

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

16.2 Plans and Specifications

Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached hereto as exhibits, or if not, then according to the plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the condominium building, by the owners of not less than seventy-five percent (75%) of the common elements, including the owners of all damaged units, which approval shall not be unreasonably withheld.

16.3 Responsibility

If the damage is only to those parts of one (1) unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of construction or repair after casualty shall be that of the Association.

16.4 Estimates of Costs

Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to repair or rebuild.

16.5 Assessments

If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during the reconstruction and repair the funds for the payment of the costs thereof are insufficient, assessments shall be made against the unit owners who own the damaged units and against all unit owners in the case of damage to common elements, in sufficient amounts to provide funds to pay the estimated costs. Such assessments against the unit owners for damage to units shall be in proportion to the cost of reconstruction and repair of their respective units. Such assessments on account of damage to common elements shall be in proportion to the owner's share in the common elements.

16.6 Deductible Provision

The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be a common expense.

16.7 Construction Funds

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

16.7.1 Association. If costs of the reconstruction and repair are the responsibility of the Association, are more than FIVE THOUSAND DOLLARS (\$5,000.00), then the sums paid upon assessments to meet such costs shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

16.7.2 Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from the collections of assessments against unit owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

16.7.2.1 Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the unit owner, shall be paid by the Insurance Trustee to the unit owner, or if there is a mortgagee endorsement, then to the unit owner and the mortgagee jointly.

16.7.2.2 Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than FIVE THOUSAND DOLLARS (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

16.7.2.3 Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than FIVE THOUSAND DOLLARS (\$5,000.00), then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in the State of Florida and employed by the Association to supervise the work.

16.7.2.4 Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner which is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

16.7.2.5 Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by unit owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid, nor to determine whether surplus funds to be distributed are less than the assessments paid by owners. Instead, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided, that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to a unit owner, and further provided, that when the Association or a mortgagee which is the beneficiary of an insurance policy the proceeds of which are included in the construction funds, so requires, the approval of an architect named by the Association shall first be obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

17. COMMON EXPENSES

17.1 Common expenses shall include expenses of the operation, maintenance, repair or replacement of the common elements, costs of carrying out the powers and duties of the Association, and any other expenses designated as common expenses by the Association.

17.2 Common expenses shall include all costs of electricity, water, gas, trash and garbage collection and sewage service for the condominium.

17.3 Common expenses shall include all expenses incurred by the Association pursuant to the terms and provisions of the Easement and Maintenance Agreement for Access, Ingress, Egress and Recreational Use to be entered into by and between the Developer and the Association and to be recorded among the Public Records of Volusia County, Florida.

17.4 Common expenses shall be shared by each unit in accordance with each unit's respective interests in the common elements and in the common surplus, as set forth in Exhibit "C". The foregoing ratio of sharing common expenses and assessments shall remain, regardless of the purchase price of the units or their locations.

18. ASSESSMENTS; LIABILITY, LIEN AND PRIORITY; INTEREST; COLLECTION

18.1 The Association, through its Board of Directors, shall have the power to fix and determine from time to time, a budget necessary to provide for the common expenses of the condominium. A unit owner, regardless of how title is acquired, except as provided in Article XIV below, shall be liable for all assessments coming due while such unit owner is the owner of a unit. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the unit being conveyed, up to the time of such voluntary conveyance.

18.2 The Board of Directors shall adopt a Budget for the Association during the month preceding the fiscal year wherein the Budget will take effect, which Budget shall include a schedule of assessments to be paid by the unit owners.

18.3 Each unit owner shall be responsible for the payment of the assessments imposed against the unit owner's unit in an amount equal to the percentage of responsibility for payment of common expenses set forth in Exhibit "C" attached hereto.

18.4 Regular assessments shall be paid by the unit owners on a monthly basis payable on the first day of each and every month.

18.5 Should the Association, through its Board of Directors, at any time determine that the assessments made are not sufficient to pay the common expenses and in the event of emergencies, the Board of Directors shall have the authority to levy and collect additional and/or special assessments to meet such needs of the Association.

18.6 The Board of Directors of the Association, in assessing for common expenses, shall (unless waived or reduced pursuant to applicable law) include therein a sum to be collected and maintained as a reserve fund for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, roof replacement, building painting and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost and for any other item for which the deferred maintenance expense or replacements cost exceeds \$10,000.000. All reserve funds, and any interest accruing thereon,

shall remain in the reserve account for authorized reserve expenditures, unless the use of reserve funds for other purposes is approved in advance by the vote of unit owners holding not less than a majority of the voting interests present at a duly called meeting of the Association.

18.7 The Board of Directors of the Association, in assessing for common expenses, may include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial security during periods of stress. Such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by unit owners or as a result of emergencies.

18.8 All monies collected by the Association from assessments imposed against unit owners in this condominium shall, unless the same is collected for the benefit of others, be the separate property of the Association. Such monies may be applied by the Association to the payment of any expense of operating and managing the condominium property, or to the proper undertaking of all acts and duties imposed upon it by virtue of the provisions of this Declaration. All monies received from assessments imposed against unit owners in this condominium shall be maintained separately in the name of the Association. Reserve and operating funds of the Association shall not be commingled. All monies received by the Association from assessments imposed against unit owners in this condominium shall be held for the benefit of the unit owners in this condominium and may not be expended for the benefit of any other condominium. No unit owner shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his unit. Such funds shall not be subject to attachment or levy by a creditor or judgment creditor of a unit owner. When the owner of a unit shall cease to be a member of the Association, by the divestment of his ownership of such unit by whatever means, the Association shall not be required to account to such owner for any share of the funds or assets of the Association.

18.9 Liability for assessments may not be avoided by abandonment of a unit, or by waiver of the use of any common elements or other property which a unit owner is entitled to use or enjoy.

18.10 Assessments not paid within five (5) days of when due shall bear interest from the date when due until paid at the rate of eighteen percent (18%) per annum. Additionally, the failure to pay any assessment within five (5) days from the date due shall entitle the Association to levy an administrative late fee, in addition to interest upon the delinquent assessment, in an amount not to exceed the greater of \$25.00 or five percent (5.00%)

of each installment of the delinquent assessment, said administrative late fee to be imposed against the delinquent unit owner for each thirty (30) day period that the assessment remains delinquent. Payments made shall be applied to interest and administrative late fees first and then to the delinquent assessment. The Association shall furnish to any Institutional Mortgagee, upon its request, written notification of any default in the assessment payments of the unit owner whose unit is encumbered by the Institutional Mortgage.

18.11 The Association is hereby granted a lien on each Unit, which lien shall secure the payment of all assessments, interest thereon, and reasonable attorneys' fees incurred as an incident to the enforcement of said lien. Notwithstanding anything to the contrary which may be contained herein, no fine shall be come a lien against a unit. The lien shall be effective, have priority and be collected as provided by the Act.

18.12 Liens for assessments may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property, as more fully set for in the Act. The Association may bid at any sale and apply as a cash credit against its bid all sums due the Association covered by the lien being enforced. In any suit for the foreclosure of said lien, the Association, provided the unit owner has remained in possession of the unit, shall be entitled to petition a court of competent jurisdiction for payment of a reasonable rental from the owner of such unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said unit.

18.13 The liability of a first mortgagee or its successors or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of:

18.13.1 The units unpaid common expenses and regular periodic assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or

18.13.2 One percent (1%) of the original mortgage debt. The provisions of this paragraph shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required, if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

18.13.3 Notwithstanding the provisions of Provision 8.13 hereof, a first mortgagee or its successors or assignees who acquire title to a unit as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the unit or chargeable to the previous owner which came due prior to acquisition of title if the first mortgage was recorded prior to April 1, 1992. If, however, the first mortgage was recorded on or after April 1, 1992, or on the date the mortgage was recorded, the Declaration included language incorporating by reference future amendments to Chapter 718 of the Florida Statutes, the provisions of Provision 18.13 shall apply.

19. MAINTENANCE GUARANTEE: Under F.S. 718.116(9)(a)(2), Developer hereby guarantees from the date of recordation of the Declaration of Condominium until the earlier of one year, or the date of the meeting at which transfer of the Association from Developer to the unit owners occurs, that the assessment for common expenses imposed on unit owners will not exceed \$117.77 per unit per month. During the guaranty period, Developer shall be excused from the payment of its pro rata share of the assessment for all units it owns; however, Developer shall pay any amount of common expenses incurred that exceeds assessments collected from unit owners other than Developer while the guaranty period is in effect.

For the purpose of this Article, income to the Association other than assessments (as defined herein and in the Act) shall not be taken into account when determining the short fall to be funded by the Developer. Prior to the Initial Guarantee Expiration Date, the Developer shall have the option of extending the Guarantee period for one (1) or more additional periods, of one (1) year each (an "Additional Guarantee Period") as provided in the Florida Statutes, Section 718.116(9). The Developer shall be deemed to have automatically extended the Guarantee Period, by an Additional Guarantee Period, unless the Developer notifies the Board of Directors of the Association, in writing, of its election not to extend the Guarantee Period for an Additional Guarantee Period. The Developer may also extend the Guarantee Period for a definite period of time by written agreement entered into with a majority of non-Developer unit owners. No funds received from unit owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic assessments for common expenses as provided in the Declaration and as disclosed in the Estimated Operating Budget referred to above, shall be used for

the payment of common expenses prior to the then applicable Guarantee Expiration Date. This restriction shall apply to funds including, but not limited to, capital contributions or start-up funds collected from unit owners at the time the unit owners purchase units in the condominium from the Developer.

20. LIMITATION OF LIABILITY

20.1 The liability of the owner of a unit for common expenses shall be limited to the amounts for which such unit owner is assessed from time to time in accordance with this Declaration and the By-Laws (including any interest, penalties, costs or fees provided for therein in the event of delinquency).

20.2 The owner of a unit may be personally liable for acts or omissions of the Association in relation to the use of the common elements, but only to the extent of such unit owner's pro rata share of that liability in the same percentage as such unit owners interest in the common elements, and then in no event shall such liability exceed the value of the unit owner's unit.

21. LIENS

21.1 Unless a unit owner has expressly requested or consented to work being performed or materials being furnished to unit owner's unit, such furnishing of labor or materials may not be the basis for the filing of a mechanic's lien against the unit owner's unit. No labor performed or materials furnished to the common elements shall be the basis for the filing of a lien thereon unless authorized by the Association, in which event same may be the basis for the filing of a lien against all units in the proportions for which the units are liable for common expenses.

21.2 In the event a lien against two or more units becomes effective, each unit owner thereof may relieve his unit of the lien by paying the proportionate amount attributable to the unit owner's unit. Upon such payment, it shall be the duty of the lienor to release the lien of record against such unit.

22. EMINENT DOMAIN OR CONDEMNATION PROCEEDINGS

If eminent domain or condemnation proceedings are successfully litigated against all or any part of the condominium property, the entire eminent domain or condemnation award is to be secured to the Association for the use and benefit of unit owners and their mortgagees as their interests appear, in accordance with the percentage of ownership of the common elements herein provided. Each unit owner, by acceptance of a deed of conveyance, acknowledges that the Association may act, as attorney-in-fact, for each unit owner in any such eminent domain or condemnation proceeding and in negotiations, settlements and agreements with the

appropriate governmental condemning authority. The Association shall give prompt written notice to each unit owner and to each holder of a mortgage of record of any such eminent domain or condemnation proceeding, and shall take no action in any such proceedings that will disturb any mortgagee's lien priority.

23. RULES AND REGULATIONS

23.1 As to the Common Elements. The Board of Directors may, by a 66 2/3% vote, from time to time, adopt or amend previously adopted administrative rules and regulations governing the details of the operation, use, maintenance and control of the common elements of the condominium and any facilities or services made available to the unit owners. The Board of Directors shall, from time to time, post at a conspicuous place on the condominium property, a copy of the rules and regulations adopted, from time to time, by the Board of Directors.

23.2 As to Units. The Board of Directors may, by a 66 2/3% vote, from time to time, adopt or amend previously adopted rules and regulations governing and restricting the use and maintenance of the unit(s) provided, however, that copies of such rules and regulations are furnished to each unit owner prior to the time the same become effective, and where applicable or desirable, copies thereof shall be posted at a conspicuous place on the condominium property.

23.3 Rules and Regulations. All rules and regulations adopted by the Board of Directors shall be deemed in effect until amended by the Board of Directors, and shall apply to and be binding upon the unit owners. The unit owners shall, at all times, obey said rules and regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees, servants and lessees. In order to change, amend or vary old or present rules and regulations and/or adopt new rules and regulations, the same shall be duly passed by at least a 66 2/3% vote or consent of the Board of Directors; however, no vote of the membership shall be required. A change, amendment or adoption of a rule and regulation shall not require an amendment to the Declaration of Condominium or of the By-Laws, unless such change, amendment or adoption of a rule and regulation would conflict, in any manner, with any provision of this Declaration and/or the By-Laws. The rules and regulations in effect as of the date of this Declaration are attached hereto as Exhibit "F".

24. MAINTENANCE CONTRACTS

If there shall become available to the Association a contract service for pest control and/or for appliance maintenance and/or for air-conditioning compressor maintenance and/or for any other services which may be the subject of a maintenance contract,

which the Association determines is for the benefit of the unit owners to consider, then, upon resolution of the members of the Association, by a majority of the votes of those members voting at a special meeting of the members of the Association at which a quorum is present or by a majority of the total votes of the members of the Association, in writing, the Association may enter into such contractual undertakings. The expenses of such contractual undertakings of the Association shall be a common expense. If, on the other hand, the members of the Association determine that the program may be undertaken by the Association for the benefit of only those unit owners who elect to be included in the program, then the Association may undertake the program without consent of the members of the Association being required as aforesaid, and the costs of such contractual undertakings shall be borne exclusively by the unit owners electing to be included in the program, and shall not be a common expense of the Association; but the Association may arrange for the collection of the contract costs from the individual unit owners electing to be included therein, may execute the contractual undertaking involved upon such terms and conditions as the Association deem proper and require from the unit owners electing to be included, such written undertakings as the Association shall deem proper, to evidence the said unit owners' obligations to the Association for their proportionate share of the costs of such program.

25. MANAGEMENT AGREEMENTS

25.1 The Board of Directors of the Association may enter into a contract with any firm, person or corporation in contracting for the management, maintenance and repair of the condominium property. However, the Association shall, at all times, retain the powers and duties to be exercised by or under the authority of the Board of Directors.

25.2 The Association and each unit owner, and their respective heirs, successors and assigns, shall be bound by any such management agreement to the same extent as if he or she or it had executed any such management agreement and shall be deemed to have:

25.2.1 Consented to the execution of any such management agreement by the Association; and

25.2.2 Covenanted and promised to perform each and every one of the covenants, promises and undertakings to be performed by unit owners and the Association as provided in any such management agreement; and

25.2.3 Ratified, confirmed and approved each and every provision of any such management agreement and acknowledged that all of the terms and provisions contained therein are fair and reasonable; and