and Restated Declaration as of the      days of                     , 2009. ~~Fee Owner has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this      day of                     .~~

THE JUPITER BEACHCOMBER  
CONDOMINIUM ASSOCIATION, INC., a  
Florida not-for-profit corporation

Signed, Sealed & Delivered  
in the presence of:

By: \_\_\_\_\_, as President

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
print name

Attest: \_\_\_\_\_, as Secretary

\_\_\_\_\_  
Signature

\_\_\_\_\_ )  
print name

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

\_\_\_\_\_ The foregoing Declaration of Condominium was acknowledged  
before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by  
and \_\_\_\_\_, as President and Secretary, respectively, of THE  
JUPITER BEACHCOMBER CONDOMINIUM ASSOCIATION, INC., a Florida not-for-  
profit corporation, on behalf of said corporation, who are [ ] personally known to me,  
or [ ] have produced \_\_\_\_\_ as identification and who did  
take an oath.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida  
Name: \_\_\_\_\_

[notary seal]