

THIS INSTRUMENT PREPARED BY  
AND  
AFTER RECORDING RETURN TO:

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## **DECLARATION OF CONDOMINIUM**

The undersigned, being the holder of title of record to the real property situate, lying and being in Gulf County, Florida, ("County") the legal description of which is attached hereto, and made a part hereof, and labeled Exhibit "A," hereby states and declares that the land described on Exhibit "A" is submitted to condominium ownership, and declared to be a condominium known as **THE OVERLOOK CONDOMINIUM**, pursuant to Chapter 718, Florida Statutes, as amended from time to time (hereinafter referred to as the "Act"), the provisions of which act are hereby incorporated by reference, and included herein.

All the restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall run perpetually unless terminated or amended as provided herein, and shall be binding upon all Unit Owners as hereinafter defined, and in consideration of receiving and by acceptance of a grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions hereof, as well as by the By-Laws and Articles of Incorporation, as hereinafter defined, of the Association. Both the burdens imposed and the benefits provided shall run with each Unit and the interests in common property as defined herein.

The real property submitted to condominium ownership herewith is subject to conditions, limitations, restrictions, reservations or record, real estate taxes and applicable zoning ordinances.

### **ARTICLE I: DEFINITIONS**

Definitions of terms used in this Declaration and its Exhibits, and as they may hereafter be amended, are as follows:

A. "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes), as amended from time to time. In the event of any conflict between the terms hereof and the terms of the Act, the terms of the Act shall control.

B. "Articles" or "Articles of Incorporation" mean the articles of incorporation of the Association.

C. "Assessment" means a share of the funds required for the payment of Common Expenses and Special Assessments, which from time to time is assessed against the Unit Owner.

D. "Association" means the entity responsible for the operation of the Condominium and such entity shall, for the purpose of this Condominium be **THE ASSOCIATION FOR THE OVERLOOK CONDOMINIUM, INC.**, a Florida corporation, not for profit.

E. "Association Property" means the property, real and personal, in which title or ownership is vested in the Association for use and benefit of its members.

F. "Board of Directors" or "Board" means the board of administration or other representative body responsible for administration of the Association.

G. "Building" means the structure(s) situated on the Condominium Property in which the Units and Common Elements are located.

H. "By-Laws" mean the by-laws of the Association existing from time to time.

I. "Common Elements" means and includes:

1. The portions of the Condominium Property not included within the individual Units.
2. The property and installations required for the furnishing of utilities and other services to more than one Unit or the Common Elements, if any, as well as the conduits, pipe ducts, plumbing, wiring and other facilities themselves.
3. Easements of support in every part of each Unit which contributes to the support of the improvements.
4. The term Common Elements when used throughout this Declaration, shall also include Limited Common Elements and Recreational Facilities (if any), as defined in the Act.

The term Common Elements does not include conduits, pipe, ducts, plumbing, wiring, air conditioning equipment or other facilities which service or apply to only one Unit although same may be located in the Common Elements.

J. "Common Expenses" means all expenses incurred by the Association for the repair, replacement, maintenance, operation or protection of the Condominium Property, and any other expense, whether or not included in the foregoing, designated as a common expense by the Act, this Declaration, the Articles or the By-Laws.

K. "Common Surplus" means the excess of all receipts of the Association, including, but not limited to, Assessments, rents, profits and revenues which exceed Common Expenses.

L. "Condominium Parcel" means a Unit, together with the undivided share in the Common Elements which is appurtenant to the Unit.

M. "Condominium" or "Condominium Property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

N. "Corporation" means the Association as defined above. Corporation and Association may be interchangeable and shall have the equivalent definition.

O. "Declaration" or "Declaration of Condominium" means the instrument(s) by which this Condominium is created, as they may be amended from time to time.

P. "Developer" means, collectively, HIGHLAND PSJ LLC, a Florida limited liability company and HIGHLAND P2 PSJ LLC, a Florida limited liability company, its successors and assigns. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the developer, but may exercise such rights of developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of developer under this Declaration are independent of the developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board of Directors or the Association upon the transfer of control of the Association.

Q. "Division" means the State of Florida, Division of Condominiums, Timeshares and Mobile Homes, State of Florida, or its successor.

R. "Institutional Mortgagee" or "Institutional First Mortgagee" or "Mortgagee" means a bank, savings and loan association, insurance company or union pension fund authorized to do business in the United States of America, an agency of the United States Government, a real estate investment trust, a lender generally recognized in the community as an institutional type lender, or any other entity making a mortgage loan to Developer secured by the Condominium Property and/or the Units. The mortgage may be placed through a mortgage or title company.

S. "Life Safety Systems" mean and refer to any and all emergency lighting, emergency generator, audio and visual signals, safety systems, sprinklers and smoke detection systems, which are now or hereafter installed in the Building, whether or not within the Units. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, regardless of where located shall be deemed Common Elements hereunder. Without limiting the generality of the foregoing, when the context shall so allow, the Life Safety Systems shall also be deemed to include all means of emergency ingress and egress, which shall include all stairways and stair landings. Notwithstanding the breadth of the foregoing definition, nothing herein shall be deemed to suggest or imply that the Building or the Condominium contains all such Life Safety Systems.

T. "Limited Common Elements" means those Common Elements which are reserved for the use of a certain Unit or Units, to the exclusion of other Units as specified in this Declaration. The perimetrical boundary of a Limited Common Element (including, but not limited to: (i) a balcony; (ii) a patio; (iii) a terrace; (iv) a porch; (v) a stairway; or (vi) any fixture attached to the Building which serves only the Unit being bounded), shall vary with the exterior unfinished surface of any such structure extended in a vertical plane and, where necessary, to the horizontal boundary.

U. "Operation" or "Operation of the Condominium" includes the administration and management of the Condominium Property.

V. "Residential Unit" means and refers to each of the Units. References herein to "Unit" or "Units" shall include Residential Units, unless the context prohibits same or it is otherwise expressly provided.

W. "Special Assessments" shall mean and refer to a charge against each Unit Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature.

X. "Unit" or "Condominium Unit" means those parcels of the Condominium Property designated on the Exhibits attached to the Declaration which are subject to exclusive ownership and except where specifically excluded, or the context otherwise requires, shall be deemed to include the Residential Units.

Y. "Unit Owner" or "Owner of a Unit" or "Owner" or "Member" means a record owner of legal title to a Condominium Parcel.

Z. "Utility Service" as used in this Declaration and the By-Laws attached hereto may include but shall not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning, garbage and sewage disposal, telephone and cable television service.

## **ARTICLE II: SURVEY AND DESCRIPTION OF IMPROVEMENTS**

Attached hereto and made a part hereof as Exhibit "B" is a survey and graphic description of the land and plot plans of the improvements constituting the Condominium, identifying the Condominium Units, the Common Elements and the Limited Common Elements (if any), their respective location and approximate dimensions. The improvements on the land described will consist of forty-nine (49)

Residential Units and the Common Elements depicted therein.

A. Identification of Units. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each Unit is set forth on Exhibit "B" attached hereto. Similarly, each area constituting a Limited Common Element is identified by designation on said Exhibit "B." The specific designation assigned to each Limited Common Element is the same designation which has been assigned to the Unit to which each such Limited Common Element is appurtenant. Said Exhibit "B", together with this Declaration, is sufficient in detail to identify the size and location of each Unit, the Limited Common Element appurtenant to the Unit, and the Common Elements.

B. Unit Boundaries.

1. The Unit Owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding the respective Unit, nor shall the Unit Owner be deemed to own the pipes, wires, conduits or other public utility lines running through said respective Unit, which are utilized for or serve more than one Unit, which items have heretofore been made a part of the Common Elements. Said Unit Owner, however, shall be deemed to own the walls and partitions which are contained in said Owner's respective Unit, and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floor and ceilings, including plaster, paint, wallpaper, mirrors, carpets, flooring, tile, cabinetry, electrical fixtures, appliances, air conditioning and heating equipment, water heaters, and the like.

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

i. Upper Boundary. The horizontal plane of the lower surface of the unfinished and/or undecorated ceiling which will be deemed to be the ceiling of the upper story if the Unit is a multi-story Unit, provided that in multi-story Units where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.

ii. Lower Boundary. The horizontal plane of the upper surface of the unfinished and/or undecorated floor which will be deemed to be the floor of the first story if the Unit is a multi-story Unit, provided that in multi-story Units where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor..

iii. Interior Walls and Divisions. Except as otherwise set forth in (2)(a)(i) and (2)(a)(ii) above, all nonstructural interior walls shall be considered to be within the Unit and shall be deemed the responsibility of the unit owner to maintain. No part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors or nonstructural interior walls shall be considered a boundary of the Unit.

b. Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical plane 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. In connection with the floor plans and plot plans identified as Exhibit "B," the legend and notes thereon contained are incorporated herein and made a part hereof by reference and the said plans have been

certified in the manner required by the Act.

C. Apertures. Where there are apertures in any boundary, including, but not limited to windows, doors, bay windows and sky lights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures including all frameworks, window casings and weather stripping thereof together with exterior surfaces made of glass or other transparent materials, provided, however, that the exteriors of the doors facing interior common element hallways shall not be included in the boundaries of the unit and shall therefore be common elements. Further, notwithstanding anything to the contrary, the structural components of the building, and the life safety systems, regardless of where located, are expressly excluded from the units and are instead deemed Common Elements.

D. Automobile Parking Spaces: The parking areas of the Condominium are set out in Exhibit "B" attached hereto. Every Unit shall be assigned two parking spaces. All remaining parking spaces shall either be used for the Condominium's guest parking or shall be assigned by Developer to Unit Owners at a later date for a fee. All parking spaces, until assigned, are Common Elements of this Condominium. Once a parking space is assigned to a Unit, the same shall be deemed a Limited Common Element of the Unit to which it was assigned. Once a parking space is assigned and is a Limited Common Element, such parking space may not thereafter be separately conveyed, hypothecated, transferred, encumbered or otherwise dealt with except to another Unit Owner, and if not transferred to another Unit Owner as provided herein, then the use thereof shall pass only with title to the Unit to which it is appurtenant. All parking areas shall be subject to such reasonable rules and regulations as may be established by the Association from time to time.

Unit Owners shall park their automobiles in their spaces as assigned. Unit Owners shall not park their automobiles in any guest parking areas, or any other part of the Common Elements. Any guests or invitees of said Units shall be required to use the guest parking spaces. EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT CERTAIN OF THE PARKING AREAS MAY BE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY VEHICLES AND/OR PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE PREMIUMS, BOTH FOR THE CONDOMINIUM ASSOCIATION FOR OWNERS, MAY BE HIGHER THAN IF THE AREAS WERE ABOVE THE FEDERAL FLOOD PLAIN. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, A UNIT, OR ACCEPTING THE ASSIGNMENT OF A PARKING SPACE, EACH OWNER, FOR SUCH OWNER AND ITS TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

E. Recreational Facilities. The Developer reserves the exclusive right to create, alter or enlarge the area of the Recreational Facilities; to alter boundaries; to designate the site of each enumerated part of the Recreational Facilities; to locate, change and relocate the position or configuration of any proposed Recreational Facilities; and to relocate the same from time to time.

### **ARTICLE III: OWNERSHIP, SHARE OF COMMON ELEMENTS, ALLOCATION OF COMMON EXPENSES AND COMMON SURPLUS**

A. Ownership. The fee title to each Condominium Parcel shall include both the Unit and the undivided interest in the Common Elements, said undivided interest in the Common Elements to be deemed to be conveyed or encumbered with its respective Unit. Any attempt to separate the fee title to a Unit from the undivided interest in the Common Elements appurtenant to each Unit shall be null and void.

B. Percentage Ownership. Each of the Unit Owners of the Condominium shall own an undivided interest in the Common Elements and Limited Common

Elements, and the undivided interest of such ownership in the said Common Elements and Limited Common Elements is the percentage as set forth on Exhibit "C" which is attached to this Declaration and made a part hereof, which is based on the total square footage of each Unit in uniform relationship to the total square footage of each other Unit in the Condominium.

C. Percentage Share. The Common Expenses and the Common Surplus of the Condominium shall be shared by the Unit Owners as specified and set forth in Exhibit "C".

D. Specific Unit Owner Responsibility. Any expense for the maintenance, repair or replacement relating to Limited Common Elements shall be paid by the Unit Owner having exclusive use of such Limited Common Element. The Unit Owner shall be responsible for all damages and costs should maintenance, repair or replacement of any Common Element be necessitated by the negligence or misuse by a Unit Owner, his family, guests, servants and/or invitees.

#### ARTICLE IV: EASEMENTS

A. Perpetual Non-Exclusive Easement in Common Elements/Condominium Property. The Common Elements and the Condominium Property shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement which is hereby created in favor of all of the Unit Owners in this Condominium for the use and benefit of such Unit Owners and the use and benefit of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which same are reasonably intended, including, without limitation, for purpose of ingress, egress, repair and maintenance, for use of Recreational Facilities if any, for installation of and maintenance of utility lines (such as water and sewer collection and distribution lines, electrical power transmission lines, telephone lines, cable television and other utility services and the like contained within the Common Elements). A Unit Owner shall do nothing within or outside their Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communication lines, or other utility services and the like or the use of these easements. These easements shall run to the benefit of all owners, guests and invitees at **THE OVERLOOK CONDOMINIUM**. Notwithstanding the foregoing provisions, the Association shall have the right to establish the Rules and Regulations governing the use and enjoyment of all such Common Elements and pursuant to which the Owners of such Units may be entitled to utilize same. The Association may impose upon the Common Elements henceforth, and from time to time, such easement, licenses and cross-easements for any of the foregoing purposes as it deems to be in the best interest of, and necessary for, the uniform and proper operation of the Condominium.

B. Easement for Encroachments. In the event that (i) any Unit shall encroach upon any Common Element for any reason not caused by the intentional or negligent act of any such Unit Owner(s) or their agent(s); (ii) any portion of the Common Elements shall encroach upon any Unit, for any reason not caused by the intentional act of the Unit Owner(s) or their agent(s); or (iii) any encroachment shall hereafter occur as a result of (1) construction of improvements; (2) settling or shifting of the improvements; (3) any alteration or repair to the Common Elements made by or with the consent of the Association or the Developer, as appropriate; or (4) any repair or restoration of any portion of the improvements or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of any portion of any Unit or the Common Elements, then an easement shall exist for the continuance of such encroachment and the maintenance of same so long as such encroachment shall naturally exist. In like manner, in the event that any Unit shall encroach upon any other Unit, an easement appurtenant to such encroaching Unit shall exist for the continuance of such encroachment into the neighboring Unit, for so long as such encroachment shall naturally exist.

C. Easement for Air Space/Support. The Owner of each Unit shall have an exclusive easement for the use of air space occupied by such Unit as such Unit

exists at any particular time, and as said Unit may be lawfully altered or reconstructed from time to time. Further, 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.

D. Easement for the Public. An easement is created for pedestrian traffic over, through and across sidewalks, paths and walks as the same may from time to time exist upon the Common Elements, and for the vehicular traffic over, through and across such portion of the Common Elements as may from time to time be paved and intended for such purposes, but the same shall not include the Condominium Property except those areas specifically assigned for same or the Limited Common Elements assigned to any particular unit.

E. Construction; Maintenance. The Developer (including its designees, successors and assigns) shall have the right in its sole discretion, from time to time, to enter the Condominium Property for the purpose of completing the construction of any and all improvements upon any portion of the Condominium Property, and for repair, replacement, maintenance or warranty purposes provided same does not unreasonably interfere with the reasonable use of the Condominium Property by the Unit Owners.

F. Sales Activity. For as long as there are any unsold Units which the Developer holds for sale in the ordinary course of business, the Developer, its designees, successors and assigns, shall have the right to use any such Units and portions of the Common Elements for model Units and sales offices, to display model Units and the Common Elements to prospective purchasers, and to erect signs and other promotional material upon the Condominium Property.

G. Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors) to perform roof repairs and/or replacements, repair, replace and maintain and/or alter rooftop mechanical equipment, to stage window washing equipment and to perform window washing and/or other exterior maintenance, repairs and/or painting of the Building and/or Common Elements.

H. Additional Easements; Relocation. The Association, through its Board, shall have the right to grant additional general and specific electric, cable television or other utility or service easements, or modify or relocate any such existing easements in any portion of the Condominium Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the improvements, or for the purposes of carrying out any provision of this Declaration, provided that such easements or the relocation of such existing easements will not prevent or unreasonably interfere with the reasonable use of the Condominium Property. The Developer reserves the exclusive right to relocate the position or configuration of any and all easements for ingress, utilities, drainage and other services within the Condominium Property until Developer completes construction of the Condominium.

I. Drainage Easement. A non-exclusive, perpetual drainage easement in on, over, under and across the common area of the Condominium designated as a drainage area on Exhibit B hereto, which includes the Retention Pond for drainage and retention of stormwater run-off (which easement shall include, without limitation, the right to install such underground or in-ground pipes, lines or related apparatus which shall be reasonably necessary for use of such drainage areas and Retention Pond). The Condominium parcels are subject to drainage easements as recorded in the public records of Gulf County Florida in Official Records Book 728 at Page 703. Copies of these relevant easements are attached as Exhibit "J" to this Prospectus.

## **ARTICLE V: NAME**

The name by which this Condominium is to be identified is: **THE OVERLOOK**

## CONDOMINIUM.

### ARTICLE VI: ADMINISTRATION OF CONDOMINIUM BY ASSOCIATION

A. Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. A copy of the Articles, By-Laws and initial Rules and Regulations of the Association are attached hereto as Exhibits "D", "E" and "F" respectively. The powers and duties of the Association shall include those set forth in this Declaration, the By-Laws and Articles of Incorporation of the Association, as all may be amended from time to time. In addition, the Association shall have all the common law and statutory powers of a corporation not-for-profit under the laws of Florida and the powers and duties set forth in the Condominium Act. All of the powers and duties of the Association shall be exercised by the Board of Directors limited only to the extent when specific Owner approval is required by law, this Declaration, the By-Laws, or Articles of Incorporation. The powers and duties of the Association as exercised by the Board of Directors shall include but not be limited to the following:

1. The irrevocable right to have access to each Unit from time to time during reasonable hours when necessary for pest control purposes or for the maintenance, repair or replacement of any Common Elements or any portion of a Unit to be maintained by the Association pursuant to this Declaration or at any time, and by force, if necessary, to make emergency repairs or to prevent damage to the Common Elements or to a Unit or Units.

2. The power to determine the expenses required for the operation of the Association and to make and collect regular and Special Assessments and other charges against Owners.

3. The duty to maintain accounting records according to good accounting practices, which shall be open for inspection by Owners or their authorized representatives at reasonable times upon prior request.

4. The power to adopt, amend and enforce rules and regulations concerning the details of the operation and use of the Units, the Common Elements and Association Property.

5. The power to charge a fee for the exclusive use of Common Elements or Association Property to any Owner being granted, by the Association, a right to such exclusive use.

6. The power to acquire title to property (including purchasing Units at a foreclosure sale); and to otherwise hold, regulate, administer, convey, lease, maintain, repair and replace Association Property and Common Elements for the use and benefit of its members, including the right to grant, modify or move easements which are a part of or cross Association Property and Common Elements.

7. The power to institute, settle or appeal actions or hearings on behalf of all Owners.

8. The power to execute all documents or consents on behalf of all Unit Owners (and their Mortgagees) required by all government and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard each Unit Owner, by acceptance of the deed to such Owner's Unit, and each Mortgagee of a Unit, by acceptance of a lien on said Unit, appoints and designates the President of the Association as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.

9. The power to enter into bulk rate communications services (as defined in Chapter 202, Florida Statutes), information services or Internet services contracts.



10. The power to contract with individuals or entities to operate various facilities or services upon portions of the Common Elements or Association Property.

11. The power to operate, maintain, repair and replace the Common Elements (which includes the surface water management system) and the Association Property.

12. The power to employ, dismiss and contract with personnel and independent contractors necessary for the maintenance and operation of the Common Elements and the Association Property. Such personnel and independent contractors may include but not be limited to those providing services incidental to the operation of a luxury condominium including but not limited to valets, security officers, concierges and pool attendants.

13. The power to maintain bank accounts on behalf of the Association and designating the signatories required therefor.

14. The power to obtain insurance for the Condominium and Association Property, including, if permitted or required by the Act, on behalf of individual Unit Owners in the event such Unit Owners fail to obtain insurance as required by the Act.

15. The power to make repairs, additions, and improvements to, or alterations of Common Elements and Association Property, and repairs to and restoration of Common Elements and Association Property, in accordance with the provisions of this Declaration after damage or destruction by fire or other event of damage, or as a result of condemnation or eminent domain proceedings or otherwise.

16. The power to levy fines against Owners and occupants for violations of this Declaration, the By-Laws or the Association's reasonable rules.

17. The power to borrow money, execute promissory notes and other evidences of indebtedness, and to give as security for mortgages security interests in property owned by the Association, if any, in connection with the operation, care, upkeep and maintenance of the Common Elements and Association Property or for the acquisition of property; provided, however, that the consent of the Owners of at least two-thirds (2/3rds) of the Units represented at a meeting at which a quorum has been attained in accordance with the By-Laws shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed \$250,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this Section A.17 is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in the Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect such Owner's Unit. Notwithstanding the foregoing, the restrictions on borrowing contained in this Section A.17 shall not apply if such indebtedness is entered into for the purpose of financing insurance premiums, which action may be undertaken solely by the Board of Directors, without requiring a vote of the Unit Owners.

B. Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Article XI hereof. The Association shall not be liable to any Unit Owner or lessee or to any other person or entity for

any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms. Nothing herein shall be deemed to relieve the Association of its duty to exercise ordinary care in the carrying out of its responsibilities or to deprive the Unit Owners of their right to sue the Association if it negligently or willfully causes damage to the Unit Owners' property during the performance of the Association's duties.

C. Effect on Developer. If the Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer: (i) assessment of the Developer as a Unit Owner for capital improvements; or (ii) any action by the Association that would be detrimental to the sales of Units by the Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.

## **ARTICLE VII: MEMBERSHIP IN CORPORATION AND VOTING**

A. Membership. The Owner or Owners of a Unit shall automatically become members of the Association upon such Owner's acquisition of an ownership interest in any Unit and its appurtenant undivided interest in the Common Elements and Limited Common Elements, and the membership of such Owner or Owners in the Association shall terminate automatically upon such Owner or Owners being divested of such ownership interest and the title to such Unit, regardless of the means by which such ownership shall be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit shall be entitled by virtue of such lien, mortgage or other encumbrance to membership in the Association or to any of the rights or privileges of such membership.

B. Voting. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions set forth in the By-Laws of the Association.

## **ARTICLE VIII: BY-LAWS**

The operation of the Association shall be governed by the By-Laws which are annexed to this Declaration and labeled Exhibit "E" and incorporated herein by reference.

## **ARTICLE IX: METHOD OF AMENDMENT**

A. General Amendments. Except for any alteration in the percentage of ownership in the Common Elements or alteration of the basis for apportionment of assessments, which may be levied by the Association in accordance with the provisions hereof, this Declaration may be amended in the following manner:

1. By the Association. Amendments to this Declaration may be proposed by either the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by not less than one-third (1/3) of the members of the Association, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon include the proposed amendments for consideration in the Notice for the Annual Meeting, or call a Special Meeting of the Members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than fourteen (14) days, nor more than sixty (60) days before the date set for such meeting. If mailed, such

notice shall be deemed to be properly given when deposited in the United States mail, addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. At such meeting, the amendment or amendments proposed must be approved by an affirmative vote of a majority of the Unit Owners present at such meeting in person or by proxy in order for such amendment or amendments to become effective.

2. By the Developer. Notwithstanding anything contained herein, the Developer reserves the right to amend this Declaration and its Exhibits, without the consent of the Unit Owners, except as required by the Act, so as to correct any omissions or errors, including scrivener's or surveyor's errors, and to accommodate changes made to Developer owned Units, so long as such amendments do not materially affect the rights of Unit Owners or Mortgagees.

B. Mortgagees' Consent. No amendment to this Declaration shall be adopted which would operate to affect the validity or priority of any mortgage held by an Institutional Mortgagee or which would alter, amend or modify in any manner whatsoever, the rights, powers, and privileges granted and reserved herein in favor of the Developer or any Institutional Mortgagees without the consent of the Developer or all such Institutional Mortgagees, as the case may be; provided, however, that the consent rights of Institutional Mortgagees shall be subject to the terms of the Act.

C. Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted and the original, or an executed copy, of such amendment(s) so certified and executed with the same formalities as a deed, shall be recorded in the Public Records of Gulf County, Florida, and such amendment(s) shall specifically refer to the recording data identifying this Declaration. At any meeting held to consider such amendment(s), the vote of any Unit Owner shall be recognized if such Unit Owner is represented thereat by limited proxy, provided such vote is delivered to the Secretary of the Association at, or prior to, such meeting.

D. Amendments With Respect to Percentage of Ownership in Common Elements. No amendment to this Declaration, which shall purport to alter in any way the basis for apportionment of assessments, shall be adopted or shall become effective without the written consent, in recordable form, of all of the Unit Owners within this Condominium, (and all of their respective Mortgagees) and the Institutional Mortgagee (if any), first had and obtained, and then same shall not become effective until an instrument evidencing such written consent is recorded among the Public Records of Gulf County, Florida.

## **ARTICLE X: MAINTENANCE AND REPAIRS**

A. Unit and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and the Limited Common Elements appurtenant thereto, whether structural or non-structural, ordinary or extraordinary, including, but not limited to, maintenance, repair and replacement of: screens, doors, and windows (including the framing, caulking and hardware); the interior and exterior of the entrance door and all other doors within or affording access to a Unit (except for the painting of the exterior of any doors providing access to the Unit, which shall be a Common Expense); the electrical (including fixtures, dimmers, wiring and outlets), plumbing (including fixtures, pitch pans, and connections), heating and air-conditioning equipment (including compressors and condensers); all cabinetry and fixtures, appliances, carpets and other floor coverings owned by the Owner of a Unit; all interior surfaces and wallcoverings and the entire interior of the Unit lying within the boundaries of the Unit or the Limited Common Elements or other property belonging to the Owner, shall be performed by the Owner of such Unit at the Owner's sole cost and expense, except as may otherwise be expressly provided to the contrary herein. The Owner shall also maintain, repair and replace, at his sole cost and expense, all hurricane shutter(s), including such portion of the

Common Elements, if any, to which the hurricane shutters are attached, or if the Condominium is constructed with impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection, then all of these items are the unit owners' maintenance responsibility. The Owner shall be obligated to repair any equipment, fixtures, wiring, or other items of property which only serve the Owner's Unit without regard to whether such items are included within the boundaries of the Unit. Where a Limited Common Element consists of a terrace, balcony or roof area, the Owner who has the right to the exclusive use of said terrace, balcony, or roof area shall be responsible for the maintenance, painting, repair and replacement of the surfaces of said area. Party wall between two Units shall be Limited Common Elements. Where a Limited Common Element consists of a party wall between two Units, the Owners of each of the Units that abut such party wall shall share the cost of repairs or replacements of such party wall equally. Any surfaces, shall be painted in conformity with the color specifications and tile specifications promulgated by the Board of Directors from time to time. With respect to Limited Common Elements located on the roof area (i.e. heating and air-conditioning equipment, if applicable) Owners (including contractors or other servicemen hired by Owner) shall not be permitted access to said roof area without prior written approval from the Board of Directors of the Association. Further, only licensed and insured contractors/ servicemen shall be approved by the Association to perform work within any Unit or the Limited Common Elements appurtenant thereto or to the Common Elements.

B. Common Elements. Except to the extent expressly provided to the contrary herein (i.e., as to Limited Common Elements, or fixtures, equipment or wiring located within the Common Elements which only serve an individual Unit), all maintenance, repairs and replacements in or to the Common Elements shall be performed by the Association and the cost and expense thereof shall be charged to all Owners as a Common Expense. In addition, the City Easement and the master stormwater management system (which includes, without limitation: all water quality structures; underground or in-ground pipes whether on the Condominium or the City Easement, lines or related apparatus; and retention/drainage ponds, swales and other similar structures) that have been or will be installed within the Condominium or the City Easement in accordance with the Environmental Resource Permit #0398135-001-DWC/CM shall be deemed part of the Common Elements and shall be maintained, repaired or replaced by the Association, and all costs and expenses of compliance with the City Easement and the operation, maintenance, repair, and replacement of the master stormwater management system and the cost and expense thereof shall be charged to all Owners as a Common Expense. However, any expense or cost for maintenance, repairs and replacements in or to the Common Elements performed by the Association arising from or necessitated by the negligence, misuse or neglect of a specific Owner(s) shall be paid solely by such Owner(s).

C. Failure to Maintain or Repair. In the event the Owner of a Unit fails to maintain or repair the Unit and Limited Common Elements as required herein or makes any unauthorized additions, alterations or improvements or otherwise violates the provisions hereof, the Association, without waiving its right to pursue all rights and remedies provided for in this Declaration or by law, shall have the option to effectuate any such necessary maintenance or repairs or to remove any unauthorized additions, alterations or improvements and the right to do the necessary work to enforce compliance with the provisions hereof, at the Unit Owner's sole cost and expense. Additionally, the Association or any other Unit Owner shall have the right to proceed in a court of competent jurisdiction to seek compliance with the provisions of this Declaration.

## **ARTICLE XI: ADDITIONS, ALTERATIONS OR IMPROVEMENTS**

A. By Unit Owner. No Owner shall cause or allow improvements or changes to any Unit or the Limited Common Elements appurtenant thereto or to the Common Elements, including, but not limited to, painting or other decorating of any nature; installing any electrical wiring, television antenna, machinery or air-conditioning units; placing of trees, plants or any vegetation whatsoever, or any

planters containing topsoil; placing any item of personal property on the exterior of the Unit; or in any other manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Board of Directors in the manner specified herein. Any requests for electrical, mechanical and structural additions, alterations and improvements must be submitted with plans prepared and sealed by the appropriate licensed professional (i.e., architect, engineer, etc.). The Owner shall be responsible for any fees and costs incurred by the Association in hiring professionals such as engineers, architects or attorneys as may be necessary to review any request by an Owner to proceed with an addition, alteration or improvement. The Board of Directors shall have the obligation to answer any written request by an Owner for approval of such an addition, alteration or improvement within forty-five (45) days after such request and any additional information requested by the Board of Directors is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work. Depending upon the nature of the alteration, addition or improvement, the Board of Directors in its sole discretion shall have the authority to require the Owner to execute an Agreement and covenant running with the land as a condition to obtaining approval.

Any approved additions, alterations and improvements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions approved by the Board of Directors with respect to design, structural integrity, aesthetic appeal, construction details, and lien protection or otherwise. An Owner making any such additions, alterations or improvements, and his heirs, personal representatives, successors and assigns, as appropriate, shall be deemed to have agreed to hold the Developer, the Association, its officers, directors, agents, employees and members and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property arising from the installation or construction of the addition, alteration or improvement and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof as may be required by the Association. Neither the Developer, the Association, nor any of its officers, directors, agents, employees, members or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, agrees not to seek damages from the Developer and/or the Association arising out of the Association's review of plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner, including his successors and assigns, agrees to hold the Developer and the Association harmless from and against any and all cost, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans hereunder. Notwithstanding anything in this Article to the contrary, the Board of Directors shall not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a Unit Owner conforming to the specifications adopted by the Board of Directors. The Board of Directors may appoint an Architectural Control Committee to assume the foregoing functions on their behalf. The provisions of this paragraph shall not be amended without an affirmative vote of four-fifths (4/5) of the total voting interests in the Condominium.

No Unit Owner shall make any additions, alterations or improvements to the Life Safety Systems, and/or to any other portion of the Condominium Property which may alter or impair the Life Safety Systems or access to the Life Safety Systems, without first receiving the prior written approval of the Board. In that

regard, no lock, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency signage shall not be altered or removed by any Unit Owner whatsoever. No barrier, including, but not limited to, personality, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

Any Unit Owner who proceeds with an approved addition, alteration or improvements shall do it at their sole risk and expense. In the event it is necessary for the Association to remove an addition, alteration or improvement installed by an Owner in the course of performing repairs or maintenance to any portion of the Condominium required to be maintained or repaired by the Association, the Owner shall be responsible for the cost of removal and replacement of such addition, alteration and improvement. Under no circumstances shall the Association be responsible for any damages to any such addition, alteration or improvement caused by the Association or its agents or employees in connection with the performance of any maintenance, repairs or replacements of any portion of the Condominium required to be maintained by the Association.

Owners shall be held strictly liable for any violations of the restrictions set forth in this Article and for all damages resulting therefrom. The Association, in addition to all other rights and remedies provided by law and this Declaration shall have the right to require the immediate removal of any alterations, additions, or improvements in violation of this Article.

B. By Developer. Notwithstanding anything to the contrary, the foregoing restrictions in this Article shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the improvements) so long as the Developer complies with Section 718.110(2), (4), and (8), Florida Statutes.

C. By Association. Whenever in the judgment of the Board of Directors the Common Elements, Association Property or any part thereof shall require additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of one hundred thousand dollars (\$100,000) in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements upon the approval of a majority of the voting members represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to the Common Elements, Association Property or any part thereof costing in the aggregate one hundred thousand dollars (\$100,000.00) or less in a calendar year may be made by the Board of Directors without approval of the Owners. The cost and expense of any such additions, alterations, or improvements shall constitute a part of the Common Expenses and shall be assessed to the Owners. Notwithstanding anything in this Paragraph to the contrary, changes to the exterior or interior color scheme of the Building shall not be deemed an alteration or improvement requiring Owner approval. Accordingly, changes in color to interior or exterior surfaces, including, but not limited to, painted, wallpapered, carpeted, or hard floor surfaces may be authorized by the Board of Directors without Owner approval even if the cost associated with such changes exceeds one hundred thousand dollars (\$100,000.00) in a calendar year. For purposes of this Paragraph, "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.

## **ARTICLE XII: LIENS AND ASSESSMENTS**

A. Determination of Common Expenses and Fixing of Assessments Thereof. The Board of Directors shall, at least annually, prepare a budget for the Condominium ("Budget"), determine the amount of Assessments payable by the

Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Owners in accordance with the provisions of this Declaration and the By-Laws. The Budget shall include reserve accounts to the extent required by law unless waived or reduced by the Owners in accordance with the Act. Notice of the Board of Directors' meeting at which the Budget for the fiscal year will be adopted, along with a copy of the proposed Budget, shall be furnished to all Owners at least fourteen (14) days prior to said meeting. The Board of Directors shall have the authority to amend the Budget from time to time or to impose Special Assessments if the operating Budget is insufficient to meet the actual expenses at any time. 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 of Directors shall determine from time to time and need not be restricted or accumulated.

"Common Expenses" shall include all expenses and Assessments properly incurred by the Association, including, but not limited to: (1) expenses of administration and management of the Association; (2) expenses of maintenance, operation, protection, repair and replacement of the Common Elements and Association Property, including, but not limited to, the costs for additions, alterations and improvements effectuated in accordance with the provisions of this Declaration; (3) expenses declared Common Expenses by the provisions of this Declaration, the By-Laws and the Condominium Act; (4) any valid charge against the Condominium as a whole; (5) the costs of carrying out the powers and duties of the Association; (6) the costs of operating or subsidizing facilities, amenities and services for the benefit of the Owners. Common Expenses shall also include insurance for directors and officers, road maintenance and operation expenses, and in-house communications, which are reasonably related to the general benefit of the Owners even if such expenses do not attach to the Common Elements or property of the Condominium, and the cost of communications services (as defined in Chapter 202, Florida Statutes), information services or Internet services obtained pursuant to a bulk contract, if applicable.

B. Liability for Assessments. An Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while that person is the Owner of a Unit. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for the share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

C. Institutional Mortgagee. A first Mortgagee who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure is liable for the share of Common Expenses, Assessments and Special Assessments or other charges imposed by the Association pertaining to such Unit that became due prior to the Mortgagee's receipt of the deed. However, such liability is limited to the lesser of: (i) those Assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (ii) one percent (1%) of the original mortgage debt. The first Mortgagee's liability for such expenses or assessments does not commence until thirty (30) days after the date the first Mortgagee takes title to the Unit. The provisions of this paragraph apply only if the first Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the Mortgagee.

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

any unpaid share of Common Expenses or Assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Assessments are Common Expenses collectible from all of the Owners, including such acquirer, and such acquirer's successors and assigns.

D. Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the date due until paid. In addition to the above stated interest, the Association may charge an administrative late fee in an amount not to exceed the highest amount provided for in the Act (as it may be amended from time to time) on Assessments and installments thereof not paid when due. All payments upon account shall be first applied to interest, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection and then to the Assessment. The foregoing method of applying payments shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. Further, the Association shall have a lien on each Condominium Parcel for any unpaid Assessment, administrative fee, interest and all attorneys' fees for the collections thereof. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon, and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure. A claim of lien must be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in a manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid Assessments. Except as otherwise provided in the Act, no lien may be filed by the Association against a Unit until forty-five (45) days after the date on which a notice of intent to file a lien has been delivered to the Unit Owner by registered or certified mail, return receipt requested, and by first-class United States mail to the Unit Owner at his or her last address as reflected in the records of the Association, if the address is within the United States, and delivered to the Unit Owner at the address of the Unit if the Unit Owner's address as reflected in the records of the Association is not the Unit address. If the address reflected in the records is outside the United States, sending notice to that address and to the Unit address by first-class United States mail is sufficient. Delivery of the notice shall be deemed given upon mailing as required by this Paragraph.

1. Acceleration. As an additional right and remedy of the Association, upon filing a claim of lien, the Association may declare the Assessment installments for the remainder of the budget year to be accelerated and such amount shall thereupon be immediately due and payable. In the event the amount of such installments changes during the period for which Assessments were accelerated, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

2. Appointment of Receiver to Collect Rental. If the 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. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.

E. Certificate of Unpaid Assessments. Within ten (10) business days after receiving a written or electronic request therefor from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the



Association shall issue the estoppel certificate stating whether all Assessments and other moneys owed to the Association by the Owner with respect to his Unit have been paid, as required by Section 718.116, Florida Statutes, as amended. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

F. Installments. Regular Assessments may be collected monthly or quarterly, in advance, at the option of the Association from time to time.

G. Limits on Rights or Responsibilities of Mortgagees. Nothing herein shall abridge or limit the rights or responsibilities of Mortgagees of a Condominium Unit as set forth in greater detail in the statutes made and provided for same.

H. Liens. With the exception of liens which may result from the initial construction of this Condominium, no liens of any nature may be created subsequent to the recording of this Declaration against the Condominium Property as a whole (as distinguished from individuals Units) except with the unanimous consent of the Unit Owners. Unless a Unit Owner has expressly requested or consented to work being performed or materials being performed or materials being furnished to his Unit or unless work was done on account of the Unit Owner's failure to maintain his individual Unit as provided for in Article X, such labor or materials may not be the basis for the filing of a lien against same. No labor performed or materials furnished to the Common Elements shall be the basis for a lien thereon unless authorized by the Association, in which event same may be the basis for the filing of a lien against all Condominium Units in the proportions for which the Owners thereof are liable for Common Expenses.

Should any portions within this Article XII conflict with the Act (F.S. 718), then the Act shall control.

### **ARTICLE XIII: INSURANCE**

The insurance which shall be carried upon the Condominium Property and the property of the Unit Owners shall be governed by the following provisions:

A. Purchase, Custody and Payment.

1. Purchase. All insurance policies described herein covering portions of the Condominium and Association Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida or by a surplus lines carrier offering policies for Florida properties reasonably acceptable to the Board.

2. Named Insured. The named insured shall be the Association, individually, and as agent for the Owners of Units covered by the policy, without naming them, and as agent for the holders of any mortgage on a Unit (or any leasehold interest therein), without naming them. The Unit Owners and the holders of any mortgage on a Unit (or any leasehold interest therein) shall be deemed additional insureds.

3. Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Association or the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Association or to the Insurance Trustee (if appointed).

4. 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 the holders of any mortgage on a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

5. Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners for obtaining insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to: (i) the Unit Owner's personal property; (ii) the Unit Owner's personal liability; (iii) moving and relocation expenses; (iv) lost rent expenses or living expenses; (v) nor for any other risks not otherwise insured in accordance herewith. It shall be the sole responsibility of the Unit Owner and/or occupant to obtain coverage of such excluded items as required by the Act.

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

1. Property Damage. The Building, including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Condominium Act to be insured under the Association's policy(ies), and all improvements located on the Common Elements from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or owned by the Association (all of the foregoing herein referred to collectively as the "Insured Property"); excluded from such coverage shall be all furniture, furnishings, floor coverings, wall coverings, ceiling coverings, hurricane shutters, or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners (whether located within the Unit or within a Limited Common Element and serving only such Unit), and all replacements of the foregoing, and the following if it is located within a Unit or Limited Common Element and serves only such Unit or if the Unit Owner is required to repair or replace such items: electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, window treatments (including curtains, drapes, blinds, hardware, and similar window treatment components), personal property, as well as fixtures, appliances or equipment permitted to be excluded from the Condominium's insurance policy pursuant to the Act, as same may be amended or renumbered from time to time. The Insured Property shall be insured in an amount not less than 100% of the replacement cost thereof, excluding land, footings, foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:

a. Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and

b. Such Other Risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

2. Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than one million dollars (\$1,000,000) for each accident or occurrence, three hundred thousand dollars (\$300,000) per person and one hundred thousand dollars (\$100,000) property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees, in such amounts and under such terms and conditions as the Association deems appropriate in its sole and absolute discretion.

3. Worker's Compensation and other mandatory insurance, when applicable.

4. Flood Insurance if required by the Developer's Institutional First

Mortgagee or if the Association so elects.

5. Fidelity Insurance. The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association in an amount not less than the minimum sum required by the Act.

6. Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.

7. Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss. All policies of physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least forty-five (45) days prior written notice to all of the named insureds, including all Mortgagees of Units. Prior to obtaining any policy of property damage insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the replacement cost of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Article.

C. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. The Board of Directors shall determine the appropriate deductible for each policy of insurance in accordance with the requirements of the Act. Each Owner, by acceptance of a deed or other conveyance of a Unit, hereby ratifies and confirms any decisions made by the Association in this regard and recognizes and agrees that funds to cover the deductible must be provided from the general operating funds of the Association before the Association will be entitled to insurance proceeds. The Association may, but shall not be obligated to, establish a reserve to cover any applicable deductible.

D. Insurance Trustee: Share of proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners and their Mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee, which shall be designated by the Board of Directors and which shall be any bank or trust company in Florida with trust powers. 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 Mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee.

1. Common Elements. Proceeds on account of damage to Common Elements shall be held in an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

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

a. Reconstruction or Repair. When the damaged property is to be reconstructed or repaired, an undivided share shall be held for the Owners and their Mortgagees, if any, of the damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

b. Failure to Reconstruct or Repair. When the building is not to be reconstructed or repaired, an undivided share shall be held for each Unit Owner and their Mortgagees, if any, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

3. Mortgages. In the event a mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided, however that 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 distribution thereof made to the Unit Owner and Mortgagee pursuant to the provisions of this Declaration.

E. 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:

1. Expense of the Trust. All expenses of the Insurance Trustee shall be first paid or provisions made therefor.

2. 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. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittance to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

3. 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 to the beneficial owners, remittance to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

4. Certificate. In making distribution to Unit Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owner and their respective shares of the distribution.

F. Association as Agent. The Association is hereby irrevocably appointed agent for each Unit Owner and for each owner of any other interest in the Condominium to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

G. Unit Owners' Personal Coverage. Each Unit Owner shall obtain and maintain at all times individual property damage and general liability policies insuring the property lying within the boundaries of their Unit and for their personal liability arising in the use of their own Unit and other areas of the Common Elements for which they have exclusive use. Coverage provided under such policies, including, but not limited to, property loss assessment coverage, shall be in accordance with the requirements of the Act, as amended from time to time. The Association shall be an additional named insured and loss payee on all property damage insurance policies issued to Unit Owners if required by the Act.

All improvements or additions to the Condominium Property that benefit fewer than all Unit Owners shall be insured by the Unit Owner or Unit 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 if permitted by the Act. The Association shall require Unit Owners to produce evidence of insurance if required by the Act.

#### **ARTICLE XIV: RECONSTRUCTION OR REPAIR AFTER PROPERTY DAMAGE**

A. Determination to Reconstruct or Repair. If any part of the Condominium shall be damaged by an event of damage, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

1. Common Elements/Units. If the damaged improvement is a Common Element, or is otherwise the responsibility of the Association, the damaged property shall be reconstructed or repaired, unless it is determined pursuant to the Act that the Condominium shall be terminated.

2. Certificate. The Insurance Trustee may rely upon a certification of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building and then applicable building and other codes, or if not, then according to plans and specifications approved by the Board of Directors of the Association; and if the damaged property is a group of Units, by not less than seventy-five percent (75%) of the Owners of Units.

C. Responsibility. If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner or to that portion of the Condominium Property for which the Unit Owner is required to carry insurance, then the Unit Owner shall be responsible, at its cost and expense, for reconstruction and repair after the event of damage. In all instances other than those described in Subparagraphs 1-4 below, the responsibility of reconstruction and repair after the event of damage shall be that of the Association. In the event that the Unit Owner is responsible for the reconstruction and repair, such work may be conditioned upon the approval by the Board of Directors of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. Such Unit Owner shall obtain all required governmental permits and approvals prior to commencing reconstruction.

1. 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 this Declaration or the Rules and Regulations 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 as set forth herein or in the Act.

2. The provisions of Subparagraph 1 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 under this Declaration or the Act.

3. To the extent the cost of repair or reconstruction for which the Unit Owner is responsible under this Paragraph is reimbursed to the Association by insurance proceeds, and 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.

4. The Association is not obligated to pay for repair or

reconstruction or repairs of property losses as a Common Expense if the property 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 property was settled or resolved with finality, or denied because it was untimely filed.

The Association may, upon the approval of a majority of the total voting interests in the Association, opt out of the provisions of Subparagraphs 1-4 for the allocation of repair or reconstruction expenses and allocate repair or reconstruction expenses in the manner provided in Paragraph C above (without regard to the exceptions described Subparagraphs 1-4) or otherwise in accordance with the terms of this Declaration, as same may be amended. Such vote may be approved by the voting interests of the Association without regard to any mortgagee consent requirements. If the Association votes to opt out of the guidelines for repair or reconstruction expenses as described in Subparagraphs 1-4, the Association must record a notice setting forth the date of the opt-out vote and the page of the official records book on which this 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 the Association votes to opt out, it may reverse that decision by the same vote required above and notice thereof shall be recorded in the official records.

D. Exception to Association Responsibility. The Association is not obligated to pay for any reconstruction or repair expenses due to property loss to any improvements installed by a current or former Unit Owner or by the 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 Paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for such improvements.

E. Estimate of costs. Immediately after a determination is made to reconstruct 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 costs to reconstruct or repair such property.

F. Assessments. The amount by which an award of insurance proceeds to the Insurance Trustee is reduced on account of a deductible clause in an insurance policy shall be assessed against all Unit Owners in proportion to their share in the Common Elements. If the proceeds of such Assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair the funds for the payment of the costs of reconstruction and Unit repair are insufficient, Assessments shall be made against the Unit Owners in the case of damage to Common Elements in sufficient amounts to provide funds for the payment of such Unit costs. Such Assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction or repair of their respective Units. Such Assessments on account of damage to Common Elements shall be in proportion to each Unit Owner's share in the Common Elements. In the event of any inconsistencies between the terms of Paragraph C above and the terms of this Paragraph F due to Unit Owner responsibility, the terms of Paragraph C above shall control.

G. Construction Funds. The funds for payment of costs of reconstruction and repair after an event of damage, 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:

1. 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 ten thousand dollars (\$10,000.00), then 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 discharge same in payment of the costs of reconstruction and repair.

2. Insurance Trustee. The proceeds of insurance collected on account of an event of damage and the sums deposited with the Insurance Trustee by the Association from collection of assessment against Unit Owners on account of such event of damage shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

a. Association: Lesser Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than fifty thousand dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee by a 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 hereafter provided for the reconstruction and repair of major damage.

b. Association: Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is fifty thousand dollars (\$50,000.00) or more, then the reconstruction 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 qualified to practice in Florida and employed by the Association to supervise the work.

c. Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the Insurance Trustee to the Unit Owner, or if there is a mortgage encumbering such Unit, then to the Unit Owner and the Mortgagee jointly.

d. Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs 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.

e. Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by the 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. Instead, the Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the name of the payee and the amount to be paid provided that when a Mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the Mortgagee as a payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Association or the Mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction funds, so requires, the approval of an architect named by the Association shall first be obtained by the Association before disbursements in payment of costs of reconstruction and repair.

## **ARTICLE XV: TAXATION**

A. Common Elements. For the purpose of ad valorem taxation, the interest of the Owner of a Condominium Parcel in his Unit and in the Common Elements appurtenant to such Unit shall be considered as a unit. The value of said unit shall be equal to the percentage share of undivided shares in Common Elements of the entire Condominium, including land and improvements as has been assigned to said Unit in Exhibit "C" of this Declaration. The total of all of said percentages equals one hundred percent (100%) of the value of all of the land and improvements thereon.

B. Amendments. The percentages assigned above shall be binding upon all Owners for all purposes, including ad valorem taxation, at all times in the future, and may not be amended or changed except as provided for in this Declaration.

## **ARTICLE XVI: TERMINATION OF CONDOMINIUM**

The Condominium shall continue until (a) terminated by casualty, loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (b) terminated pursuant to a Plan of Termination (as defined in the Condominium Act) in accordance with Section 718.117, Florida Statutes or any successor statute. Although Institutional mortgage holders are not included in the voting interests of the Condominium with respect to voting on a Plan of Termination, any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs or for other reasons is to be agreed to by mortgage holders representing at least fifty-one (51%) percent of the votes of the units subject to mortgages.

## **ARTICLE XVII: FAILURE TO COMPLY WITH CONDOMINIUM DOCUMENTS**

A. Compliance and Default. The Association, each Unit Owner, occupant of a Unit and other invitee of a Unit Owner shall be governed by and shall comply with the provisions of this Declaration of Condominium, and the Articles of Incorporation and By-Laws of the Association, and its Rules and Regulations as any of the same are now constituted or as they may be adopted and/or lawfully amended from time to time. Failure by the Owner of a Unit to comply with such documents shall entitle the Association or the Owners of other Units to the following relief in addition to the remedies provided by the Act:

1. Compliance. Failure to comply with any of the terms of this Declaration of Condominium or other restrictions and regulations contained in the Articles of Incorporation or By-Laws of the Association, or its Rules and Regulations, shall be grounds for relief which may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure or lien as provided in Article XII or any combination thereof. Additionally, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, to make a special charge against the Unit Owner and the Unit for sums necessary to do whatever work is required to put the Unit Owner, or Unit, in compliance; provided, however, that nothing contained in this Article shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure to comply by the Owner of a Unit or the Association, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (at all trial, appellate or arbitration proceedings) as may be determined by the court or such tribunal.

If a Unit Owner is delinquent for more than ninety (90) days in paying a monetary obligation due to the Association, the Association may suspend the right of a Unit Owner or a Unit's occupant, licensee or invitee to use Common Elements, common facilities, or any other Association Property until the monetary obligation is paid. The right to suspend use does not apply to Limited Common Elements intended to be used only by that Unit, Common Elements that must be used to access the Unit, utility services provided to the Unit, parking spaces or elevators.



The Association may also suspend the voting rights of a Unit or Member due to nonpayment of any monetary obligation due to the Association which is more than ninety (90) days delinquent. The suspension ends upon full payment of all obligations currently due or overdue the Association. The notice and hearing requirements provided in the next paragraph do not apply to the foregoing suspensions. If such a suspension is imposed, the Association must approve the suspension at a properly noticed Board meeting, and after the imposition of such suspension, the Association must notify the Unit Owner and, if applicable, the Unit's occupant, licensee or invitee by mail or hand delivery.

The Association may levy reasonable fines for the failure of the Owner of the Unit, or its occupant, licensee, or invitee, to comply with any provision of this Declaration, the Association By-Laws, or Rules and Regulations of the Association. A fine may not become a lien against a Unit. A fine may not exceed \$100 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. However, the fine may not in the aggregate exceed \$1,000. The Association may suspend, for a reasonable period of time, the right of a Unit Owner, or a Unit Owner's tenant, guest or invitee, to use the Common Elements, common facilities or any other Association Property for failure to comply with any provision of this Declaration, the Association By-Laws, or Rules and Regulations of the Association; provided, however, that such suspension shall not apply to Limited Common Elements intended to be used only by that Unit, Common Elements needed to access the Unit, utility services provided to the Unit, parking spaces or elevators. A fine may not be levied and a suspension may not be imposed unless the Association first provides at least fourteen (14) days' written notice and an opportunity for a hearing to the Unit Owner and, if applicable, its occupant, licensee or invitee in accordance with the requirements of the Act. The hearing must be held before a committee of other Unit Owners who are neither Board members nor persons residing in a Board member's household. If the committee does not agree with the fine or suspension, the fine or suspension may not be levied or imposed.

2. Negligence. A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

3. No Waiver of Right by Association. The failure of the Association or of the Owner of a Unit to enforce any right, provision, covenant or condition which may be granted by this Declaration of Condominium or other above-mentioned documents shall not constitute a waiver of the right of the Association or of the Owner of a Unit to enforce such right, provision, covenant or condition in the future.

4. No Waiver of Right by Developer. The failure of the Developer to enforce any right, privilege, provisions, covenant or condition which may be granted to it by this Declaration of Condominium or the above-mentioned documents shall not constitute waiver of the right to thereafter enforce such right, privilege, provisions, covenant or condition in the future.

5. Rights are Cumulative. All rights, remedies and privileges granted to the Association or the Owner of a Unit pursuant to any terms, provisions, covenants or conditions of this Declaration of Condominium or other above-mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies or privileges as may be available to such party at law or in equity.

B. Equitable Relief. In the event of substantial damage to, or destruction of, all or a substantial part of the Condominium Property, and in the event the property is not repaired, reconstructed or rebuilt within a reasonable period of time, any Unit Owner shall have the right to petition a court of equity in Gulf County,

Florida, for equitable relief, which may, but need not necessarily, include a termination of the Condominium and partition.

## **ARTICLE XVIII: OCCUPANCY AND USE RESTRICTIONS**

In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the Units and provided this Article shall not be used to permit or sanction unlawful discrimination or other violation of laws; the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

A. Occupancy Restrictions. The provisions in the following paragraphs numbered "1," "2" and "3" of this Subparagraph A shall not be applicable to Units held by the Developer for model Units, sales or resales offices, or management or administrative services:

1. Permitted Occupants. Each Residential Unit shall be used as a residence only, by the Unit Owner, members of his family, social guests and lessee(s) of the Unit Owner, except as otherwise expressly provided herein, and in accordance with all applicable county and state codes, ordinances and regulations. A Residential Unit owned or leased by an individual, corporation, partnership, limited liability company, trust or other fiduciary or entity may only be occupied by the following persons, and such persons' families, provided that the Owner or other permitted occupant must reside with his/her family: (i) the individual Unit Owner or lessee; (ii) an officer, director, stockholder, employee or designee of a corporation; (iii) a partner, employee or designee of a partnership; (iv) the fiduciary or beneficiary of a trust; (v) the manager or managing member of a limited liability company; or (vi) a duly appointed designee of any other entity. Under no circumstances may more than one (1) family reside in a Unit at one time. The Board of Directors shall have the power to authorize occupancy of a Residential Unit by persons in addition to those set forth above.

2. Definitions. As used herein, "family" or words of similar import shall be deemed to include a spouse, children, parents, brothers, sisters, grandchildren and other persons permanently cohabiting in the Residential Unit together with the Owner or permitted occupant thereof. As used herein, "guests" or words of similar import shall include only those persons who have a principal residence other than the Residential Unit. Unless otherwise determined by the Board of Directors of the Association, a person(s) occupying a Residential Unit for more than one (1) month without the Owner or a member of his family being present shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this Declaration (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to lessees.

3. Children. Children shall be permitted to be occupants of Residential Units. Children shall be the direct responsibility of their parents or legal guardians who must supervise them and assure that their respective children shall comply with the rules, regulations and restrictions of the Association while they are within the Condominium Property. Playing shall not be permitted in any of the lobbies, hallways, stairways, elevators and lobby areas.

4. Pet Restrictions. No Owner or occupant of a Residential Unit, including lessees and guests, shall be permitted to maintain any animals in their Unit or on the Condominium Property except as provided herein. Each Owner or occupant of a Residential Unit (regardless of the number of joint owners or occupants) may maintain two (2) household pets in his/her Unit, each weighing no more than 50 pounds, to be limited to a dog or a cat, provided such dog or cat (i) has been registered with the Association, (ii) is not kept, bred or maintained for any commercial purposes, (iii) does not become a nuisance or annoyance to neighbors, and (iv) is not a pit bull or other breed considered to be dangerous by the Developer or the Association; provided that neither the Developer, the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Unit

committing such violation shall fully indemnify and hold harmless the Developer, the Board, each Unit Owner and the Association in such regard. Each Owner or occupant who is permitted to maintain a properly registered dog or cat shall comply with all of the additional restrictions set forth in this Paragraph governing pets. Any dog or cat that has been properly registered may be replaced upon their death or removal from the Unit. No reptiles or other wildlife shall be kept in or on the Condominium Property (including Units). Unit Owners must pick-up all solid wastes of their pets and dispose of such wastes appropriately. All pets must be kept on a leash no more than six (6) feet in length at all times when outside the Unit. No pets may be kept on balconies, if any, when the Owner is not in the Unit. Violations of the provisions of this Paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Owners and/or to require any pet to be permanently removed from the Condominium Property. This Paragraph shall not prohibit the keeping of fish or a caged household-type bird(s) in a Residential Unit, provided that a bird(s) is not kept on Limited Common Elements and does not become a nuisance or annoyance to neighbors. Further this Paragraph shall not prohibit a Unit Owner from keeping a service/support animal, provided the Unit Owner is disabled, as that term is defined by federal law, and that the animal is a reasonable or necessary accommodation to his/her disability. Proof of disability must come in the form of a detailed statement from a medical doctor explaining (1) the disability of the Unit Owner and (2) the nature of the life function of the pet which is necessary to assist the Unit Owner with the disability.

B. Use Restrictions. The Unit Owner shall not permit or suffer anything to be done or kept in his Unit which will increase the rate of insurance on the Condominium Property, or which will obstruct or interfere with the rights of other Unit Owners or annoy them by unreasonable noises or otherwise; nor shall the Unit Owner commit or permit any nuisance, immoral or illegal act in or about the Condominium Property.

1. Nuisances. No nuisances shall be allowed upon the Condominium Property, nor shall any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents be permitted. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. Hazardous or flammable materials shall not be kept in any storage facilities located within the Condominium, if any.

2. Toxic or Noxious Matter. No person shall discharge into the property's sewer system or storm drain any toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, welfare, violate any law, subject any Owner or occupant to liability under state and federal law for any clean-up or cause injury or damage to neighboring property or business elsewhere on property.

3. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. Violations of laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party violating any such provisions.

4. Noise. No Owner shall make or permit any disturbing noises in the Condominium by himself or his family, servants, employees, agents, visitors, or licensees, nor permit any conduct by such persons that will interfere with the rights, comforts or conveniences of other Unit Owners. No Owner shall play or permit to be played any musical instrument, nor operate or permit to be operated a phonograph, television, radio, sound amplifier or other electronic equipment in a Unit in such a manner as to disturb or annoy other residents.

5. No Commercial Uses. In order to preserve the residential

character of the Condominium, no business, trade or profession of any type shall be operated from within any Residential Unit. Notwithstanding the foregoing, residents shall not be restricted from utilizing home computers, fax machines and telephones for personal or business use, provided such practice does not violate the residential character of the Condominium.

6. Common Elements. No person shall use the Common Elements, or any part thereof, or a Unit, or the Condominium Property, or any part thereof, in any manner contrary to or not in accordance with such Rules and Regulations pertaining thereto, as from time to time promulgated by the Association. No Owner shall permit any use of his Unit or make any use of the Common Elements that will increase the cost of insurance upon the Condominium Property.

7. Access and Use. The rights of access and use established with respect to the Condominium Property shall be subject to security checks and restrictions. In the event the Association hires security personnel, such personnel shall have the right to stop and question persons and to require satisfactory evidence of any such person's right to be where such person is stopped. Persons not establishing such rights to the satisfaction of the security personnel may be required to leave the Condominium Property.

8. Condominium Property. The entrances, passages, vestibules, elevators, lobbies, halls and like portions of the Common Elements shall not be obstructed nor used for any purpose other than the ingress and egress to and from the Condominium Property; nor shall any carts, bicycles, carriages, or any other similar objects be stored therein. The personal property of Owners must be stored in their respective Units or in assigned storage lockers or spaces, if any.

9. Storage on Terraces. No equipment, materials or other personal items shall be kept or stored on any terrace area of the Condominium, including, but not limited to, towels, clothing and bicycles.

10. Clotheslines. No clotheslines or similar devices shall be allowed on any portion of the Condominium Property.

11. Signs, Advertisements and Notices. No Residential Unit Owner shall show signs, advertisements, or notices of any type on the Common Elements and no Residential Unit Owner shall show signs, advertisements, or notices of any type in his Unit or within his Unit which said signs, advertisements, or notices are visible from the exterior of the Unit without the prior written consent of the Association.

12. Hurricane Preparation. An Owner who plans to be absent during the hurricane season must prepare his Unit prior to his departure by designating a responsible firm or individual to care for his Unit should the Unit suffer hurricane damage and furnishing the Association with the name(s) of such firm(s) or individual(s).

13. Drainage. There shall be no interference with the established drainage pattern over the property unless an adequate alternative provision is made for proper drainage with the prior written approval of the Association. The Condominium parcels are subject to drainage easements as recorded in the public records of Gulf County Florida in Official Records Book 728 at Page 703. Copies of these relevant easements are attached as Exhibit "J" to this Prospectus. No Owner shall dispose of any hazardous materials in any drains. If such Owner fails to maintain such drainage and, as a result, imminent danger or damage to person or property may result to the other Owners, then the Association shall have the right of access onto such area for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to persons and property and the Association shall use reasonable care so as to not cause any damage to such areas. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris.

14. Parking. Owners' automobiles shall be parked in the parking areas. No vehicles of any nature shall be parked on any portion of the Property except on a surfaced parking area thereof. To the extent that the Condominium has any guest parking, Owners are prohibited from parking in such guest parking spaces. No vehicle which cannot operate on its own power shall remain on the Property for more than forty-eight (48) hours. No maintenance or repair, except emergency repair, of vehicles shall be made on the Property. No commercial vehicles, recreational vehicles (RV's), limousines, motor homes, trailers of any type, including but not limited to house trailers or campers may be kept on the Property.

15. Association Employees. No Owner shall interfere with or direct any employees of the Association. Employees of the Association are not to be utilized for personal errands. The Board of Directors shall be solely responsible for directing and supervising employees of the Association, except to the extent such responsibility may be delegated to the Association's manager.

16. Access by Association. The Association may retain a pass-key to all Units. No Owner shall alter any lock, nor install a new lock, without the prior written consent of the Board of Directors, or, in the event of emergency, without delivering a key to the Association promptly thereafter. Where such consent is given, the Owner shall provide the Association with an additional key.

17. Assessments. Every Unit Owner shall promptly pay the Assessments levied by the Association.

18. Maintenance. Every Unit Owner shall maintain in a clean and sanitary manner and repair his Unit and all interior surfaces within or surrounding his Unit (such as the surfaces of the walls, ceilings, floors, etc.) whether or not part of the Unit or the Limited Common Elements which are appurtenant to the Unit, and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his Unit.

19. Window Coverings. Owners shall not hang any laundry, garments or other objects which are visible from the outside of the Unit, except for draperies, blinds, shades, or other suitable window coverings. Decorative window coverings shall not include any type of reflective film on any glass windows or doors.

20. Alterations. Without limiting the generality of Article XI hereof, but subject to Article VI hereof, no Owner shall make any additions, alterations or improvements in or to the Common Elements, the Limited Common Elements, or the exterior of a Unit, including, but not limited to, the installation of screens, sliding glass doors, enclosures, awnings, trellises, window tinting, painting or other decorating of any nature visible from the exterior of the Unit, installation of electrical wiring, antennas, machinery, air conditioning units, or hard floor surfaces, without the prior written consent of the Board of Directors.

21. Exterior Improvements. Without limiting the generality of the preceding Paragraph 20 of this Section B, but subject to Article XI hereof, the Unit Owner shall not cause anything else to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, or windows of the buildings except with the prior written consent of the Board of Directors, and further, when approved, subject to the rules and regulations adopted by the Board of Directors, from time to time. Notwithstanding anything contained herein to the contrary, an Owner may display one (1) portable, removable United States flag in a respectful manner on the exterior of the Unit, and portable, removable official armed services flags (not to exceed 4 1/2 feet by 6 feet) that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard may likewise be displayed on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day. In addition, the Association may not refuse the request of a Unit Owner for a reasonable accommodation for the attachment on the mantel or frame of the door of the Unit Owner of a religious object not to exceed three (3) inches wide, six (6) inches high, and one and one-half (1 1/2) inches deep.

22. Weight and Sound Restriction. With the exception of the Developer, hard floor coverings, including but not limited to, tile, wood, marble and stone, may not be installed in any part of the Unit (except in the bathrooms, kitchen or foyer) or Limited Common Elements without the prior written consent of the Board of Directors in accordance with the procedures specified herein. Approval for installation of any hard floor covering shall be subject to compliance with weight and soundproofing specifications adopted by the Board of Directors from time to time. Due to the propensity of carpeting to retain moisture and thus contribute to the corrosion of the concrete slabs, under no circumstances may carpeting be installed or maintained on any terraces. Additionally, the floor coverings (and insulation and adhesive material therefor) installed on any terrace shall not exceed a thickness that will result in the finish level of such structures being above the bottom of any scuppers or diminish the required height of the rails (as established by the applicable building code). Each Owner agrees that sound transmission in a building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can often be heard in another Unit. The Developer does not make any representations or warranties as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from sound transmission.

23. Mitigation of Dampness and Humidity. No Unit Owner shall install within their Unit or upon the Common Elements or Association Property non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture and/or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with back boards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at 78°F to minimize humidity in the Unit. Leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed or otherwise acquiring title to a Unit, shall be deemed to have agreed that Developer is not responsible and hereby disclaims any responsibility for the existence or presence of mold, mildew, fungus or spores and for any illness or allergic reactions which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free of contamination. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. The Developer does not make any representations or warranties regarding the existence or development of same. In furtherance of the rights of the Association as set forth in Article VI above, in the event that the Association reasonably believes that the provisions of this paragraph are not being complied with, then the Association shall have the right, but not the obligation, to enter the Unit (without requiring the consent of the Unit Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Owner or any other party), to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Owner to the Association).

24. Pool. In order to provide for proper safety, food or beverages shall be consumed at the pool only in the area designated by the Association.

a. No radios or other music device may be played without headphones at the pool by any resident or guests.

b. Pool chairs, if any, may not be removed from the pool

deck.

c. All residents must provide proper identification to gain access to the pool.

d. No parties may be held on the pool deck or other Common Element without the approval of the Association.

e. Owners must accompany their guests to the pool at all times. No more than two (2) guests are permitted at any time.

25. Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in Subparagraphs A and B of this Article.

26. Effect on Developer. Subject to the following exceptions, the restrictions and limitations set forth in this Article shall not apply to the Developer, nor to Units owned by the Developer. The Developer shall not be exempt from the restrictions, if any, relating to requirements that leases or lessees be approved by the Association, except as specifically provided herein, pet restrictions, or vehicular restrictions, if any, except as such vehicular restrictions relate to the Developer's construction, maintenance and marketing activities.

C. Transfer of Unit. No Unit Owner, other than the Developer, may transfer their Unit except by complying with the following provisions:

1. Right of First Refusal. Any Owner who receives a bona fide offer to purchase their Unit (such offer to purchase a Unit shall be referred to as an "Outside Offer"), which they intend to accept shall give notice by certified mail to the Board of Directors of the receipt of such Outside Offer. Said notice shall also state the name and address of the proposed purchaser, the terms 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 Owner to sell the Unit to the Association or its designee upon the same terms and conditions as contained in such Outside Offer. The Owner shall submit in writing such further information with respect thereto as the Board of Directors may reasonably request. 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 Owner, to purchase such Unit upon the same terms and conditions as contained in the Outside Offer. If the Board of Directors elects to purchase the Unit on behalf of the Association in accordance with the terms of the Outside Offer, the Board of Directors shall have the authority to proceed with such purchase on behalf of all 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 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.

In the event the Association or its designee should fail to notify the Owner of its election to purchase such Unit within the time period prescribed above, the Owner shall be free to accept the Outside Offer. In such event, if the Owner accepts such Outside Offer but such sale is not consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing, then, should such Owner thereafter elect to sell such Unit the Owner shall be required to again comply with all of the terms and provisions of this Article.

2. Certificate. Upon request of the Owner, a duly authorized officer of the Association shall provide the Owner with a certificate of waiver of its right of first refusal if the Association or its designee does not elect to purchase the Unit in accordance with the terms set forth in the Outside Offer.

3. Approval by Association. In order to determine that proposed

purchasers are familiar with the governing documents and Rules and Regulations of the Association, the Board of Directors, at its option, shall have the right to require a personal interview with the proposed purchaser. Notwithstanding anything in this Article to the contrary, the Association shall have the absolute right to deny approval of any sale without being obligated to purchase the Unit if: (a) the sale would result in a violation of the Association's governing documents; or (b) the Owner or proposed purchaser makes any material misrepresentation on any documents provided to the Association or in the personal interview. A material misrepresentation shall be defined as any false representation or omission which in the sole judgment of the Board of Directors would influence their decision in regard to whether to exercise their right of first refusal.

4. Exceptions. The provisions of this Article shall not apply with respect to any sale or conveyance of any Unit by: (a) the Owner thereof to his spouse, adult children, parents, or a trustee, corporation or other entity where the Owner or the aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trustee, corporation or other entity; (b) the Association; (c) the Developer; or (c) an Institutional First Mortgagee deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure; provided, however, that each succeeding Owner shall be bound by, and his Unit subject to, the provisions of this Article. Any Owner shall be free to convey or transfer his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Owner shall be bound by, and his Unit subject to, the provisions of this Article.

5. Transfer Fee. The Association shall have the authority to charge a non-refundable one-hundred dollar (\$100.00) screening fee per applicant other than husband/wife or parent/dependent child, which are considered one applicant in connection with the approval required for the sale of a Unit. Said fee may be increased by the Board of Directors from time to time but shall not exceed the highest fee permitted by law as set forth in Chapter 718, Florida Statutes, as same may be amended from time to time.

6. Sale in Violation of this Article. Any purported sale of a Unit in violation of this Article shall be voidable at any time at the election of the Association and if the Board of Directors shall so elect, the Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to void a conveyance. Said Owner shall reimburse the Association for all expenses (including attorneys' fees and costs incurred in connection with such proceedings).

D. Lease of Unit. The following restrictions shall apply in connection with the leasing of Residential Units:

1. Association as Agent. An Owner leasing his Unit shall be deemed to irrevocably appoint the Association as his agent or attorney-in-fact in his place and stead to terminate the tenancy of any tenant who violates any of the terms of the Association's Governing Documents or statutes of the State of Florida. The determination of whether a violation has occurred shall be within the sole discretion of the Board of Directors. The Owner shall be liable for all costs and reasonable attorneys' fees incurred by the Association in connection with the termination of the lease or tenancy and the eviction of the tenant. This provision shall not obligate the Association to commence such proceeding and shall not relieve the Owner of his obligation to terminate the Lease and evict the tenant for any violations of law or the Association's Governing Documents.

2. Tenant Use Rights. When a Unit is leased, a tenant shall have all use rights in the Association Property and those Common Elements otherwise readily available for use generally by Owners and the Owner shall not have such rights except as a guest, unless such rights are waived in writing by the tenant. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a Unit Owner and a tenant of Association Property and Common Elements otherwise readily available for use by Unit Owners.



3. Subleases, Assignments and Renewals of Leases. Except as otherwise provided herein, the provisions of this Article shall also apply to subleases, assignments and renewals of leases.

E. Miscellaneous Restrictions and Obligations.

1. Liability for Common Expenses. No Owner of a Condominium Unit may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use and enjoyment of any of the Common Elements or by the abandonment of his Unit.

2. Restraint Upon Separation and Partition of Common Elements. No Unit Owner shall attempt to convey his undivided interest in the Common Elements which are appurtenant to each Unit separately from the Unit to which it is appurtenant. The undivided interest in the Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit to which it is appurtenant, even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Unit. The respective shares in the Common Elements shall remain undivided, and no Unit Owner shall have an action for partition of the Common Elements, the Condominium Property, or any part thereof, except as provided herein with respect to termination of the Condominium. Any conveyance, mortgage or other instrument which purports to effect the transfer, conveyance, devise or encumbrance, or which purports to grant any right, interest, or lien in, to, or upon a Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in the Common Elements, unless the same purports to convey, devise, encumber or otherwise treat or deal with the entire Unit and its appurtenances. Any instrument conveying, devising, encumbering or otherwise dealing with the Unit which describes said Unit by the designation assigned thereto in Exhibit "B," without limitation or exception, shall be deemed and construed to affect the entire Unit and its appurtenant undivided interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or tenants by the entirety.

3. Interest in Unit. No Unit Owner shall attempt in any manner to divest himself of his interest in the Unit and its appurtenances except by conveyance of his total interest in the Unit and its appurtenances.

4. Judicial Sale. No judicial sale of a Unit nor any interest therein shall be valid unless:

a. The sale is to a purchaser approved by the Association which approval shall be in recordable form, executed by two officers of the Association and delivered to the purchaser; or

b. The sale is a result of a public sale with open bidding.

5. Developer's Rights. Nothing set forth in this Declaration shall be construed as limiting the Developer's rights to freely and without approval of the Association or any other Unit Owner, convey, alter or modify Units in the Condominium subject to the limitations of Chapter 718 of the Florida Statutes.

6. Obligations of Unit Owners. In addition to other obligations and duties heretofore set out in this Declaration, every Unit Owner shall:

a. Promptly pay the Assessments levied by the Association.

b. Maintain in good condition and repair his Unit, and Limited Common Elements appurtenant thereto, and all interior surfaces within or surrounding his Unit, and maintain and repair the fixtures therein.

c. Conform and abide with the By-Laws and uniform rules

and regulations promulgated by the Board of Directors of the Association.

F. Mortgages. No Unit Owner may mortgage his Unit or any interest therein without the approval of the Association except to an Institutional Mortgagee. The approval of any other mortgage may be granted upon conditions determined by the Association, or may be arbitrarily withheld. This provision shall not be construed so as to prevent the Developer or Association from accepting a purchase money mortgage as a part of the purchase price of a Unit nor prevent a Unit Owner from accepting a purchase money mortgage from an approved purchaser.

G. Sales Activity and Developer's Rights. Until the Developer has completed and sold all the proposed Units of the Condominium, neither the Unit Owners nor the Association nor their use of the Condominium shall interfere with the completion of the contemplated improvements, Developer's access to and entry upon the Condominium for construction and sales purposes, and the sale of Units. The Developer (or its duly authorized agents or assigns) may make such use of the unsold Units and the Common Elements as may facilitate such construction access, completion and sale, including, but not limited to, the storage of equipment or materials, the maintenance of construction and sales offices for the construction and showing of the property and display of signs, billboards, placards, and visual promotional materials. The Developer may use unsold Units as model units or as sales offices for display purposes to prospective Condominium purchasers. The Developer shall have the right to use unassigned parking spaces for prospective purchasers and such other parties as Developer determines. The sales office personal property, model furnishing, signs and all items pertaining to construction and sale shall not be considered Common Elements and shall remain the property of the Developer. As long as Developer shall hold fee simple title to any Unit in the normal course of business, no amendment affecting or altering Developer's rights under this Declaration may be made without Developer's written consent.

The Developer reserves the right to assign storage units and/or parking spaces to Unit Owners for a fee and to designate such areas as limited common elements.

H. Changes in Developer-Owned Units. Developer shall have the right, without the vote or consent of the Association, to make alterations, or improvements in, to, and upon Units owned by Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary, so long as the configuration or size of the Units is not changed, the appurtenances to the Units are not materially altered or modified, and the percentage interest in the Common Elements of any Units shall not be changed by reason thereof. The provisions of this paragraph may not be added to, amended or deleted without the prior written consent of the Developer.

## **ARTICLE XIX: ADDITIONAL RIGHTS OF MORTGAGEES AND OTHERS**

A. Availability of Association Documents. The Association shall have current and updated copies of the following for inspection by Institutional Mortgagees during normal business hours or under other reasonable circumstances: (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.

B. Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of:

1. any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;

2. a sixty (60)-day delinquency in the payment of the Assessments on a mortgaged Unit;

3. the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

4. any proposed action which requires the consent of a specified number of mortgage holders.

C. Amendments. Subject to the other provisions of the Declaration and except as provided elsewhere to the contrary, an amendment of a materially adverse nature to mortgagees must be agreed to by mortgagees that represent at least fifty one (51%) percent of the votes of units that are subject to mortgages.

## **ARTICLE XX: ADDITIONAL PROVISIONS**

A. Titles. Article and Paragraph titles inserted throughout this Declaration are intended only as a matter of convenience and for reference and in no way define, limit, or in any way affect this Declaration, or define, limit or in any way affect the content of the respective Article and/or Paragraph.

B. Conflict. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration, Exhibits attached hereto or otherwise, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its Exhibits to the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

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

D. 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) or registered mail to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in this Declaration or in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to Mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

E. Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the Exhibits annexed hereto, or the 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).

F. Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute

or litigation shall be governed by the laws of the State of Florida.

G. Gender; Plurality. Whenever the context and facts permit, the use of the singular shall include the plural and the plural shall include the singular and the use of any gender shall be deemed to include all genders.

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

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

J. Time Shares. The Developer will not create time-share estates with respect to any Units in this Condominium.

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

L. Execution of Documents: Attorney-in-Fact. Without limiting the generality of other articles of this Declaration and without such other articles limiting the generality hereof, each Owner, by reason of acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium, as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all documents or consents. This power of attorney is irrevocable and coupled with an interest. The provisions of this paragraph may not be amended without the consent of the Developer.

M. Liability of the Association. Notwithstanding anything contained in the Association's Governing Documents, the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium and/or Association Property, including, without limitation, Owners, tenants and their respective guests, invitees, agents, servants, contractors or subcontractors or for any property of such persons. Without limiting the generality of the foregoing:

1. it is the express intent of the Association's Governing Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;

2. 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, Gulf County and/or any other jurisdiction or the prevention of tortious activities; and

3. the provisions of the Association's Governing 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 Assessments and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if Assessments are chosen to be used for any such reason.

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

N. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. It is the intention of the Developer that this Declaration and the provisions hereof, as well as the provisions of all Exhibits hereto, shall comply with the Act, and if there be any direct conflict between the provisions of this Declaration or any of the Exhibits hereto and the said Act, then the provisions of the Act shall govern. If there shall ever be a question as to the interpretation of any of the provisions of this Declaration or the Exhibits hereto, same shall be interpreted in accordance with the intent of the Developer in such manner that any such questions would conform to the Act and against any interpretation which would not be in conformance with the said Act.

O. Rules and Regulations. Subject to the terms of this Declaration, which provide for conditions under which this Declaration may be terminated, the Rules and Regulations of the Association shall remain in effect for a minimum of twenty-five (25) years and shall be automatically renewed thereafter.

#### **ARTICLE XXI: DISCLAIMER OF WARRANTIES**

A. Disclaimer of Warranties. **Developer hereby disclaims any and all express or implied warranties as to the design; construction; sound and/or odor transmission; existence and/or development of molds, mildew, toxins or fungi; furnishing and equipping of the Condominium Property, except only those set forth in Section 718.203 of the Act, to the extent applicable and to the extent that same have not expired by their terms. As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed. Each Unit Owner, by virtue of acceptance of title to its respective Unit (whether from the Developer or another party), shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages. The Unit Owner has not received nor relied on any warranties and/or representations from Developer of any kind, other than as expressly provided herein.**

Further, given the climate and humid conditions in Florida, molds, toxins and fungi may exist and/or develop within the Unit and/or the Condominium Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have released the Developer from any and all liability resulting from same, including, without limitation, any liability for incidental or consequential damages (which may result from, without limitation, the inability to possess the Unit, inconvenience, moving costs, hotel costs, storage costs, loss of time, lost wages, lost opportunities, and/or personal injury). Without limiting the generality of the foregoing, leaks, wet flooring and moisture will contribute to the

growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed or otherwise acquiring title to a Unit, shall be deemed to have agreed that Developer is not responsible and hereby disclaims any responsibility for any illness or allergic reactions which may be experienced by the Unit Owner, its family members and/or their guests, tenants and invitees as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free of contamination.

Each Owner understands and agrees that for some time in the future, it and its guests, tenants and invitees may be disturbed by the noise, commotion and other unpleasant effects of nearby construction activity and as a result Owner and its guests, tenants and invitees may be impeded in using portions of the Condominium Property by that activity. Because the Condominium is located in an urban area, demolition or construction of buildings and other structures within the immediate area or within the view lines of any particular Unit or of any part of the Condominium (the "Views") may block, obstruct, shadow or otherwise affect Views, which may currently be visible from the Unit or from the Condominium. Therefore, each Owner, for itself, its successors and assigns, by acceptance of a deed or otherwise acquiring title to a Unit, releases Developer, its partners and its and their officers, members, directors, and employees and every affiliate and person related or affiliated in any way with any of them ("Developer's Affiliates") from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind, including attorneys' fees and costs, including those incurred through all arbitration and/or appellate proceedings, related to or arising out of any claim against the Developer or Developer's Affiliates related to Views or the disruption, noise, commotion, and other unpleasant effects of nearby development or construction. As a result of the foregoing, there is no guarantee of view, security, privacy, location, design, density or any other matter.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

Signed, Sealed and Delivered  
in the presence of:

DEVELOPER:

HIGHLAND PSJ LLC, a Florida limited  
liability company

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

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

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

HIGHLAND P2 PSJ LLC, a Florida  
limited liability company

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

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

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

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

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of HIGHLAND PSJ LLC, a Florida limited liability company. He is personally known to me or produced a driver's license issued by the Florida Department of Highway Safety and Motor Vehicles as identification and did not take an oath.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
Commission No.:

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

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of HIGHLAND P2 PSJ LLC, a Florida limited liability company. He is personally known to me or produced a driver's license issued by the Florida Department of Highway Safety and Motor Vehicles as identification and did not take an oath.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
Commission No.: