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(For Recorder's Use Only)

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM**

of

OPUS CONDOMINIUM

(formerly known as The Islamorada, a condominium)

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM, AMENDS, REPLACES, RESTATES AND SUPERSEDES IN ITS ENTIRETY THE DECLARATION OF CONDOMINIUM RECORDED ON MARCH 29, 2006, IN OFFICIAL RECORDS BOOK 5795, PAGE 358 OF THE PUBLIC RECORDS OF VOLUSIA, COUNTY FLORIDA.

1.	INTRODUCTION AND SUBMISSION.....	1
1.1	The Land	1
1.2	Submission Statement.....	1
1.3	Name.....	2
2.	DEFINITIONS.....	2
3.	DESCRIPTION OF CONDOMINIUM.....	5
3.1	Identification of Units.....	5
3.2	Unit Boundaries.....	5
3.3	Limited Common Elements	6
3.4	Easements.....	7
4.	COMMON ELEMENTS, COMMON SURPLUS, COMMON EXPENSES AND VOTING RIGHTS.....	9
4.1	Percentage Ownership and Shares.....	9
4.2	Restraint Upon Separation and Partition of Common Elements.....	9
4.3	Voting	9
5.	AMENDMENTS	9
5.1	By the Association.....	9
5.2	By Declarant.....	10
5.3	Execution and Recording.....	10
5.4	Restrictions on Amendments.	11
5.5	Scrivener's Errors.....	11
6.	MAINTENANCE AND REPAIRS	12
6.1	Units.....	12
6.2	Common Elements	12
6.3	Association's Right of Access to Units.....	13
6.4	Hurricane Shutters	13
6.5	Miscellaneous.....	13
7.	ADDITIONS, ALTERATIONS OR IMPROVEMENTS.....	13
7.1	By the Association.....	13
7.2	By Unit Owners.....	13
7.3	Life Safety Systems	15
7.4	By Declarant.....	15
7.5	Changes in Declarant -Owned Units	16

8.	OPERATION OF THE CONDOMINIUM BY THE ASSOCIATION.....	16
8.1	Powers and Duties	16
8.2	Limitation Upon Liability of Association.....	18
8.3	Restraint Upon Assignment of Shares in Assets.....	19
8.4	Approval or Disapproval of Matters.....	19
8.5	Acts of the Association.....	19
9.	ASSESSMENTS.....	19
9.1	Determination of Common Expenses and Assessments.....	19
9.2	Liability for Payment.....	19
9.3	Unpaid Assessments.....	20
9.4	Lien for Assessments.....	20
9.5	Notice of Intention to Foreclose Lien.....	21
9.6	Collection of Rentals.....	21
9.7	Institutional Mortgagee.....	21
9.8	Certificate of Unpaid Assessments.....	22
9.9	Special Assessments.....	22
9.10	Suspension of Rights of Delinquent Owners.....	22
10.	INSURANCE.....	22
10.1	Purchase, Custody and Payment.....	22
10.2	Coverage.....	23
10.3	Additional Provisions.....	24
10.4	Premiums.....	24
10.5	Insurance Trustee; Share of Proceeds.....	24
10.6	Distribution of Proceeds.....	25
10.7	Association as Agent.....	26
10.8	Benefit of Mortgagees.....	26
11.	RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY.....	26
11.1	Determination to Reconstruct or Repair.....	26
11.2	Plans and Specifications.....	27
11.3	Responsibility.....	27
11.4	Estimate of Costs; Assessments.....	27
11.5	Construction Funds.....	27
11.6	Owner Report.....	28

11.7	Benefit of Mortgagees	28
12.	CONDEMNATION	29
12.1	Deposit of Awards with Insurance Trustee.....	29
12.2	Determination Whether to Continue Condominium	29
12.3	Disbursement of Funds	29
12.4	Unit Reduced but Habitable	29
12.5	Unit Uninhabitable	30
12.6	Taking of Common Elements	31
12.7	Amendment of Declaration	31
13.	OCCUPANCY AND USE RESTRICTIONS	31
13.1	Occupancy of Units	31
13.2	Pets.....	32
13.3	Alterations	32
13.4	Use of Common Elements	32
13.5	Nuisances	32
13.6	No Improper Uses.....	32
13.7	Leases.....	32
13.8	Exterior Improvements; Landscaping.....	33
13.9	Prevention of Mold.....	33
13.10	Protection of Sea Turtles.....	34
13.11	Effect on Declarant; Association.....	34
14.	COMPLIANCE AND DEFAULT	34
14.1	Negligence.....	34
14.2	Compliance	34
14.3	Costs and Attorneys' Fees	35
14.4	No Waiver of Rights.....	35
15.	TERMINATION OF CONDOMINIUM	35
16.	ADDITIONAL PROVISIONS	35
16.1	Additional Rights of Institutional Mortgagees.....	35
16.2	Assignment of Declarant's Rights	36
16.3	Limitation of Liability	36
16.4	Covenant Running With the Land.....	36
16.5	Notices	37

16.6	No Time-Share Estates or Club Memberships	37
16.7	Interpretation	37
16.8	Mortgagees	37
16.9	Exhibits	37
16.10	Adjustment of Dollar Amounts	37
16.11	Litigation	38
16.12	Warranties	38
16.13	Refund of Taxes, Fees and Other Charges	38
16.14	Future Development; Approvals; Execution of Documents	39
16.15	Signature of President and Secretary	39
16.16	Governing Law	39
16.17	Severability	39
16.18	Waiver	39
16.19	Ratification	40
16.20	Gender; Plurality	40
16.21	Captions	40
EXHIBIT A	Legal Description of Land	
EXHIBIT B	Survey	
EXHIBIT C	Allocation of Shares of Common Elements, Common Expenses and Common Surplus	
EXHIBIT D	By-Laws	
EXHIBIT E	Articles of Incorporation	

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
OF
OPUS CONDOMINIUM**

This Amended And Restated Declaration of Condominium ("Declaration") made as of this 29th day of March 2011 ("Effective Date") by Opus Condominium LP, a Delaware limited partnership, formerly known as Islamorada LP, a Delaware limited partnership, having an address at Commerce Court West, 199 Bay Street, Suite 2900, Box 459, Toronto, ON, Canada M5L 1G4 ("Declarant").

The Condominium, originally known as The Islamorada, a condominium, was created by Islamorada Condominiums, LLC, a Florida limited liability company ("Creating Developer") pursuant to the Declaration of Condominium of The Islamorada, a Condominium, recorded on March 29, 2006, in Official Records Book 5795, Page 358 of the Public Records of the County ("Original Declaration").

Declarant foreclosed on Creating Developer's interest in the Condominium and is now the owner of all of the Units and 100% of the voting interests of the Association.

Declarant is a "bulk buyer," as such term is defined in Section 718.703, Florida Statutes.

Declarant, as the holder of 100% of the voting interests in the Association has elected to amend and restate the Original Declaration.

Declarant, joined by the Association, declares that this Declaration amends and restates in its entirety the Original Declaration. This Declaration shall supersede the Original Declaration upon being filed and recorded by the Association so that from the Effective Date, the Land and Improvements shall be owned, held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, restrictions, easements, charges and liens of this Declaration, as it is lawfully amended from time to time, and which shall run with the Land and be binding on all persons having any right, title or interest in the Land, or any part thereof and their heirs, successors and assigns, and shall inure to the benefit of each Owner. This Declaration shall become effective to amend and restate the Original Declaration on the date it is filed in the Public Records of the County.

1. INTRODUCTION AND SUBMISSION.

1.1 **The Land.** Declarant owns title to the land located in Volusia County, Florida described in Exhibit "A" ("Land").

1.2 **Submission Statement.** Declarant submits the Land and all improvements erected or to be erected thereon, all easements, rights and appurtenances and all other property, real, personal or mixed, intended for use in connection therewith, to the condominium form of

ownership and use in the manner provided by the Florida Condominium Act, Chapter 718, Florida Statutes as it exists on this date, excluding all public and private utility installations (including voice, video and data) and other personal property, if any, not owned by Declarant which are not submitted to condominium ownership.

1.3 **Name**. The name by which this condominium is to be identified is: Opus Condominium ("Condominium").

2. **DEFINITIONS**. The following terms when used in this Declaration and in its exhibits, as they may subsequently be amended, shall have the meaning indicated in this Article, except where the context clearly indicates a different meaning:

"**Act**" means the Condominium Act (Chapter 718, Florida Statutes) as it exists on this date.

"**Articles**" means the Articles of Incorporation of the Association attached at Exhibit "E," as they may be amended from time to time.

"**Assessment**" or "**Assessments**" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against an Owner.

"**Association**" means Opus Condominium Association, Inc., a not for profit Florida corporation, formerly known as, Islamorada Condominiums Association of The Shores, Inc., the entity responsible for the operation of the Condominium.

"**Association Property**" means any real or personal property owned or leased by, or dedicated by plat to, the Association, including any improvements on such real property.

"**Attorneys' Fees**" means the reasonable fees, disbursements and court costs incurred for the services of any attorney, paralegal or other support personnel, including, without limitation, any accountant or other professional, providing services to the party engaging such attorney or attorney's firm.

"**Board of Directors**" or "**Board**" means the Board of Directors of the Association.

"**Building**" means the structure on the Condominium Property in which the Units are located.

"**By-Laws**" means the By-Laws of the Association attached as Exhibit "D," as they may be amended from time to time.

"**Charges**" means any charge or charges due to the Association, which may include charges due to the Association for the use of Condominium Property or recreation areas, maintenance services furnished at the expense of an Owner, other services furnished for the benefit of an Owner, and surcharges, fines and damages and other sums due from such Owner.

"**Common Elements**" means and includes:

- Units;
- (a) those portions of the Condominium Property not included within the Units;
 - (b) easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of Utility Services and other services to Units and the Common Elements;
 - (c) an easement of support in every portion of a Unit which contributes to the support of the Building;
 - (d) the property and installations required for the furnishing of Utility Services and other services to more than one Unit or to the Common Elements;
 - (e) any other parts of the Condominium Property designated as Common Elements in this Declaration; and
 - (f) the Life Safety Systems.

"Common Expenses" means all expenses incurred by the Association on behalf of the operation of the Association or on behalf of the Condominium, including, without limitation:

- (a) expenses of administration, management, operation, maintenance, repair or replacement of the Common Elements and the furniture and furnishings located on the Common Elements (excluding furniture and furnishings on the Limited Common Elements);
- (b) costs of carrying out the powers and duties of the Association and for administration and management of the Association; and
- (c) any other expenses designated as Common Expenses by the Act or the Condominium Documents.

Common Expenses shall not include expenses related to any Limited Common Elements specified in this Declaration as the obligation of an Owner or group of Owners less than all of the Owners.

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

"Condominium Documents" means collectively this Declaration, the Articles, the By-Laws and the rules and regulations of the Condominium.

"Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to that Unit; when the context permits, the term includes all other appurtenances to the Unit.

"Condominium Property" means the Land, the Improvements, all easements and rights appurtenant intended for use in connection with the Condominium and all other property, real, personal and mixed made subject to this Declaration.

"County" means the County of Volusia, State of Florida.

"Declaration" or **"Declaration of Condominium"** means this instrument, as it may be amended from time to time.

"Division" means the Division of Florida Condominiums, Timeshares and Mobile Homes of the Florida Department of Business and Professional Regulation, or its successors.

"Improvements" means all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property, including, but not limited to, the Building.

"Individual Assessment" or **"Individual Assessments"** includes assessments against an Owner by the Association for the cost of reconstruction or repair incurred by the Association arising from failure of an Owner to secure or maintain insurance required by Section 10.1(f) and includes the cost of obtaining such insurance incurred by the Association pursuant to Sections 10.1(f) and 10.8.

"Institutional Mortgagee" means any of the following as holder or guarantor of a first mortgage on a Unit: a bank, savings and loan association, insurance company, real estate or mortgage investment fund or trust, pension fund, an agency of the United States government, a governmental sponsored entity or any governmental sponsored insurer or guarantor of a first mortgage on any Unit, mortgage banker, any other lender generally recognized as an institutional-type lender, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), any lender advancing funds to Declarant secured by an interest in any portion of the Condominium Property and Declarant.

"Legal Requirements" means any requirements, regulations, laws or rulings of the County, the federal government or any other governmental body, agency or official having jurisdiction over the Condominium Property.

"Life Safety Systems" includes any and all emergency lighting, audio and visual signals, safety systems, sprinkler systems in the Building, emergency generators and smoke detection systems, all means of emergency ingress and egress, including all stairways and stair landings, now or subsequently installed in the Building, whether or not within the Units, together with all conduits, wiring, electrical connections and systems related thereto.

"Limited Common Elements" means the Limited Common Elements described in Section 3.3 of this Declaration.

"Owner" or **"Unit Owner"** means any one or more persons, firms, associations, corporations or other legal entities holding legal title to a Condominium Parcel as shown by the

real estate records in the office of the Clerk of the County, including Declarant; "Owner" shall not mean or refer to (i) any holder of a mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure proceedings or deed in lieu of foreclosure, or (ii) any lessee or tenant of an Owner.

"Owner Property" has the meaning indicated in Section 10.1(f).

"Person" means an individual or individuals, firm, corporation, partnership, limited liability company, association, trust or other legal entity or any combination of any of the foregoing.

"Primary Institutional Mortgagee" means the Institutional Mortgagee which owns of record at any time first mortgages on Units securing a greater aggregate indebtedness than is owed to any other Institutional Mortgagee.

"Unit" means a part of the Condominium Property which is subject to exclusive ownership.

"Utility Services" shall include, but not be limited to, electric power, domestic water, heating, air conditioning, trash removal, sewerage, master antenna, cable television, telephone and security systems.

3. **DESCRIPTION OF CONDOMINIUM.**

3.1 **Identification of Units.** The Condominium Property includes a Building containing 54 Units. Each Unit is identified by a separate numerical or alpha-numerical designation. The designation of each Unit is set forth on Exhibit "B". Exhibit "B" consists of a survey of the Land, a graphic description of the Improvements, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Exhibit "B" together with this Declaration identify the Common Elements, the Limited Common Elements and each Unit and their relative locations and approximate dimensions. There shall pass with a Unit as appurtenances: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with full voting rights; and (e) other appurtenances as may be provided in this Declaration.

3.2 **Unit Boundaries.** Each Unit shall include a fee simple interest in that part of the Building lying within the boundaries of the Unit, which boundaries are as follows:

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

(i) **Upper Boundaries** - the horizontal plane of the unfinished lower surface of the structural ceiling of the Unit.

(ii) **Lower Boundaries** - the horizontal plane of the unfinished upper surface of the floor of the Unit.

(b) **Perimetrical Boundaries**. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

(c) **Apertures**. Where there are apertures in any boundary, including, but not limited to, windows, doors, conversation pits and skylights, such boundaries shall be extended to include the interior unfinished surfaces of such apertures, including the framework. Exterior surfaces made of glass or other transparent material, and all framing and casings, shall be included in the boundaries of the Unit and shall not be deemed a Common Element.

(d) **Exclusions**. The boundary of any Unit shall not include any unfinished interior surfaces of interior bearing walls or partitions or pipes, ducts, walls, conduits, chases or other facilities running through any interior wall or partition to furnish service to any other Unit or the Common Elements.

(e) **Conflict or Ambiguity**. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "B" shall control in determining the boundaries of a Unit.

3.3 **Limited Common Elements**. The Limited Common Elements shall consist of:

(a) **Terraces, Balconies and Patios**. The terraces, balconies and patios to which direct and exclusive access shall be afforded to a particular Unit shall be for the exclusive use of the Owner owning such abutting Unit. Such Owner shall be responsible for the maintenance and care of the balcony, terrace or patio, including, without limitation, all wiring, electric outlets, lighting fixtures and screening. The Association shall be responsible for the maintenance of the structural elements of such balcony or terrace. An Owner shall not enclose the exterior balconies, terraces or patios without the prior written approval of the Board.

(b) **Automobile Parking Spaces and Storage Spaces**. Each Unit shall be entitled to the exclusive use of one parking space and one storage space. The parking space and storage space shall be assigned by Declarant at the time of closing on the Unit. The Board shall be empowered to change such assignments and to make additional assignments provided the Owners affected by such change consent but no changes may be made without the prior consent of Declarant so long as Declarant holds any Units for sale in the ordinary course of business. Assignments (or changes in assignments) shall be in writing (but need not be recorded in the Public Records). Declarant, during the period it holds at least one Unit for sale in the ordinary course of business, shall have the right to assign for consideration additional parking spaces and storage spaces to a Unit. Upon such assignment, each parking space or storage space so assigned shall be a Limited Common Element of the applicable Unit. An Owner's right to use such parking space or spaces or storage space shall become an appurtenance to the Unit and may be encumbered or conveyed thereafter as an appurtenance to the Unit without specific reference to

the parking space or storage space. Except as indicated below, after exclusive use of any such parking space or storage space is assigned by Declarant, it may not be conveyed, assigned or encumbered except as an appurtenance to the Unit to which it is assigned or as otherwise provided in this Section. An Owner may transfer the Owner's exclusive right to use an additional parking space by executing and delivering to another Owner a document executed with the formalities of a deed transferring the exclusive right to such parking space. After the sale of the last Unit in the Condominium by Declarant, any parking spaces not assigned by Declarant may be assigned by the Association.

(c) **Spaces Created by Combining Units.** If any part of a wall separating two Units is removed in accordance with the provisions contained elsewhere in this Declaration, the space created by the removal shall be a Limited Common Element appurtenant to those Units.

(d) **Utility Installations.** Utility installations serving less than all the Units shall be deemed a Limited Common Element appurtenant to the Units served.

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

(a) **Support.** An easement of support and of necessity is reserved for the benefit of each Unit and each Unit shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(b) **Utility Services and Other Services; Drainage.** Easements in favor of governmental and quasi-governmental authorities, utility companies, cable television and communications companies, ambulance and emergency vehicle companies and parcel/mail carrier companies, over and across all roads and drives existing from time to time within the Condominium Property, and over, under, upon and across the Common Elements, as may be reasonably required to permit such providers, and their agents and employees, to provide their respective authorized services to and for the benefit of the Condominium Property. Easements for Utility Services, other services and drainage are reserved under, through and over the Condominium Property as may be required from time to time for all or portions of the Condominium Property. An Owner shall do nothing within or outside the Unit that interferes with or impairs, or may interfere with or impair, the provision of such Utility Services, other services or drainage facilities or the use of these easements. The Board of Directors or its designee shall have access to each Unit to inspect, maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits, other Utility Services, other services, drainage facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements. Except in the event of an emergency, such right of access shall not unreasonably interfere with an Owner's permitted use of a Unit, and shall not permit entry on less than one days' prior notice.

(c) **Encroachments.** If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall subsequently occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the

Common Elements made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for its maintenance so long as the Improvements exist.

(d) **Ingress and Egress.** A non-exclusive easement is created in favor of each Owner and occupant, their guests and invitees, for (i) pedestrian traffic over, through and across sidewalks, streets, paths, walks, other rights of way and other portions of the Common Elements as from time to time may exist and be intended and designated for such purpose and use, (ii) vehicular traffic over, through and across such portions of the Common Elements as from time to time may exist and be paved and intended for such purposes but the same shall not include parking and (iii) parking on those Common Elements designated for parking and not assigned as Limited Common Elements in accordance with this Declaration. Any lien or leasehold encumbering the easements described in this Section 3.4(d) (other than those on any Condominium Parcel) shall automatically be subordinate to the rights of Owners with respect to such easements.

(e) **Construction; Maintenance.** Declarant (including its designees, contractors, successors and assigns) shall have the right, in its sole discretion, from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of (i) completing the construction or remodeling of the Condominium Property, (ii) making alterations or improvements to the Units or the Condominium Property and (iii) repairing, replacing or maintaining the Condominium Property upon the failure of Association to perform same. The Association (including its designees and contractors) shall have the right from time to time to enter the Condominium Property, including the individual Units, and to perform the Repairs and Alterations which may be performed by the Association pursuant to Articles 6 and 7. Any activity described in this paragraph shall not prevent or unreasonably interfere with the use or enjoyment by Owners of the Condominium Property.

(f) **Sales Activity.** For as long as Declarant owns a Unit, Declarant, its designees, successors and assigns, shall have the right to (i) use any such Units and parts of the Common Elements for model apartments and sales offices, (ii) show model apartments and the Common Elements to prospective purchasers and tenants of Units, (iii) erect signs and other promotional material on the Condominium Property advertising Units for sale or lease to purchasers of Units and (iv) take any and all actions which, in Declarant's opinion, may be helpful for selling or leasing Units or promoting the Condominium Property generally. Declarant shall not be charged for such use. Declarant reserves the right to use any Units to which title has not been transferred as temporary accommodations for, but not limited to, prospective purchasers and Declarant's agents, employees and licensees. Such temporary accommodations shall not be considered a leasing of the Unit and shall not be subject to Section 14.1.

(g) **Easements and Restrictions of Record.** The creation of the Condominium is subject to restrictions, reservations and easements recorded among the Public Records of the County, prior to the recordation of this Declaration.

(h) **Additional Easements.** The Board, on its behalf and on behalf of the Association, and all Owners (each of whom appoints the Association as their attorney-in-fact for this purpose), each shall have the right to grant such additional electric, gas, water distribution or waste water collection or other utility or service or other easements, or relocate any existing easements or drainage facilities in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Association shall deem necessary or desirable for the proper operations and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of Owners, or for the purpose of carrying out any provisions of this Declaration or otherwise. Such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes. The Board has the authority, without the joinder of any Owners, to grant, modify or move any easement, subject to the provisions of the easement, if the easement constitutes part of, or crosses, the Common Elements.

4. COMMON ELEMENTS, COMMON SURPLUS, COMMON EXPENSES AND VOTING RIGHTS.

4.1 **Percentage Ownership and Shares.** The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses appurtenant to each Unit, is set forth in Exhibit "C." Allocation of percentage interest for Units is based upon the approximate square footage of each Unit in relationship to the approximate total square footage of all Units.

4.2 **Restraint Upon Separation and Partition of Common Elements.** The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and, except as otherwise provided in this Declaration, the exclusive right to use all appropriate appurtenant Limited Common Elements: (a) shall not be separated from the Unit but shall pass with the title to the Unit, whether or not separately described, and (b) shall remain undivided and cannot be conveyed or encumbered except together with the Unit. No action for partition of the Common Elements, the Condominium Property, or any part, shall lie, except as provided upon termination of the Condominium.

4.3 **Voting.** Each Unit shall be entitled to one vote to be cast by its Owner in accordance with the By-Laws and the Articles on all Association matters on which Owners are entitled to vote, unless such voting rights are suspended in accordance with Section 9.10. Each Owner shall be a member of the Association.

5. **AMENDMENTS.** Except as specifically otherwise provided, this Declaration may be amended only as follows:

5.1 **By the Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which it will be considered. A resolution to adopt the amendment may be proposed either by a majority of the Board of Directors or by not less than one-third of the members of the Association.

(a) Except as elsewhere provided, an amendment may be adopted and approved by:

(i) Owners owning in excess of 50% of the Units plus not less than 66-2/3% of the Board of Directors; or

(ii) Owners owning not less than 67% of the Units represented at any meeting at which a quorum has been attained; or

(iii) Not less than 50% of the Board of Directors in the case of amendments to the Section of the Declaration entitled "Insurance" or other sections reasonably required by insurers or the Primary Institutional Mortgagee.

(b) Except to the extent otherwise specifically provided in this Declaration, no amendment shall (i) change the configuration or size of any Unit in any material fashion, (ii) materially alter or modify the appurtenances to any Unit, or (iii) change the percentage by which an Owner shares the Common Expenses and owns the Common Elements and Common Surplus (collectively "Material Amendments"), unless, in any such case, all affected record Owners, mortgagees and other lien holders join in the execution of the amendment. In addition, Material Amendments must be approved by 67% or more of the voting interests of Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association, designation as Limited Common Elements of such portion of the Common Elements serving only a single Unit or a group of Units, and installation, replacement, operation, repair and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a Material Amendment and accordingly, shall not be deemed included in this paragraph (b).

(c) Any changes to the Condominium Property described in Section 3.3(c) shall not require an amendment to this Declaration.

5.2 **By Declarant.** As long as Declarant owns a Unit, Declarant may amend the Condominium Documents without approval or joinder of any other party to effect any change or addition, except that Declarant may not in such manner (i) permit time share estates, (ii) materially adversely affect substantial property rights of Owners (unless the Owners affected consent in writing), (iii) affect rights of mortgagees under provisions in this Declaration which require mortgagee consent or (iv) modify the Condominium Documents in a manner inconsistent with the Act or Sections 5.1(b) or 5.4(b). No amendment pursuant to this Section shall modify Sections 5.1(b) or 5.4(b) of this Declaration.

5.3 **Execution and Recording.** An amendment, other than amendments made solely by Declarant pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association identifying the Declaration with its recording data. The certificate shall be executed in the form required for the execution of a deed. Amendments by Declarant shall be made by written instrument in recordable form but no Association action is required. Any amendment of the Declaration is effective when recorded in the Public Records of the County.

5.4 Restrictions on Amendments.

(a) Proposals to amend this Declaration shall contain the full text of the provision to be amended; new words shall be indicated by underlining and deletions shall be indicated by lining through the material to be deleted with hyphens or otherwise clearly indicating the deleted material. No amendment may be proposed or adopted solely by reference to the title of the provision being amended. If a proposed change is so extensive that the procedure set forth in this Section 5.4(a) would hinder rather than assist the understanding of the proposed amendment, it shall not be necessary to use underlining and hyphens as indicators of words added or deleted but instead a notation shall be inserted immediately preceding the proposed amendment in substantially the following language: "substantial rewording of declaration; see provision for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

(b) No amendment may eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to Declarant or mortgagees of Units without the consent of Declarant or such mortgagees in each instance. The Sections entitled "Insurance", "Reconstruction or Repair after Casualty" and "Condemnation" shall not be modified unless the Primary Institutional Mortgagee shall join in the amendment. Except as specifically provided in this Declaration, or if required by Fannie Mae or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.

(c) No amendment prohibiting an Owner from renting his or her Unit, altering the duration of the term of any rental or limiting the number of rentals during any particular period shall be applicable to any Owner at the time of the effective date of the amendment unless the Owner has consented to the amendment. Such amendment, however, shall be applicable to Unit Owners who acquire their Units after the effective date of that amendment.

5.5 Scrivener's Errors. If, through scrivener's error, all of the Common Expenses or interest in the Common Surplus or all of the Common Elements have not been distributed in this Declaration so that the sum total of the shares of Common Elements which have been distributed or the shares of the Common Expenses or ownership of Common Surplus fails to equal 100%; or, through error, more than 100% of the Common Elements or Common Expenses or ownership of the Common Surplus shall have been distributed; or, if through scriveners' error, a Condominium Parcel has not been designated an appropriate undivided share of the Common Elements, Common Expenses or Common Surplus; or, if there is any other omission or error in this Declaration or in any of the Condominium Documents, or if the scrivener, by affidavit, acknowledges some other omission or error in preparation of this Declaration, the Association may correct the error and/or omission by an amendment to this Declaration and/or any related documents by simple resolution of the Board of Directors approved by a majority of the Board or by a majority vote of Owners voting at a meeting of the Association called at least in part for the purpose, at which a quorum is present. Any amendment approved pursuant to this Section which modifies the shares of Common Expenses, Common Elements or Common Surplus appurtenant to one or more Units, shall not be effective unless the Owners of and holders of liens upon the Units affected consent in writing to the amendment. For the purpose of this Section and Section

5.2(b), no Owner's property rights shall be deemed to be materially adversely affected nor shall his share of the Common Elements, Common Expense or Common Surplus be deemed modified by reason of the modification of the shares of Common Expense, Common Elements or Common Surplus appurtenant or attributable to another Unit.

5.6 **Special Amendment.** As long as Declarant owns any Unit, Declarant may amend the Condominium Documents without approval or joinder of any other party (a) to comply with requirements of the FNMA, the FHLMC, the GNMA, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; and (b) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Units.

6. **MAINTENANCE AND REPAIRS.** All maintenance, repairs and replacements (collectively "Repairs") to the Condominium Property shall be performed as follows:

6.1 **Units.** Except as otherwise expressly provided in this Declaration, an Owner shall make all Repairs to the Owner's Unit and the appurtenant Limited Common Elements, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, screens, windows, the interior side of the entrance door and all other doors within or affording access to the Unit, the electrical, plumbing, heating and air-conditioning equipment, fixtures and outlets, appliances, paint and other wall covering, carpets and other floor covering, if any, within the Unit or the Limited Common Elements or belonging to the Owner. Where a Limited Common Element consists of a balcony or terrace, the Owner who has the right to the exclusive use of said balcony or terrace shall be responsible for the maintenance, care and preservation of the paint and surface of any walls, floor slab and/or railing, within said area, any fixed and/or sliding glass doors in the entrance ways or other portions of said area, any wiring, electrical outlets and fixtures thereon, and replacement of light bulbs, if any. All Repairs shall be made in accordance with the original plans and specifications or as otherwise directed by the Association. The Association shall make Repairs to the Unit (i) to the extent the Association receives proceeds for such Repairs under policies of insurance it maintains, (ii) occasioned by incidental damage arising from work done in the Unit by reason of any Repairs performed by the Association on the Common Elements, (iii) relating to those portions of the Common Elements located within a Unit, or (iv) with respect to those structural elements of any Limited Common Element attached to and accessible from a Unit. The Board may, at its option, elect to treat the expense of exterior window washing as a Common Expense.

6.2 **Common Elements.** Except as otherwise provided, the Association shall make all Repairs to the Common Elements and Limited Common Elements (except to the extent indicated in Section 6.1) and the parking areas (including those constituting a portion of the Limited Common Elements) and Association Property. The cost of such Repairs shall be charged to all Owners as a Common Expense except to the extent arising from or necessitated by the negligence, misuse or neglect of any specific Owner, in which case such cost shall be paid solely by such Owner.

6.3 **Association's Right of Access to Units.** The Association has the irrevocable right of access to each Unit during reasonable hours when necessary for Repairs to any Common Elements or of any portion of a Unit or Limited Common Elements to be maintained by the Association pursuant to this Declaration, or for making emergency Repairs which are necessary to prevent damage to the Common Elements or to any other Unit.

6.4 **Hurricane Shutters.** The Board shall adopt hurricane shutter specifications for the Building, which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with all applicable building codes. Notwithstanding any provision to the contrary in this Declaration, if approval is required under this Declaration or the Act, the Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board. The Board may, with approval of a majority of the Units at a meeting at which a quorum has been obtained, install hurricane shutters, and maintain, repair and replace such shutters, on the Common Elements and/or Limited Common Elements. The Board may not install hurricane shutters over laminated glass designed as hurricane protection and complying with the applicable building code if same would violate the Act, as same may be amended. The Board may operate any such shutters installed where operation is necessary to preserve and protect the Condominium Property. The installation, replacement, and maintenance of such shutters in accordance with the procedures of this Section shall not be deemed a material alteration to the Common Elements but shall be deemed a Common Expense.

6.5 **Miscellaneous.** All work performed on any portion of the Condominium Property shall be in compliance with all applicable Legal Requirements. All plumbing and electrical maintenance, repairs, and replacements shall be made only by plumbers or electricians duly licensed and qualified to perform such services in the State of Florida and, if applicable, in the County.

7. **ADDITIONS, ALTERATIONS OR IMPROVEMENTS.**

7.1 **By the Association.** Any additions, alterations or improvements (collectively "Alterations"), as distinguished from repairs and replacements, costing in excess of the greater of (i) 10% of the Association's budget for a particular calendar year or (ii) \$50,000 in the aggregate in any calendar year ("Improvement Limit"), shall be made by the Association only after the prior approval of a majority of the Units represented at a meeting at which a quorum is attained. Any Alterations to the Condominium Property costing in the aggregate less than the Improvement Limit in a calendar year may be made by action of the Board without approval of the Owners. The costs of any such Alterations shall constitute Common Expenses and shall be assessed to the Owners.

7.2 **By Unit Owners.**

(a) **In General.** An Owner shall not make any Alterations in or to the Common Elements, Association Property, such Owner's Unit or any Limited Common Elements, including, without limitation, installations of awnings on balconies and changes or additions to the plumbing, electrical, heating or air conditioning systems, without obtaining prior written consent from the Board of Directors, which consent may be withheld for any reason at the sole

discretion of the Board, including, without limitation, for purely aesthetic reasons. Consent shall not be granted if it is determined that the Alterations would detrimentally affect the architectural design of the Condominium Property, but shall not be withheld in a discriminatory manner. An Owner shall not make any Alterations which would remove any portion of, or make additions to, or adversely affect the safety or soundness of the Common Elements or any portion of the Condominium Property maintained by the Association. The Board shall be deemed to have consented to a request if it fails to take any action within 30 days after the later of (i) receipt of such request, or (ii) receipt of all additional information requested by the Board within such 30-day period. Any Alterations by an Owner shall be made in compliance with all Legal Requirements and with any conditions imposed by the Association relating to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Any Owner making or causing to be made any such Alterations shall be deemed to have agreed, for such Owner and Owner's heirs, personal representatives, successors and assigns, to hold the Association and all other Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance of such Alterations from and after that date of installation or construction as may be required by the Association. The Board may appoint an architectural control committee to assume the functions of the Board for Owner Alterations. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant or the Association, nor any of their officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans under this Declaration, by the submission of same, and any Owner, by acquiring title to a Unit, agrees not to seek damages from Declarant and/or the Association arising out of the review of any plans. 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 Legal Requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold Declarant and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, Attorneys' Fees), arising out of any review of plans by the Association.

(b) **Combining Units.** An Owner owning two immediately adjacent Units may, at such Owner's own expense, combine the two Units to form one dwelling by removing all or a part of the wall or walls separating the Units, as if such combination were a change to be effected pursuant to Section 7.2(a). Such Owner shall give notice of such combination prior to undertaking any work, but Board of Directors' approval shall not be required unless the proposed Alteration would in any material way (i) interfere with any other Owner's use and enjoyment of his Condominium Parcel, (ii) impair the Building's structural soundness, (iii) impair Utility Services to any Unit, (iv) change the Building's exterior appearance, or (v) violate any applicable law or ordinance. Notwithstanding the absence of the need for Board approval, an Owner combining two or more Units shall otherwise comply with Section 7.2(a) of this Declaration. Any Units so combined shall continue to be treated as separate Units for purpose of this

Declaration and no amendment to this Declaration shall be required for any such changes. An Owner who combines two or more Units may at any time restore the original wall or walls in their original location and shall be required to do so before conveying one of the Units without the other or before conveying the Units to different parties.

(c) **Weight and Sound Restrictions.** Hard and/or heavy surface floor coverings, such as tile or wood, are permitted in foyers, kitchens and bathrooms. All other areas are to receive sound absorbent, less dense floor coverings, such as carpeting. Installation or use of a hard and/or heavy surface floor covering in any other location or installation of any heavy object must be submitted to and approved by the Board, meet applicable structural requirements, sound transmission standards and be compatible with the structural design of the Building. The Board may, from time to time, set standards for hard surface floor coverings and installation of such floor coverings. The Board may require the review of a structural engineer. Floor coverings on balconies shall meet the engineering design standards for the Building and be compatible with the structural and architectural designs and not adversely affect drainage. The Board will have the right to specify the exact material used on balconies consistent with good design practices for the waterproofing, soundproofing, and structural designs. Owners will be held strictly liable for violation of these restrictions and for all resulting damages. The Board has the right to require immediate removal of violations. Each Owner by acceptance of a deed or other conveyance of a Unit, acknowledges and agrees that sound transmission in high-rise buildings 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. Declarant does not make any representation or warranty as to the level of sound transmission between and among Units and other portions of the Condominium Property. Each Unit Owner waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.

7.3 **Life Safety Systems.** No 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 no event shall stairwell identification and emergency signage be altered or removed by any Owner. No barrier including, but not limited to personalty, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

7.4 **By Declarant.** The provisions of Section 7.1, and 7.2 shall not apply to Declarant and any Units owned by Declarant. Declarant shall have the right, without consent or approval of the Board or other Owners, to (i) make Alterations, structural and nonstructural, interior and exterior, ordinary and extraordinary, in any Unit owned (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), (ii) add, expand or alter recreational facilities or (iii) change the layout of rooms in any owned Units. In making any Alterations, Declarant may relocate and alter Common Elements adjacent to such Unit provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Owners other than Declarant. Declarant shall comply with all Legal Requirements in making any Alterations to Units owned. If Declarant alters the floor plans of the Building, Declarant will cause an amendment to the Declaration to be recorded

indicating the changed floor plan. The provisions of this Section 7.3 may not be modified without prior written consent of Declarant.

7.5 **Changes in Declarant -Owned Units.** Without limiting the provisions of Section 7.4, Declarant shall have the right, without the vote or consent of the Association or Owners, to (a) change the size of Declarant owned Units by combining separate Declarant owned Units into a single dwelling (although being kept as two separate Units under this Declaration), or otherwise; and (b) reapportion among Declarant owned Units affected by any change in size their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses. The percentage interests in the Common Elements and share of Common Surplus of any Units other than the affected Declarant owned Units shall not be changed by reason thereof unless the Owners of such Units shall consent thereto. Declarant shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making alterations, additions and improvements, Declarant may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units, or portions thereof, into adjacent Common Elements, to the extent such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than Declarant. Any amendments to this Declaration required by changes of the Declarant made pursuant to this Section shall be effected by Declarant alone pursuant to Subsection 5.2, without the vote or consent of the Association or Unit Owners (or their mortgagees) except to the extent that any of same is otherwise restricted pursuant to Section 5.1(b), in which event, the amendment must be approved as set forth in Section 5.1(b). Without limiting the generality of Section 5.2, the provisions of this Section may not be added to, amended or deleted without the prior written consent of Declarant.

8. **OPERATION OF THE CONDOMINIUM BY THE ASSOCIATION.**

8.1 **Powers and Duties.** The Association shall be responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the By-Laws and Articles. In addition, the Association shall have all the powers and duties set forth in the Act and in this Declaration, including, without limitation:

(a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration, or at any time and by force, if necessary, for emergency repairs necessary to prevent damage or injury to the Common Elements or to any other Unit or Units.

(b) The power to make and collect Assessments and Charges and surcharges against Owners and to lease, maintain, repair and replace the Common Elements and Association Property.

(c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Owners or their authorized representatives at such reasonable times as established from time to time by the Board.

(d) The power to enter into contracts with others (whether or not affiliated with the Association or Declarant), for a valuable consideration, for maintenance and management of the Condominium Property and Association Property and, in such connection, to authorize a management agent (which may be an affiliate of Declarant) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments and Charges and perfection of liens for nonpayment thereof on behalf of the Board, preparation of records, enforcement of rules and maintenance, repairs and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association shall, however, retain at all times the powers and duties granted by this Declaration, the Articles, By-Laws and the Act, including but not limited to the making of Assessments, Charges, promulgation of rules and execution of contracts on behalf of the Association.

(e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security mortgages and security interests in property owned by the Association, provided that such actions are approved by (i) a majority of the Board of Directors and of Owners represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Owners as may be specified in the By-Laws with respect to certain borrowing, and (ii) Declarant during such time as Declarant owns any Units. This provision shall not limit the power of the Board to finance payment of insurance premiums.

(f) The power to grant easements or use rights on or lease any portion of the Common Elements and charge a rental or use fee for any temporary or permanent use.

(g) When authorized by a majority of Owners represented at a meeting at which a quorum has been attained, the power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas and other recreational facilities and parking areas, whether or not contiguous to the lands of the Condominium, intended to be provided for the use or benefit of Owners (whether or not on an exclusive basis), but no consent of Owners shall be required to acquire, lease or sell Units. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.

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

(i) The power to (i) grant bills of sale for items of personal property owned or governed by the Association and (ii) take any other action on behalf of itself and all Owners (as attorney-in-fact for all Owners) to satisfy any requirement of a company or governmental agency to which equipment, facilities or materials used in connection with Utility Services are to be transferred.

(j) The duty to notify Owners within a reasonable time of the institution of any action or proceeding against the Association in which the Association may be exposed to

liability in excess of insurance coverage; any Owner shall have the right to intervene in and furnish additional defense for the Association.

(k) The power to adopt hurricane shutter specifications for the Building and install hurricane shutters in accordance with Section 6.4.

(l) The power to levy reasonable fines against a Unit for failure of the Owner or its occupant, licensee or invitee to comply with any provision of the Condominium Documents.

(m) The power to sell or lease Association Property or any Unit acquired by the Association.

(n) Emergency powers as provided under Section 718.1265 of the Act.

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

8.2 Limitation Upon Liability of Association.

(a) Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property and the Association Property, the Association shall not be liable to Owners for injury or damage, other than for the cost of maintenance and repair pursuant to Section 6.2, caused by any latent condition of the Condominium Property or the Association Property. The Association shall not be deemed a guarantor or insurer of the health, safety or welfare of any Owner or any occupant or user of any portion of the Condominium Property. The Association is not empowered, and has not been created, to act as an entity for enforcement or compliance with the laws of the United States, Florida, or the County or any other governmental entity or agency.

(b) Any provisions of the Condominium 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, even if Assessment funds are chosen to be used for any such reason.

(c) EACH UNIT OWNER (BY VIRTUE OF ACCEPTANCE OF TITLE TO A UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES), SHALL BE BOUND BY THIS SECTION 8.2 AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS SECTION.

(d) As used in this Section, "Association" shall include within its meaning all of the Association's directors, officers, committees and board members, employees, agents,

contractors (including management firms), subcontractors, successors and assigns. The provisions of this Section shall also inure to the benefit of Declarant and its affiliates.

8.3 **Restraint Upon Assignment of Shares in Assets.** An Owner's share in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to such Owner's Unit.

8.4 **Approval or Disapproval of Matters.** Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same individual who would cast the vote for the Unit if at an Association meeting, unless the joinder of record Owners is specifically required by the Declaration or By-Laws.

8.5 **Acts of the Association.** Unless approval or action of Owners or a specific percentage of the Board is specifically required by the Condominium Documents or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Owners. The Board may so approve and act through the proper officers of the Association without a specific resolution. Whenever an approval or action of the Association is to be given or taken, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

9. **ASSESSMENTS.**

9.1 **Determination of Common Expenses and Assessments.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium and for the Association, determine the amount of Assessments payable by Owners to meet the Common Expenses and allocate and assess such expenses among Owners in accordance with the provisions of this Declaration and the By-Laws. The Board, promptly following its determination, shall advise all Owners in writing of the amount of Assessments payable by each Owner and shall furnish copies of the budget, on which such Assessments are based, to all Owners and (if requested in writing) to their respective mortgagees. Any budget adopted shall contain reserves for capital expenditures and deferred maintenance but reserves may be waived in accordance with the procedure set forth in the By-Laws. Any budget adopted may be changed at any time to cover actual expenses. Any such change shall be adopted consistent with the provisions of the By-Laws.

9.2 **Liability for Payment.** Each Owner, regardless of the manner in which title is acquired, including, without limitation, purchase at a judicial sale, or deed in lieu of foreclosure, shall be liable for all Assessments, Individual Assessments and Charges due with respect to that Unit while an Owner. Except as otherwise indicated in this Article, an Owner shall be jointly and severally liable with the previous Owner of a Unit for all unpaid Assessments, Individual Assessments and Charges against the Unit coming due to the time of the transfer of title. Such liability shall be without prejudice to any right the Owner may have to recover from the previous Owner any payment made. The liability for Assessments, Individual Assessments and Charges

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.

9.3 **Unpaid Assessments.** Assessments, Individual Assessments and Charges paid within 10 days after the due date shall not bear interest but all sums not paid within such period thereafter shall bear interest at the highest lawful rate from the original due date until paid. The Association may charge an administrative late fee, in addition to such interest, in an amount not to exceed the greatest of (i) \$25.00, (ii) five percent of each delinquent Assessment and Individual Assessment payment and, to the extent allowed by law, each delinquent Charge or (iii) the highest amount as may be permitted by the Act. In addition, the Association may accelerate any unpaid Assessments in accordance with the By-Laws. Any payment received by the Association shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and Attorneys' Fees incurred in collection, and then to the delinquent Assessment and Individual Assessment (and/or Charges, to the extent allowed by law). The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee shall neither be subject to the provisions of Florida's interest and usury laws nor the provisions of the Condominium Act dealing with the levy of fines against a Unit. The Association has a lien on each Condominium Parcel for any unpaid Assessments and Individual Assessments (and Charges to the extent allowed by law), with interest and for Attorneys' Fees incurred by the Association incident to the collection of the Assessments and Individual Assessments (and Charges, to the extent allowed by law) or enforcement of the lien.

9.4 **Lien for Assessments.** The Association shall be entitled to a lien against a Condominium Parcel for any unpaid Assessments, Individual Assessments and unpaid Charges, to the extent allowed by law. Except as otherwise provided in Section 9.7, the lien is effective from and shall relate back to the date of the recording of this Declaration in the Public Records of the County. No lien may be filed by the Association against a Condominium Parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the Owner of such Condominium Parcel by registered or certified mail, return receipt requested, and by first-class United States mail addressed to the Owner at such Owner's last known address as reflected in the records of the Association if the address is within the United States, and delivered to the Owner at the address of the Unit if the 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 of the United States, sending the notice to that address and to the Unit address by first-class United States mail with sufficient postage is sufficient. Delivery of the notice shall be deemed given upon mailing as required by this Section. Alternatively, notice shall be completed if served on the Owner in the manner of service of process under Chapter 48 of the Florida Rules of Civil Procedure. The Association may record a claim of lien in the Public Records of the County. The claim of lien shall contain the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates and shall be executed and acknowledged by an officer of the Association or an authorized agent. No such lien shall be effective longer than one year after the claim of lien was recorded, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The one year period shall be extended by the period the Association is prevented from filing an action to foreclose the lien by any automatic stay arising out of a bankruptcy proceeding of the Owner against whom enforcement is sought or of anyone else claiming an interest in the Unit. The

claim of lien shall secure all unpaid Assessments, Individual Assessments and Charges (to the extent allowed by law), interest, costs, and Attorneys' Fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to a issuance of a certificate of title. Upon payment the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for unpaid Assessments and Individual Assessments (and Charges to the extent allowed by law) in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments and Individual Assessments (and Charges to the extent allowed by law) without waiving any claim of lien. Any filed claim of lien may be assigned by the Association to Declarant or to any other Person.

9.5 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least 30 days after the Association gives written notice to the Owner of its intention to foreclose its lien for unpaid Assessments and Individual Assessments. If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid Assessments and Individual Assessments (and Charges to the extent allowed by law), including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover Attorneys' Fees. The notice shall be given by personal delivery to the Owner or by mailing by certified or registered mail, return receipt requested, addressed to the Owner at such Owner's last known address and upon such mailing the notice shall be deemed to have been given. If, after diligent search and inquiry, the Association cannot find the Owner or a mailing address at which the Owner will receive the notice, the court may proceed with the foreclosure action and may award Attorneys' Fees as permitted by law. The notice requirements of this Section are satisfied if the Owner records a Notice of Contest of Lien as provided in the Act. The notice requirements of this Section shall not apply if an action to foreclose a mortgage on the Unit is pending before any court, if the Association's rights would be affected by such foreclosure, and if actual constructive, or substitute service of process has been made on the Owner.

9.6 Collection of Rentals. If the Owner remains in possession of the Unit and the lien is foreclosed, the court in its discretion may require the Owner to pay a reasonable rental for the Unit and the Association shall be entitled to the appointment of a receiver to collect the rent.

9.7 Institutional Mortgagee. If an Institutional Mortgagee obtains title to a Unit as a result of foreclosure of its mortgage by purchase at a public sale resulting from such mortgagee's judgment in a foreclosure suit in which the Association has been properly named as a defendant junior lienholder, or accepting a deed in lieu of foreclosure, such Institutional Mortgagee, its successors and assigns, shall not, except to the extent indicated below, be liable for Common Expenses, Assessments, Individual Assessments or Charges imposed by the Association attributable to such Condominium Parcel or chargeable to the former Owner becoming due prior to acquisition of title unless such Assessments, Individual Assessments or Charges are secured by a claim of lien recorded prior to the recording of the mortgage. Such unpaid share of Common Expenses, Assessments, Individual Assessments or Charges shall be deemed to be Common Expenses collectible from all Owners, including such acquirer, and its successors and assigns. An Institutional Mortgagee (or its designee) acquiring title to a Unit as indicated in this Section, shall be liable for unpaid Assessments arising prior to the acquisition of title to the extent of the lesser of (i) Common Expenses and Assessments accruing in the 12 month period

prior to the acquisition of title or (ii) one percent of the principal amount of the original debt or such greater amount as may be from time to time permitted by the Act. Such amount shall be paid within 30 days after acquisition of title. The provisions of this Section shall not be construed to excuse any Institutional Mortgagee from payments of Assessments and Individual Assessments subsequent to the acquisition of title to a Unit.

9.8 **Certificate of Unpaid Assessments.** Within 15 days after written request by Owner or holder of a mortgage on a Unit, the Association shall provide a certificate stating all Assessments and other moneys owed to the Association by the Owner with respect to the Unit. Any person other than the Owner who relies on such certificate shall be protected thereby. The Association or its authorized agent may charge a reasonable fee for the preparation of such certificate.

9.9 **Special Assessments.** In addition to Assessments set forth in the annual budget of the Association, the Board may levy Assessments for nonrecurring costs or capital improvements. The specific purpose or purposes of any such Assessment approved in accordance with the Condominium Documents shall be set forth in a written notice of such special Assessment sent or delivered to each Owner. The funds collected pursuant to a special Assessment shall be used only for the specific purpose or purposes set forth in such notice, or, at the discretion of the Board, returned to the Owners or applied as a credit to future Assessments. Upon completion of such specific purpose or purposes, any excess funds shall be considered Common Surplus.

9.10 **Suspension of Rights of Delinquent Owners.** If an Owner is delinquent for more than 90 days in paying any monetary obligation due to the Association, the Association may suspend the right of the Owner (A) to vote, which suspension terminates upon payment in full of all overdue obligations and (B) the right of the Owner or any occupant, licensee, or invitee of such Owner's Unit to use Common Elements, common facilities, or any other Association Property until the monetary obligation is paid. This Section does not apply to (i) any Limited Common Elements used solely by such Owner's Unit, (ii) Common Elements necessary to access the Unit, (iii) Utility Services serving the Unit or (iv) any parking spaces, or elevators in the Condominium. No suspension in use rights may be imposed by the Association without notice and an opportunity for a hearing in accordance with the By-Laws.

10. **INSURANCE.**

10.1 **Purchase, Custody and Payment.**

(a) **Purchase.** All insurance policies purchased by the Association concerning the Condominium Property shall be issued by an insurance company or companies authorized to do business in Florida. Insurance may also be provided through a self-insurance fund complying with the requirements of Sections 624.460 to 624.488 of Florida Statutes.

(b) **Approval.** Each insurance policy, the agency and the company issuing the policy shall be subject to the approval of the Primary Institutional Mortgagee which approval shall not be unreasonably withheld.

(c) **Named Insured.** The named insured on the insurance policies shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Owners and their mortgagees shall be additional insured.

(d) **Custody of Policies and Payment of Proceeds.** All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed) described below, or, in the absence of such appointment, to the Association. All policies and endorsements shall be deposited with the Insurance Trustee (if appointed) or in the absence of such appointment, with the Association.

(e) **Copies to Mortgagees.** One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements, shall be furnished by the Association, upon request, to each Institutional Mortgagee holding a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than 10 days prior to the beginning of the term of the policy or not less than 10 days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

(f) **Personal Property and Liability.** An Owner may obtain, at Owner's expense, insurance coverage upon the personal property lying within the boundaries of the Owner's Unit, or any Limited Common Elements appurtenant to such Unit, including, but not limited to, floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner and heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, screens, hardware, and similar window treatment components, or replacements of any of the foregoing or other personal property owned, supplied or installed by an Owner or Owner's tenants ("Owner Property") and for Owner's personal liability and living expense and for any other risks not otherwise insured in accordance with Section 10.2. If obtained, such insurance coverage shall also include special assessment coverage of no less than \$2,000 per occurrence.

10.2 **Coverage.** The Association shall maintain the following insurance coverage:

(a) **Casualty.** The Improvements, including the Building and all fixtures, machinery and installations initially installed (in accordance with the original plans and specifications, or replacements of like kind or quality in accordance with the original plans and specifications or those existing at the time the Unit was originally conveyed, if the original plans are not available), and all alterations and additions made by the Association, including, in each case those portions of the Building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the Units but excluding Owner Property (collectively, "Insured Property"), shall be insured in an amount not less than 100% of full insurable replacement value, excluding foundation and excavation costs, against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks including, but not limited to, vandalism and malicious mischief, and windstorm as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use. The full replacement cost shall be determined at least once every 36 months by an independent insurance appraisal or an update of a prior appraisal. Such policies may contain reasonable deductible provisions as determined by the Board of Directors and the Act.

(b) **Liability.** Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors, or prevailing market conditions, but with combined single limit liability of not less than \$300,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of Owners as a group to any Owner, and vice versa.

(c) **Worker's Compensation.** Worker's compensation and other mandatory insurance, when applicable.

(d) **Flood Insurance.** Flood insurance if required by the Primary Institutional Mortgagee or if the Association so elects.

(e) **Fidelity Insurance.** Fidelity insurance covering all persons who control or disburse funds, including, without limitation, all directors, officers and employees of the Association and managing agents. Such insurance shall be in an amount not less than the maximum amount of funds in the hands of persons who handle such funds.

(f) **Other Insurance.** Such other insurance as the Board of Directors shall determine from time to time to be desirable.

When appropriate and obtainable, each insurance policy shall waive the insurer's right to: (i) subrogation against the Association and 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 caused by an act of the Board of Directors, by a member of the Board or by one or more Owners.

10.3 **Additional Provisions.** All policies of physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least 10 days' prior written notice to all of the named insureds, including all mortgagees of Units. The Board of Directors shall obtain an appraisal from a property 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. All or any portion of the insurance to be provided pursuant to Section 10.2 may be provided by a blanket policy obtained by others covering the Condominium Property and other property provided that any such blanket policy separately allocates insured amounts to the Condominium Property at least in the amounts set forth in Section 10.2.

10.4 **Premiums.** Insurance premiums for the Association's policies or for the Association's share of blanket policies shall be paid as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.

10.5 **Insurance Trustee; Share of Proceeds.** An Insurance Trustee may be designated by the Board of Directors with the approval of the Primary Institutional Mortgagee. If so appointed, the Insurance Trustee shall be a bank or trust company in Florida with trust

powers. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Insurance Trustee by this Declaration and shall be entitled to enforce all rights conferred upon such Trustee. Common Expenses shall include fees and expenses of any Insurance Trustee. The Insurance Trustee (if appointed) 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 Insurance Trustee (if appointed) shall receive the proceeds paid and hold them in trust for the purposes stated below, and for the benefit of the Owners and their respective mortgagees in the following shares which need not be set forth on the records of the Insurance Trustee:

(a) **Insured Property.** Proceeds on account of damage to the Insured Property shall be held for each Owner in undivided shares equal to each Owner's undivided share in the Common Elements appurtenant to the Unit; if the damaged Insured Property includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if it were Optional Property described in paragraph (b) below.

(b) **Optional Property.** Proceeds on account of damage solely to Units and/or certain portions or all of their contents not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively, "Optional Property"), if collected by reason of optional insurance which the Association elects to carry, shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

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

10.6 **Distribution of Proceeds.** Proceeds of insurance received by the Insurance Trustee shall be distributed as follows:

(a) **Expenses of the Trust.** All expenses of the Insurance Trustee (if appointed) shall be first paid or provision made therefor.

(b) **Reconstruction or Repair.** If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray such cost. Any proceeds remaining after defraying such costs shall be distributed in the manner provided in the last two sentences of Section 11.1(b).

(c) **Failure to Reconstruct or Repair.** If it is determined as elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 11.1(b), and distributed first to all Institutional Mortgagees in an amount sufficient to satisfy their mortgages, and the balance, if any, to the beneficial owners. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

(d) **Certificate.** In making distributions to 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 Owners and their mortgagees and their respective shares of the distribution.

10.7 **Association as Agent.** The Association is irrevocably appointed as agent and attorney-in-fact for each Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property: (a) to adjust all claims for property damage up to and including \$50,000 arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims; and (b) with the consent of the Primary Institutional Mortgagee, to adjust all claims for property damage in excess of \$50,000, and to execute and deliver releases upon payment of claims. This provision shall not be construed to confer upon the Association any authority with regard to any claims which an Owner may have for personal injury.

10.8 **Benefit of Mortgagees.** Certain provisions in this Article 10 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

11. **RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY.**

11.1 **Determination to Reconstruct or Repair.**

(a) **Repair of Damage.** In the event of damage or destruction to the Insured Property (and the Optional Property, if insured by the Association) as a result of fire or other casualty, the Board of Directors shall arrange for prompt repair and restoration of the Insured Property (and the Optional Property, if insured). The Insurance Trustee (or the Board, if an Insurance Trustee has not been appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. The expression "prompt repair" as used in this Section, means repairs commencing not more than 60 days from the date the Insurance Trustee notifies the Board of Directors and Owners that it holds insurance proceeds sufficient to pay the estimated cost of restoration, or not more than 90 days after the Insurance Trustee notifies the Board and Owners that such insurance proceeds are insufficient to pay the estimated costs of restoration. The Insurance Trustee (or the Board, if an Insurance Trustee has not been appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

(b) **Non-Repair and Termination.** If (i) 75% or more of the insurable value of the Insured Property is substantially damaged or destroyed, (ii) Owners owning at least 75% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with repair or restoration and (iii) the Primary Institutional Mortgagee approves such resolution, then the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Owner, mortgagee or lienor, as if the Condominium Property were owned in common. In connection with such action, the net proceeds of insurance resulting from such damage or destruction shall be divided among all Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries

of the Unit), and among affected Owners in proportion to the damage suffered by each such affected Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit). Payments otherwise payable to an Owner shall be applied first to payment of any mortgage on the Owner's Unit held by an Institutional Mortgagee, second to the Association for any due and unpaid Assessments, third to payment of all mortgages and liens on such Owner's Unit in their order of priority. The balance, if any, will be payable to the Owner.

11.2 **Plans and Specifications.** Any reconstruction or repair shall be made either (a) substantially in accordance with the plans and specifications for the original Improvements or (b) in accordance with plans and specifications approved by the Board of Directors. If the Board approves alterations in the Building such alterations shall also be subject to approval by (i) Owners of not less than 75% of the interests in the Common Elements, (ii) the Primary Institutional Mortgagee, and (iii) all Owners of Units (and their respective mortgagees) the plans for which are to be altered.

11.3 **Responsibility.** If the Optional Property for which an Owner is obligated to maintain and repair is damaged, then the Owner or Owners shall be responsible for all necessary reconstruction and repair. To the extent there are insurance proceeds available with respect to such damage by reason of the purchase of optional insurance, the Association shall reconstruct and repair the damaged Optional Property, but the Owner or Owners of such damaged Unit(s) shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds such proceeds on a Unit by Unit basis, as determined in the sole discretion of the Association. In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

11.4 **Estimate of Costs; Assessments.** Unless a determination has been made not to rebuild or repair in accordance with Section 11.1, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair. If the insurance proceeds are not sufficient to defray the estimated costs, or if at any time during, or upon completion of, reconstruction and repair the funds for payment are insufficient, Assessments shall be made against the Owners in sufficient amounts to provide for the payment of such costs. Such Assessments on account of the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, in proportion to the cost of repairing the damage suffered by each Owner, as determined by the Association.

11.5 **Construction Funds.** The funds for payment of the costs of reconstruction and repair, which shall consist of proceeds of insurance held by the Association or the Insurance Trustee, if appointed, and funds collected by the Association from Assessments against Owners, shall be disbursed as follows:

(a) **Association.** If all Assessments by the Association to provide funds for reconstruction and repair are more than \$50,000, then the sums collected from such Assessments shall be deposited with the Insurance Trustee. In all other cases, the Association shall hold and disburse the sums collected in payment of the costs of reconstruction and repair except to the extent otherwise provided in Section 11.5(b)(i).

(b) **Disbursement.** The insurance proceeds and sums collected from Owners on account of such casualty shall constitute a construction fund to be disbursed as follows:

(i) **Association - Non-Major Damage.** If the estimated costs of reconstruction and repair by the Association is \$50,000 or less, then the construction fund shall be disbursed to pay such costs upon the order of the Board of Directors unless the Primary Institutional Mortgagee requests the Insurance Trustee to disburse the funds in the manner provided below for the reconstruction and repair of major damage.

(ii) **Association - Major Damage.** If the estimated costs of reconstruction and repair by the Association is more than \$50,000, then the construction fund shall be disbursed to pay such costs in the manner contemplated by paragraph (i) above, but then only upon the further approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

(iii) **Surplus.** The first monies disbursed in payment of costs of reconstruction and repair shall be charged against insurance proceeds. If there is a balance in the construction fund after payment of all costs relating to the reconstruction and repair, it shall be distributed to the beneficial owners of the fund in the manner provided in Section 11.1(b) but that portion of any surplus which is not in excess of Assessments paid by Owners into the construction fund shall be payable to Owners and shall be distributed to Owners in proportion to their actual payments of Assessments for restoration.

(iv) **Certificate.** Nothing in this Declaration shall obligate the Insurance Trustee to determine whether or not (i) sums paid by Owners for Assessments have been deposited by the Association with the Insurance Trustee (ii) disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect or otherwise, (iii) any disbursement is to be made from the construction fund, or (iv) surplus funds to be distributed are less than the Assessments paid by Owners. In addition, the Insurance Trustee shall not be obligated to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating (A) the sums to be paid are due and properly payable, and (B) the names of the payees and amounts to be paid.

11.6 **Owner Report.** A Unit Owner may undertake reconstruction work on portions of the Owner's Unit with the prior written consent of the Board. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. An Owner shall obtain all required governmental permits and approvals prior to commencing reconstruction. Owners are responsible for the cost of reconstruction of any Owner Property and any such reconstruction work undertaken by the Association shall be chargeable to the Owner and enforceable as an Individual Assessment.

11.7 **Benefit of Mortgagees.** Certain provisions in this Article 11 are for the benefit of mortgagees of Units and may be enforced by any of them.

12. **CONDEMNATION.**

12.1 **Deposit of Awards with Insurance Trustee.** For purposes of this Declaration, the taking of portions of the Condominium Property by the exercise of the power of eminent domain or purchase in lieu thereof ("Taking") shall be treated as a casualty. The awards for a Taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee (if appointed, or otherwise with the Association) even if the awards may be payable to Owners. If the Owners fail to deposit the awards with the Insurance Trustee (if appointed, or otherwise with the Association), the Board of Directors, in its discretion, may impose Charges against a defaulting Owner in the amount of the Owner's award, or the amount of that award may be set off against the sums subsequently made payable to that Owner.

12.2 **Determination Whether to Continue Condominium.** The determination whether or not to continue the Condominium will be made in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty.

12.3 **Disbursement of Funds.** If the Condominium is terminated after a Taking, the proceeds of the awards and Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after a Taking, the size of the Condominium will be reduced and the property damaged by the Taking will be made useable in the manner provided below. The proceeds of the awards and any Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds after a casualty by the Insurance Trustee (if appointed, or otherwise with the Association) or as elsewhere provided in this Article.

12.4 **Unit Reduced but Habitable.** If the Taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the Taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

(a) **Restoration of Unit.** The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

(b) **Distribution of Surplus.** The balance of the award for the Unit, if any, shall be distributed to the Owner and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.

(c) **Adjustment of Shares in Common Elements.** If the floor area of the Unit is reduced by the Taking, the percentage representing the share in the Common Elements, the Common Expenses and Common Surplus attributable to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the Taking and the denominator of which shall be the area in square feet of the Unit before the Taking. The shares of all Owners in

the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

- (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance");
- (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance; and
- (iii) The result of such division for each Unit shall be the adjusted percentage for such Unit.

12.5 **Unit Uninhabitable.** If the Taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Association), then:

(a) **Payment of Award.** The award for the Taking shall be paid to the extent available: first, to the applicable Institutional Mortgagees in amounts sufficient to satisfy their mortgages on each Unit rendered uninhabitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Owners and other mortgagees of their Units. In no event shall the total of such distributions for a specific Unit exceed the market value of such Unit immediately prior to the Taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.

(b) **Addition to Common Elements.** The remaining portion of the Unit, if any, shall become part of the Common Elements and placed in a condition allowing, to the extent possible, for use by all Owners in the manner approved by the Board of Directors. If the cost of such work shall exceed the balance remaining of the fund from the award for the Taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

(c) **Adjustment of Shares.** The shares in the Common Elements, Common Expenses and Common Surplus shall be adjusted to distribute the shares among the reduced number of Owners (and among reduced Units) that continue as part of the Condominium as follows:

- (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Section 12.4(c) (the "Percentage Balance"); and
- (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Section 12.4(c), by the Percentage Balance.

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

(d) **Assessments.** If the balance of the award for the Taking (after payments to the Owner and such Owner's mortgagees as above provided) is not sufficient to alter the

remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all Owners who will continue as Owners after the changes in the Condominium effected by the Taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected by reason of the Taking.

(e) **Arbitration.** If the market value of a Unit prior to the Taking cannot be determined by agreement between the Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Owners, including Owners who will not continue after the Taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares affected by reason of the Taking.

12.6 **Taking of Common Elements.** Awards for the Taking of Common Elements shall be used to render the remaining portion of the Common Elements useable in the manner approved by the Board of Directors. If the cost of such work shall exceed the balance of the funds from the awards for the Taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the Taking of Common Elements, if any, shall be distributed to the Owners in the shares in which they own the Common Elements after adjustments to these shares by reason of the Taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

12.7 **Amendment of Declaration.** The changes in Units, the Common Elements and in the ownership of the Common Elements and the adjustment to the shares in the Common Expenses and Common Surplus that are effected by the Taking shall be evidenced by an amendment to this Declaration approved by, and executed at the direction of, a majority of the Board.

13. **OCCUPANCY AND USE RESTRICTIONS.** In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

13.1 **Occupancy of Units.** Each Unit shall be used as a residence only and shall be subject to the exclusive possession of its Owner. Use as a residence may include use as a home office to the extent permitted under applicable law. Home office use shall not include any use that would generate additional traffic to the Condominium, authorize any use or occupancy of the Unit by business employees, nor permit an Owner to receive customers or clients at the Unit or the Condominium. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed three persons per bedroom or studio. Children shall be permitted to reside in Units. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent

of this Section 13.1 and the Board of Directors shall enforce, and Owners comply with, same with due regard for such purpose. The provisions of this Section 13.1 shall not be applicable to Units used by Declarant for model apartments, sales or leasing offices or management services.

13.2 **Pets.** Except for small domestic birds or tropical fish and except as may otherwise be permitted by written consent of the Board which may be withheld in the sole discretion of the Board, each Unit (regardless of the number of joint owners) may maintain no more than two household pets (provided the weight of each pet does not exceed 60 pounds) in such Unit, limited to domesticated dogs or cats, provided they are not kept, bred or maintained for any commercial purpose and do not become a nuisance or annoyance to neighbors. No guest or invitee may bring any animal upon the Condominium Property. No Person other than an Owner or Owner's tenant shall be permitted to keep a pet. Owners must pick up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be leashed at all times when outside the Unit. Pets may not be kept in balcony or patio areas when the Owner is not in the Unit. Without limiting the generality of Article 13, violation of the provisions of this Section shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property.

13.3 **Alterations.** Without limiting the generality of Article 7, no Owner shall cause or allow improvements or changes to any Limited Common Elements or 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 or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Association (in the manner specified in Article 7).

13.4 **Use of Common Elements.** The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.

13.5 **Nuisances.** No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants.

13.6 **No Improper Uses.** No immoral, improper, offensive, hazardous or unlawful use shall be made of any portion of the Condominium Property. All Legal Requirements shall be observed. Violations of Legal Requirements relating to any portion of the Condominium Property, shall be corrected by and at the sole expense of the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere provided.

13.7 **Leases.**

(a) No lease of a Unit shall be made for a term less than 1 week. The provisions of the Act and the Condominium Documents shall be deemed expressly incorporated into all leases. If an Owner remains in possession of a Unit after a foreclosure judgment has been entered, the court, in its discretion, may require the Owner to pay a reasonable rent for the

Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

(b) If a Unit is occupied by a tenant and the Owner is delinquent in any monetary obligation due to the Association, the Association may notify the tenant in writing ("Association Notice") that all future monetary payments by the tenant under his or her lease for the Unit be paid to the Association, and the tenant must make all future payments of his or her monetary obligations to the Association until the Association releases the tenant or the tenant ceases his or her tenancy in the Unit. At the time the Association Notice is given to the tenant, the Association shall mail to the Owner a copy of the Association Notice. The Association shall, upon request, provide the tenant with written receipts for payments made to the Association. A tenant who acts in good faith in response to an Association Notice is immune from any claim from the Owner. If the tenant prepaid rent to the Owner before receiving the Association Notice and provides written evidence to the Association of such prepayment within 14 days after receiving the Association Notice, the tenant shall receive credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the Association to be credited against the monetary obligations of the Owner to the Association. The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increase at least 10 days before the date the rent is due. The liability of the tenant may not exceed the amount due from the tenant to the Owner. The Owner shall provide the tenant a credit against rents due to the Owner in the amount of payments to the Association under this Section. The Association may issue notices under Florida Statutes, Section 83.56 and may sue for eviction under Florida Statutes, Sections [REDACTED] as if the Association were a landlord under Part II of Chapter 83, Florida Statutes if the tenant fails to pay any required payment to the Association. However, the Association is not otherwise deemed a landlord under Chapter 83, Florida Statutes and has no obligations under Florida Statutes, Section 83.51. A tenant does not, by virtue of payment of monetary obligations to the Association, acquire any of the rights of an Owner to vote in any election or to examine the books and records of the Association. A court, in appointing a receiver for the Owner or the Unit, may annul the rights of the Association under this Section 13.8(b).

13.8 Exterior Improvements; Landscaping. Without limiting the generality of Article 7 or Section 13.3, no Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies, railings, fences or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment), nor plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside such Owner's Unit, without the prior written consent of the Association. Notwithstanding the foregoing, an Owner may display one portable, removable United States flag in a respectful way and on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, an Owner may display, in respectful way, portable, removable, official flags, no larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard.

13.9 Prevention of Mold. By reason of climate and humid conditions in South Florida, molds, mildew, toxins and fungi may exist and/or develop within the Unit and the Condominium Property. 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 assumed the risks associated with molds, mildew, toxins and/or fungi and to have released Declarant and the Association from any and all liability resulting from same. No Unit Owner shall install, within his or her Unit, or upon the Common Elements or Association Property, non-breathable wall-coverings or low-permeance paints. Each Unit Owner shall operate the air conditioning system in the Unit, whether or not occupied, to maintain a temperature not exceeding 78°F, to minimize humidity in the Unit. If the Association reasonably believes that the provisions of this Section 13.9 are not being complied with, then the Association shall have the right (but not the obligation) to enter a Unit (without requiring the consent of the Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required above (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, with all such costs to be deemed Charges payable to the Association.

13.10 **Protection of Sea Turtles.** Each Owner shall comply with any Legal Requirements with respect to limiting light transmission for the protection of sea turtles on the beaches.

13.11 **Effect on Declarant; Association.** The restrictions and limitations set forth in this Article (excluding Sections 13.1, 13.2 and 13.7) shall not apply to Declarant or to Units owned by Declarant except to the extent required under the Act. The provisions of Sections 13.1, 13.2 and 13.7 shall apply to Declarant. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Article for good cause shown but no indulgence in any instance shall constitute a waiver with respect to any other instance.

14. **COMPLIANCE AND DEFAULT.** Each Owner, occupant of a Unit and the Association shall be governed by and shall comply with the terms of the Condominium Documents, as the same may be amended from time to time. The Association (and Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act.

14.1 **Negligence.** An Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by such Owner's negligence or by that of any member of such Owner's family or such Owner's or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

14.2 **Compliance.** In the event an Owner or occupant fails to maintain, or to cause to be maintained, a Unit, or fails to observe and perform all of the provisions of the Condominium Documents or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed by judicial action to require performance and/or compliance, to impose any

applicable fines, to sue for damages, to charge the Owner and the Unit for the sums necessary to do whatever work is required to put the Owner or Unit in compliance and to collect such charge and have a lien to the extent permitted by the Act. In addition, the Association shall have the right, for itself and its employees and agents, to enter the Unit and perform the necessary work to enforce compliance with the above provisions (by force, if necessary) to the extent otherwise permitted in Section 6.3, without having committed a trespass or incurring any other liability to the Owner.

14.3 **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of an Owner or the Association to comply with the requirements of the Act or the Condominium 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 Attorneys' Fees as may be awarded by the court.

14.4 **No Waiver of Rights.** The failure of the Association or any Owner to enforce any covenant, restriction or other provision of the Act or the Condominium Documents, as the same may be amended from time to time, shall not constitute a waiver of their right with respect to future actions.

15. **TERMINATION OF CONDOMINIUM.** The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as the Condominium is terminated in accordance with the provisions of the Act.

16. **ADDITIONAL PROVISIONS.**

16.1 **Additional Rights of Institutional Mortgagees.**

(a) In addition to all other rights set forth, Institutional Mortgagees shall have the right, upon written notice to the Association, to:

(i) Examine the Association's books and records during normal business hours;

(ii) Receive an unaudited financial statement of the Association within 90 days after the end of its fiscal year;

(iii) Receive notice of Association meetings and attend such meetings;

(iv) Receive notice of an alleged default by any Owner upon whose Unit such Mortgagee holds a mortgage, which is not cured within 60 days after notice of default to such Owner;

(v) Receive notice of any substantial damage or loss to any portion of the Condominium Property; and

(vi) Receive notice of any proposed action that would require the consent of a specified percentage of Institutional Mortgagees.

Any Institutional Mortgagee giving notice pursuant to this Article shall serve its notice upon the Association, by registered or certified mail, return receipt requested, which notice shall: (1) identify each Unit upon which each such Institutional Mortgagee holds any mortgage; and (2) designate the place to which notice are to be given by the Association to such Institutional Mortgagee.

(b) Whenever consent or approval of any holder(s) of any mortgage(s) encumbering any Condominium Parcel(s) or Condominium Property is required by the Condominium Documents to any amendment of the Condominium Documents, or to any action of the Association or to any other matter relating to the Condominium, it may not be unreasonably withheld. The Association may request such consent or approval of such holder(s) by written request sent certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by such holders). Any holder receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested, in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request) was delivered to and received by the Association, which response must be received by the Association within 60 days after the holder receives such request. If such response is not timely received by the Association, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by an officer of the Association. Such affidavit, where necessary, may be recorded in the Public Records of the County and shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained.

16.2 Assignment of Declarant's Rights. Declarant may assign the whole or any portion of Declarant's rights set forth in the Condominium Documents. In the event of a partial assignment, the assignee shall not be deemed "Declarant" but may exercise any rights of Declarant assigned to it. Any such assignment may be made on a non-exclusive basis.

16.3 Limitation of Liability. The liability of each Owner for Common Expenses shall be limited to the amounts assessed against the Owner from time to time in accordance with the Condominium Documents. An Owner may be personally liable for any damages caused by the Association in connection with the use of the Common Elements, but only to the extent of such Owner's prorata share of that liability in the same percentage as the Owner's interest in the Common Elements and in no event shall said liability exceed the value of the Owner's Unit. Each Owner shall be liable for injuries or damages resulting from an accident in such Owner's Unit to the same extent or degree that the owner of a house or any other property owner would be liable for such an occurrence and for personal injury and property damage outside of the Owner's Unit arising from the acts or negligence of the Owner as provided elsewhere in this Declaration.

16.4 Covenant Running With the Land. All provisions of the Condominium Documents shall, to the extent applicable and unless otherwise expressly provided to the contrary, be perpetual covenants running with the Land and with every part and interest therein, and all of the provisions shall be binding upon and inure to the benefit of Declarant and subsequent owner(s) of the Land or any part or interest therein, and their respective heirs, personal representatives, successors and assigns. This Section is not intended to create nor shall

it be construed as creating any rights in or for the benefit of the general public. All present and future Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of the Condominium Documents, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of the Condominium Documents, as they may be amended from time to time, by such Owner, tenant or occupant.

16.5 **Notices.** All notices to the Association required or desired under this Declaration or the By-Laws shall be sent by certified or registered mail (return receipt requested) or by hand delivery or overnight courier (such as Federal Express) to the Association care of its office indicated in its most current filing with the Florida Secretary of State's office, or to such other address as the Association may designate from time to time by notice in writing to all Owners. Except as otherwise specifically provided in the Act or this Declaration, all notices to any Owner shall be sent by first class mail to the Condominium address of such Owner, or such other address as may have been designated by an Owner 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 5 business days after proper mailing, whichever shall first occur.

16.6 **No Time-Share Estates or Club Memberships.** No time-share estates will or may be created with respect to any Unit. No club memberships will or may be created with respect to any Unit.

16.7 **Interpretation.** The Board of Directors shall be responsible for interpreting the provisions of the Condominium Documents. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation. In the event of conflict or inconsistency between the provisions of any of the Condominium Documents, the Declaration shall take precedence over the Articles, By-Laws and applicable rules and regulations; the Articles shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations.

16.8 **Mortgagees.** The Association shall not be responsible to any holder of a mortgage or lien on any Unit and may assume the Unit is free of any mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.

16.9 **Exhibits.** There is incorporated into this Declaration any materials contained in the Exhibits which under the Act are required to be part of the Declaration.

16.10 **Adjustment of Dollar Amounts.** Except to the extent inconsistent with the Act as it may be amended from time to time, all dollar amounts indicated in this Declaration shall be subject to adjustment commencing as of the fifth anniversary of the recording of this Declaration and thereafter at each succeeding five-year anniversary date (for example, on the 10th, 15th and

20th anniversary date of the recording of this Declaration). Each date upon which the dollar amounts shall be subject to adjustment shall be referred to as an "Adjustment Date." The date of recording of this Declaration shall be referred to as the "Recording Date". The Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Commerce, All Items, U.S. Average (or, if such index ceases to be published, any index designated by the Board of Directors reflecting changes in the cost of living in the United States generally or in the State of Florida) shall be referred to as the "Index". At each Adjustment Date each of the dollar amounts appearing in this Declaration shall be adjusted in accordance with the following formula:

$$\frac{\text{dollar amount x Index on Adjustment Date}}{\text{Index on Recording Date}}$$

The Index on any date shall mean the Index for the month in which the Adjustment Date or Recording Date occurs.

16.11 **Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association in its own name and/or on behalf of the Owners unless it is approved by the Board.

16.12 **Warranties.**

(a) All Units and their appurtenant Common Elements have been or will be sold without warranties. Declarant disclaims any and all express or implied warranties, whether established by statutory, common, case law or otherwise, as to the design, construction, sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Condominium Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans or warranties imposed by statute. Declarant has not given and each Unit Owner has not relied on or bargained for any such warranties. Each Unit Owner, by accepting a deed to a Unit, or other conveyance thereof, shall be deemed to represent and warrant to Declarant that in deciding to acquire the Unit, the Unit Owner relied solely on such Unit Owner's independent inspection of the Unit and the Condominium.

(b) **DECLARANT IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618, FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF DECLARANT.**

16.13 **Refund of Taxes, Fees and Other Charges.** Unless otherwise provided in this Declaration, Association agrees that any taxes, fees or Charges paid by the Declarant to any governmental authority, utility company or any other entity which at a later date are refunded in whole or in part, shall be returned to Declarant in the event said refund is received by the Association.

16.14 Future Development; Approvals; Execution of Documents. To the extent not prohibited by any Legal Requirements, Declarant reserves, for itself and its successors and assigns, any and all rights, whether now or subsequently existing, relating to any future improvements which may, from time to time, be permitted under Legal Requirements which may be developed on any portion of the Condominium Property or adjacent property. As long as Declarant owns any Unit or any portion of the Condominium Property, Declarant shall have the right and be entitled, from time to time, in its sole discretion and without the consent of any other party: (i) to re-plat or to further plat or further develop all or any part or parts of the Condominium Property, (ii) to execute a unity of title, declaration or covenant running with the land in lieu of unity of title, or any applications, permits or other documents needed to obtain any governmental approvals in connection therewith, (iii) to file, amend or modify subdivision restrictions and/or amendments thereto with respect to any part or parts of the Condominium Property without consent of other parties, and (iv) to grant easements and designate the beneficiaries thereof, which easements shall be for the benefit of the health, safety or welfare of the Owners or which may be required by any governmental agency. Each Owner, by reason of the acceptance of a deed to such Owner's Unit, agrees to execute, at the request of Declarant, all documents or consents which may be required by any governmental agency to allow Declarant and its affiliates to complete the plan of development of the Condominium as such plan may be subsequently amended from time to time, or take any other action permitted by this Section. Each Owner appoints Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owner, any and all such documents, consents, covenants or declarations required in connection with the development plan for the Condominium or any adjacent property owned by Declarant or any affiliate of Declarant. This power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of Declarant.

16.15 Signature of President and Secretary. Wherever the signature of the President or the Secretary of the Association is required, the signature of a vice-president may be substituted for the President, and the signature of the assistant secretary substituted for the Secretary but the same person may not execute any single instrument on behalf of the Association in two separate capacities.

16.16 Governing Law. Should any dispute or litigation arise between any parties whose rights or duties are affected or determined by the Condominium 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 and shall be prosecuted only in the courts of the County.

16.17 Severability. The invalidity in whole or in part of any covenant or restriction, or any article, section, subsection, sentence, clause, phrase or word, or other provision of the Condominium 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.

16.18 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.

16.19 **Ratification**. Each 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 the Condominium Documents are fair and reasonable in all material respects.

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

16.21 **Captions**. The captions contained in the Condominium Documents are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.


[NO FURTHER TEXT ON THIS PAGE]


Declarant has executed this Declaration as of the date indicated above.

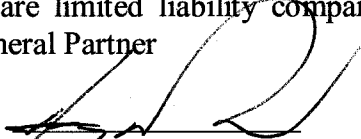
Signed, sealed and delivered
in the presence of:

OPUS CONDOMINIUM LP, a Delaware
limited partnership

By: OPUS CONDOMINIUM LLC, a
Delaware limited liability company,
its General Partner

Sign Name: 
Print Name: Joshua Lax

Sign Name: 
Print Name: Bharti Mistry

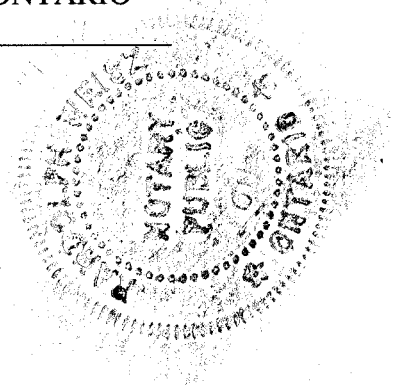
By: 
Name: Henry Wolfond
Title: Manager

ACKNOWLEDGMENT

PROVIDENCE OF ONTARIO)
)
CANADA)

The foregoing Declaration of Condominium was acknowledged before me this 14th day of March, 2011, by Henry Wolfond, the Manager of OPUS CONDOMINIUM LLC, a Delaware limited liability company, the general partner or OPUS CONDOMINIUM LP, a Delaware limited partnership, on behalf of said partnership. He is personally known to me.

~~_____~~
NOTARY PUBLIC, PROVINCE OF ONTARIO
Print Name Randolph Weisz



JOINDER

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

IN WITNESS WHEREOF, OPUS CONDOMINIUM ASSOCIATION, INC., has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this ____ day of March, 2011.

Signed, sealed and delivered
in the presence of:

OPUS CONDOMINIUM ASSOCIATION,
INC., a Florida corporation not for profit

Sign Name: [Signature]
Print Name: Joshua Lax

By: [Signature]
Name: Henry Wolfond
Title: President

Sign Name: [Signature]
Print Name: Bharti Mistry

PROVIDENCE OF ONTARIO)
)
CANADA)

The foregoing joinder was acknowledged before me this 14th day of March, 2011, by Henry Wolfond, as President of OPUS CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, on behalf of said corporation. He is personally known to me.

[Signature]

NOTARY PUBLIC, PROVINCE OF ONTARIO
Print Name Randolph Weisz

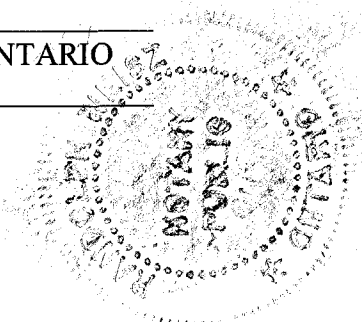


EXHIBIT A

Legal Description

Lots 1, 2 and 3, Block 1, MELINDA COOKE'S SUBDIVISION, according to the plat thereof, as recorded in Map Book 1, Page 93, also recorded in map Book 12, Page 47, Public Records of Volusia County, Florida; TOGETHER WITH lands lying Easterly and adjacent to said lots, being described as follows: Commencing at the Southeasterly corner of Lot 1, Block 1, of said Melinda Cooke's Subdivision as a Point of Beginning; thence North 66°07'37" East, a distance of 57.58 feet to the Florida Department of Natural Resource Coastal Construction Setback Line as recorded in Map Book 30, Page 19, of the Public Records of Volusia County, Florida; thence North 24°51'40" West along said line a distance of 150.02 feet; thence South 66°07'37" West, a distance of 54.39 feet to the Northwesterly corner of Lot 3, Block 1, of Melinda Cooke's Subdivision, aforesaid, thence South 23°38'21" East along the Easterly line of said Lots 1, 2 and 3, Block 1, a distance of 150.00 feet to the Point of Beginning.

LESS AND EXCEPT a parcel of land being the Southerly 8.00 feet of Lot 1, Block 1 MELINDA COOKE'S SUBDIVISION, according to the Plat thereof, as recorded in Map Book 1, Page 93, also recorded in Map Book 12, Page 47, of the Public Records of Volusia County, Florida, together with unplatted lands lying Easterly and adjacent to said Lot 1 in Section 15, Township 15 South, Range 33 East, being more particularly described as follows:

Commence at the Southeasterly corner of Lot 1, Block 1, of said MELINDS COOKE'S SUBDIVISION, as a Point of Beginning; run thence South 66° 06' 28" West for a distance of 250.00 feet along the Southerly line of said Lot 1, said line also being the Northerly right of way line of Browning Avenue (a 30 foot right of way) to the Easterly right of way of State Road A1A, also known as South Atlantic Avenue (an 80 foot right of way); thence North 23° 37' 45" West, along said Easterly right of way, for a distance of 8.0 feet; thence North 66° 06' 28" East, departing said right of way for a distance of 309.92 feet; thence South 24° 17' 28" East for a distance of 8.00 feet to the aforesaid Northerly right of way line of Browning Avenue; thence South 66° 06' 28" West, along said Northerly right of way line for a distance of 60.01 feet to the Point of Beginning.

EXHIBIT B

Survey