

**Document Prepared By/Return To:**

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**DECLARATION OF CONDOMINIUM  
OF  
SORRENTO, A CONDOMINIUM**

**D.R. Horton, Inc.**, a Delaware corporation (the "Developer"), hereby declares:

1. **Introduction and Submission.**

1.1 **The Land.** The Developer owns the fee title to certain land located in the City of Bonita Springs, Lee County, Florida, as more particularly described in Exhibit "1" annexed hereto (the "Land").

1.2 **Submission Statement.** The Developer hereby submits the Initial Phase, more particularly described in Exhibit "1.16" attached hereto and made a part hereof (hereinafter referred to as the Initial Phase) of the Land and all improvements erected or to be erected thereon and all other property, real, personal or mixed and all access easement rights and benefits, now or hereafter situated on or within, or benefiting the Land - but excluding all public or private (e.g. cable television) utility installations therein or thereon to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act (the "Act" as hereinafter defined) as it exists on the date hereof and as it may be hereafter renumbered. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Initial Phase as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association or the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto.

1.3 **Name.** The name by which this condominium is to be identified is SORRENTO, A CONDOMINIUM (hereinafter called the "Condominium").

1.4 **Phase Condominium.** The Land, which is anticipated to become a portion of the Condominium Property when and if Phases 1 – 38 are made part of the Condominium Property, is described on Exhibit "1" attached hereto and made a part hereof. The Condominium is intended to contain thirty eight (38) Phases on the Land and fourteen (14) Phases on the Additional Property, hereinafter defined in Section 3.3. The legal description of the Initial Phase of the Condominium is set forth on Exhibit "1.16". The legal description of the proposed Phases 2-38 are set forth on Exhibits "1.1" through "1.38" attached hereto and the legal descriptions of the proposed Phases 39-52 of the Condominium shall be set forth in Exhibits "1.39" through "1.52" to be attached by amendment to this Declaration in accordance with the provisions of Section 3.

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

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

2.2 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time.

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

2.4 "Association" or "Condominium Association" means SORRENTO CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.

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

2.6 "Board of Directors" or "Board" means the Board of Directors of the Association, referred to in the Act as the "board of administration".

2.7 "Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which is located on the Condominium Property.

2.8 "By-Laws" mean the By-Laws of the Association, as amended from time to time.

2.9 "Common Elements" mean and include:

(a) The portions of the Condominium Property, which are not included within the Units.

(b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility, wastewater treatment 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 utilities and other services to more than one Unit or to the Common Elements and for the furnishing of wastewater treatment (sewer) services to the Units, provided that such property and installments are located within the Condominium Property.

(e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.

2.10 "Common Expenses" mean all expenses incurred by the Association in the performance of its duties for the Condominium, including, but not limited to: (1) expenses of maintenance, operation, protection, repair or replacement of the Common Elements and Association Property; (2) expenses declared to be Common Expenses by the provisions of this Declaration or by the Articles, By-Laws or the Act; (3) all expenses and assessments due the Master Association for expenses of the Master Association pursuant to the terms of the Master Declaration; and (4) the costs of carrying out the powers and duties of the Association. Common Expenses also include insurance for directors and officers, in-house communications, security services, and pest control services to the Common Elements, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or property of the Condominium, and the cost of a master antennae television system, duly franchised cable television service, broadband, telecommunications, satellite and/or internet services obtained pursuant to a bulk contract, if such a bulk contract is entered into by the Association. Common Expenses shall not include any separate obligations of individual Unit Owners.

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

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

2.13 "Condominium Property" means the Land, Additional Property, Improvements and other property described in Section 1.2 hereof or submitted to the condominium by amendment or supplement to this Declaration, improvements and other property described in Section 2.21 hereof, subject to the limitations thereof and exclusions therefrom.

2.14 "County" means the County of Lee, State of Florida.

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

2.16 "Developer" shall mean D.R. Horton, Inc., a Delaware corporation, its successors, assignees, nominees or affiliates as to which the rights of Developer hereunder are specifically assigned.

2.17 "Division" shall mean the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department Business and Professional Regulations or its successors.

2.18 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property, including, but not limited to, the Building or Buildings, as applicable.

2.19 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, or any other lender generally recognized as an

institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.

2.20 "Master Association" means the Sorrento Master Association, Inc., a Florida not-for-profit corporation.

2.21 "Master Declaration" means the Declaration of Covenants, Conditions and Restrictions for Sorrento, to be recorded in the Public Records of Lee County, Florida, as such may be further amended from time to time.

2.22 "Limited Common Elements" mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.23 "Phase" or "Phases" shall mean that portion of the land and improvements thereon, as contemplated by Section 718.403, Florida Statutes, which may, at Developer's sole discretion become part of the Condominium Property by recording this Declaration or subsequent amendments thereto.

2.24 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.

2.25 "Residential Unit" or "Unit" shall mean a part of the Condominium Property which is subject to exclusive ownership.

2.26 "Unit Owner" or "Owner of a Unit" or "Owner" means the Record Owner of legal title to a Condominium Parcel according to the Public Records of the County.

### 3. Description of Condominium.

3.1 Identification of Units. If all of the Land and Additional Property become part of the Condominium, the Condominium Property will consist of fifty two (52), four Unit condominium Buildings containing a total of two hundred eight (208) Residential Units. Each Phase will consist of one building having two stories. Each Phase shall also be designated by a unique physical address on Sosta Lane. Each Unit shall be identified by a separate numerical designation consisting of the Phase number, Building number and Unit Number. The designation of each Unit is set forth on Exhibit "4" attached hereto and made a part hereof. Exhibit "4" consists of a survey of the Land and Additional Property, a graphic description of the Improvements located or anticipated to be located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit "4", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions in the Initial Phase and the proposed Common Elements and Units in each subsequent Phase. The Developer reserves the right to modify the number of Units within the subsequent proposed Phases in accordance with the schedule set forth herein. There

shall pass with a Unit as appurtenances thereto (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 the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration or the Act.

3.2 Phase Plan. The Developer is developing the Land and Additional Property (to the extent the Developer acquires title to such Additional Property) as a phase condominium, as provided for by Section 718.403, Florida Statutes. The Initial Phase, as described in Exhibit "1.16" and Exhibit "4", shall be submitted to condominium ownership herewith, upon the recording of this Declaration in the Public Records of Lee County. At all times prior to and following the recording of this Declaration, the Developer shall not be obligated to add any property in the additional Phases described or to be described in Exhibits "1.1" through "1.52" to the Condominium or to construct any improvements, including Common Elements, on the proposed subsequent Phases as shown on Exhibit "4". Developer reserves the right at any time and in Developer's sole discretion to discontinue the phase condominium and at Developer's option to develop the adjacent land in any manner with any product type or to sell the adjacent land to a third party. Any and all proposed common areas within the subsequent Phases shall not become Common Elements of the Condominium Property if Developer makes such election. Developer further reserves all rights and obligations with respect to the property described as additional Phases until an amendment to this Declaration is recorded in the Public Records Lee County such additional Phases to the Condominium. If any subsequent Phase shall in fact be added to and made part of the Condominium, the Condominium Property shall be expanded to encompass and include all portions of such Phase, improvements constructed thereon, including Common Elements, Limited Common Elements, easements and rights thereto intended for use of the Phase property.

Developer is not obligated to construct any additional Phase or submit the land upon which a proposed subsequent Phase is described to condominium ownership. If the Phases are constructed and made part of this Condominium, the size and unit mix may be similar to that of the Initial Phase; however, Developer reserves the right to modify the configuration, mix or type, of the proposed Phase units. Units located on the first floor in the Initial Phase shall contain 1,652 square feet and Units located on the second floor in the Initial Phase shall contain 1,932 square feet, each exclusive of appurtenant Limited Common Elements. If the Developer modifies the configuration, mix or type of Units in any subsequent Phase, the smallest Unit shall not contain less than 1500 square feet and the largest Unit shall not contain more than 2250 square feet, in both cases exclusive of appurtenant Limited Common Elements. Additionally, the Developer reserves the right to modify the number of Units in any subsequent Phase in accordance with the following schedule:

<u>Phases/Buildings</u>	<u># of Residential Units Anticipated</u>	<u>Minimum # of Units</u>	<u>Maximum # of Units</u>
1	4	-	-
2-52	4	4	5

Initially, the Condominium shall consist of 4 Units; however, if all additional Phases are constructed and made part of the Condominium, the total number of Units shall be not less than 152 Units and not more than 208 Units. Developer also reserves the right to vary the placement of the Buildings and Common Elements on the land and the height of the Buildings if necessary to accommodate other variations in subsequent Phases.

Developer reserves the right to unilaterally add subsequent Phases to the Condominium without the consent and/or joinder of any other party by amendment to this Declaration for seven (7) years after the earlier of (i) date of the recording of substantial completion pursuant to 718.104(4)(e) or (ii) the conveyance of title to a unit which is not accompanied by a recorded assignment of Developer's rights in favor of the grantee of such title unless unit owners vote to extend such period pursuant to 718.403 for the maximum amount of time allowable under applicable law. After the Developer's right to unilaterally add Phases has expired, the Developer may add Phases with the joinder and consent of the Association and Unit Owners in accordance with applicable laws.

Notwithstanding the numerical sequence of the Phases and/or Buildings or any inference that can be drawn therefrom or from any other provision of the Declaration, the Developer reserves the right to submit Phases to the Condominium Property in any sequence; provided, however, any Phases submitted to the Condominium Property shall have ingress and egress from and to all Phases of the Condominium Property and public rights of ways.

3.3 Right to Add Additional Property. The Developer shall have the right, in its sole discretion, to add additional property adjacent to the Land (the "Additional Property") to the description of the Land and to add additional Phases to the terms and provisions of this Declaration, without the joinder or consent of any Unit Owner or any other party, by recording a Supplement to this Declaration, adding such Additional Property to the description of the Land. Such Supplement shall identify the Phases that may be added to the Condominium Property pursuant to the provisions of this Declaration. Upon the recording of the Supplement, Additional Phases located in the Additional Property, may be added to the Condominium in accordance with the procedure set forth in Section 3.2 hereof. All of the terms and provisions of this Section 3 with respect to subsequent Phases and the description of the Residential Units shall be the same for the Additional Property.

3.4 Unit Boundaries. Each Unit shall include that part of the Condominium Property that lies within the following boundaries:

(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 parametrical boundaries:

(i) Upper Boundaries. The upper boundary of a Unit shall be the unfinished lower surface of its concrete ceiling. The unit shall include any drywall attached to wood framing within the ceiling.

(ii) Lower Boundaries. The lower boundary of the Unit shall be the horizontal plane of the unfinished upper surface of the floor of the Unit.

(iii) Interior Divisions. Except as provided in subsections (i) and (ii) above, no part of the floor, stairwell adjoining floors or nonstructural interior walls shall be considered a boundary of the Unit.

(b) Parametrical Boundaries. The parametrical 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 except as provided below.

(c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces of glass thereof, provided however, the exterior surfaces of doors facing other Common Elements thereof shall be deemed Limited Common Elements for purposes of painting. Notwithstanding anything to the contrary, the structural components of the Building are expressly excluded from the Units and are hereby deemed Common Elements.

(d) Garages and Storage. Each Unit includes a space labeled as garage on Exhibit "4" hereto. Each garage shall be part of the Unit; however, no portion of a garage intended for the parking of a motor vehicle and incidental storage, shall be converted to air conditioned living space. The Unit Owner shall maintain the garage door, floor and the interior of the garage and appurtenant equipment. The Association shall maintain the exterior of the Garage. The storage area located adjacent to the covered lanai shall be part of the Unit and maintained solely by the Unit Owner as part of the Unit.

(e) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "4" hereto shall control in determining the boundaries of a Unit, except that the provisions of Section 3.3(c) above shall control unless specifically depicted otherwise on such survey.

3.5 Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:

(a) Patios, Balconies, Terraces, and Lanais appurtenant to Residential Units.

Any patio, balcony, terrace and/or lanai (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others, if any, shall be a Limited Common Element of such Unit(s). The Association shall be responsible for the maintenance of the structural elements of any such Limited Common Elements, with the costs of same being a part of the Common Expenses. Each Owner shall, however, be responsible for the general cleaning and upkeep of the appearance of the area(s) and, for the repair and replacement of mechanical elements and any floor coverings placed or installed in the garage or on any patio, balcony terrace and/or lanai, if applicable. A Unit Owner using a patio, balcony, terrace and/or lanai or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom.

(b) Entry. Each stairwell and entry of a Unit as shown on Exhibit "4" shall be a Limited Common Element of each Unit for the exclusive use of the Unit Owner of the Unit which it serves. Such entry and stairwell shall be maintained by the Association.

(c) Miscellaneous Areas, A/C Pad and Equipment. Any areas, including an air conditioning pad, upon which fixtures or equipment (e.g., an air conditioning unit located adjacent to the Unit and related lines and equipment) serving a Unit or Units exclusively are located shall be Limited Common Elements of such Unit(s) being served by the fixtures or equipment. Additionally, any other area labeled "L.C.E." on Exhibit "4" hereto shall be deemed a Limited Common Element of the Unit to which such area is pertinent. The maintenance, repair and replacement of any such equipment and/or areas shall be the sole responsibility of the Owner(s) of the Unit to which the equipment and/or areas are appurtenant. Air conditioning equipment, including but not limited to compressors, lines, and handlers, shall be owned, maintained and replaced by the Unit Owner whose Unit it serves exclusively.

(d) Driveways. Each are labeled as "Drive" on Exhibit "4" shall be a Limited Common Element reserved for the exclusive use of the Unit Owner of the adjacent Unit to which it serves. The Driveway shall be maintained by the Association. Any space located between driveways shall be Common Elements.

(e) Exterior Door Surfaces. The exterior surface materials of the doors and garage doors serving a Unit shall be a Limited Common Element thereof, to be painted by the Association; however, each Unit owner shall be responsible for the maintenance and repair of the door and door hardware itself.

(f) Conveyance of a Unit. All Limited Common Elements appurtenant to that Unit shall be conveyed as part of that Unit unless alternative means of conveyance are specifically provided for in this Declaration.

3.6 Common Elements. The land, landscaping and other improvements in the Condominium Property but not part of any Unit shall be Common Elements of the Condominium. The Developer may, but shall not be required to, add additional facilities,



amenities, surface parking, and roadways in its sole discretion. The Developer also reserves the right to modify, amend, relocate, or substitute Common Elements, as may be required by governmental authorities or in its sole discretion for any purpose to preserve the character of the property. If the Developer elects to discontinue the phase plan and not add proposed subsequent Phases to the Condominium Property or Additional Property, the Developer reserves the right to grant necessary or desirable access and use easements over any portion of the Common Elements, in favor of the Developer, its successors and assigns, and owners of residential units or lots constructed on the land which was not added to the Condominium in accordance with Section 3.7(j).

3.7 Easements. The following easements are hereby created (in addition to any easements created under the Act and any easements recorded in the Public Records of Lee County affecting the Condominium Property):

(a) Support. Each Unit and any structure and/or improvement hereafter constructed shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, fiber optics, other communications and security systems, and other services and drainage in order to serve the Condominium. The Association shall have a right of access to each Unit during reasonable hours when 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 the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units. All drainage easements dedicated or reserved hereunder in accordance with the WMD permit shall be permanent in nature unless modification of the location of any drainage easement is required or approved by the WMD. A permanent easement over those Common Elements providing access to any CDD (as hereinafter defined) property is dedicated and reserved in favor of the Parklands West Community Development District (the "CDD") for the purpose of allowing the CDD to carry out its obligations under the CDD Charter on property which is owned and to be maintained by the CDD.

(c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit (or Limited Common Elements appurtenant thereto); (b) any Unit encroaches upon any other Unit (or Limited Common Elements appurtenant thereto) or upon any portion of the Common Elements or Association Property; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements or Association Property made by or with the consent of the Association or Developer, as appropriate, 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 or Association Property, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.

(d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests, tenants and invitees shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements or Association Property as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements, Association Property or Master Association Property as from time to time may be paved and intended for such purposes. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

(e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property or Association Property and take any and all action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so.

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

(g) Sales and Leasing Activity. Until such time as Developer (or any of its affiliates) is no longer offering Units for sale in the ordinary course of business, the Developer, its designees, affiliates, successors and assigns, hereby reserves and shall have the right to use any Units and parts of the Common Elements or Association Property for guest accommodations, model apartments and sales, leasing, management resales and construction offices, to show model Units and the Common Elements and/or other portions of the Condominium Property or the adjacent property to prospective purchasers and tenants of Units and/or units or improvements intended to be constructed on any adjacent properties or on the Condominium Property of the Developer or its designees or affiliates, and to erect on the Condominium Property or Association Property signs and other promotional material to advertise Units (or the other aforesaid units) for sale or lease. An easement is hereby reserved for all such purposes and without the requirement that any consideration be paid by the Developer to the Association or any Unit Owner.

(h) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for acts or omissions of Developer in the development, construction, sale, resale, leasing, financing and marketing of the Condominium, then Developer and its contracts, agents and designees shall have the right, in Developer's sole discretion and from time to time and without requiring prior approval of the Association and/or any Unit Owner and without requiring any consideration to be paid by the Developer to the Unit Owners and/or Condominium Association (provided, however, that absent an emergency situation, Developer

shall provide reasonable advance notice), to enter the Condominium Property, including the Units, Common Elements and Limited Common Elements, for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. The failure of the Association or any Unit Owner to grant, or to interfere with, such access, shall alleviate the Developer from having to fulfill its warranty obligations and the costs, expenses, liabilities or damages arising out of any unfulfilled Developer warranty will be the sole obligation and liability of the person or entity who or which impedes the Developer in any way in Developer's activities described in this Subsection 3.7(i). The easements reserved in this Section shall expressly survive the transfer of control of the Association to Unit Owners other than the Developer and the issuance of any certificates of occupancy for the Condominium Property (or portions thereof). **Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be or are expressly set forth herein) as set forth in Section 23 below.**

(i) Construction Easement. Developer hereby reserves to itself and its successors, assigns and designees a non-exclusive easement over such portions of the Common Elements or Association Property as are necessary to afford access between any public road and any and all lands adjacent to the Condominium which are owned by Developer or its successors or assigns. The purpose of such easement shall be for the development, construction, sale and administration of any condominium or other development Developer elects to construct on said adjacent land. Developer shall be responsible for any damage caused to the Common Elements or Association Property as a result of the use of such easement by construction and other vehicles and persons, ordinary wear and tear excepted.

(j) Master Association Easement. The Master Association and its agents, contractors, designees, employees, successors and assignees shall have a non-exclusive easement for access over, upon and through all Common Elements for the purpose of performing its duties and obligations as set forth in the Master Declaration. The Master Association shall also have an easement for access over, upon and through the Condominium Property for the purpose of performing its duty and obligation to maintain the landscaping and surface water management systems located on the Condominium Property.

(k) Additional Easements. The Association, by and through the Board of Directors on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property or Association Property, as the Association shall deem necessary or desirable, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes. In addition, if the Developer elects to discontinue the phase plan and not add proposed subsequent Phases to the Condominium Property or Additional Property, the Developer reserves the right to grant necessary or desirable access and use easements over any portion of the Common Elements, in

favor of the Developer, its successors and assigns, and owners of residential units or lots constructed on the land which was not added to the Condominium in accordance with this Declaration.

3.8 Water Management System. It shall be the responsibility of the Master Association to operate and maintain the surface and storm water management systems in accordance with the permit issued by the WMD for the Condominium. The Master Association shall collect any necessary assessments as operating expenses of the Master Association from the members to operate and maintain the surface and storm water management systems in accordance with the permit.

4. 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 the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

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

5.1 Percentage Ownership and Shares in Common Elements. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit, are set forth in **Exhibit "5"** attached hereto and made a part hereof, shall be equal for all Units in the Condominium. The share of Common Elements and Common Surplus for each Unit may be reduced as Units are added to the Condominium; however, all Units shall always have an equal share of Ownership on the Common Elements and Common Surplus. The Developer shall retain the unilateral right to modify the percentage ownership appurtenant to each Unit in accordance with Exhibit "5" so long as the Developer has the unilateral right to add Phases to the Condominium in accordance with this Declaration and Florida Law.

5.2 Voting. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association.

6. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:

6.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors of the Association or by one-third (1/3) members of the Association. Except as elsewhere provided,

approvals of proposed amendments must be by affirmative vote of no less than sixty-seven percent (67%) of the Unit Owners. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting; however, the same may not be counted as a vote on the action taken and may not be used for the purpose of creating a quorum.

6.2 By the Developer. The Developer, during the time it has the right to elect a majority of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association to correct an omission or error, or effect any other amendment, except that this procedure for amendment cannot be used if (i) such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent thereto; or (ii) the amendment purports to change the configuration or size of a Unit in any material fashion; materially alters or modifies the appurtenance to a Unit, changes the share of a Unit as set forth in Section 5.1 above, or purports to permit the creation of time-share estates. Any amendments described in clause (ii) shall require the joinders set forth in Section 718.110(4) or (8), Florida Statutes, as applicable. Notwithstanding the foregoing, the Developer shall also have the right to amend this Declaration as provided in Sections 3.2 and 3.3 hereof without the joinder or consent of any Unit Owner or the Association and to unilaterally amend this Declaration to add additional Phase property to the Condominium in accordance with Section 3.2 and applicable law. Thereafter the proposed phases may be added to the Condominium with the proper vote of the Association and Unit Owners in accordance with applicable law.

6.3 Water Management District. No amendment may be adopted which would affect the surface water management and/or drainage systems, including environmental conversation areas, without the consent of the applicable water management district ("WMD"). The WMD shall determine whether the amendment necessitates a modification of the current surface water management permit. If a modification is necessary, the WMD will advise the Association.

6.4 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of Lee County.

6.5 Proviso. Unless otherwise provided specifically to the contrary in this Declaration (e.g., in Section 3 and 10 hereof), no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus after the applicable Phases have been added to the Condominium by amendment to this Declaration or the Developer has given notice to the Unit Owners that no additional Phases will be added to the Condominium Property, unless the record Owner(s) thereof, all record owners of mortgages or other liens thereon and the Owners of a majority of all other Units, shall join in the execution of the amendment. No amendment may

be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment, such joinder not to be unreasonably withheld. The provisions of this Section 6.5 may not be amended without the joinder and consent of the Developer and affected mortgagee.

No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

## 7. Maintenance and Repairs.

7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural (except as provided below), ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, water heaters, fixtures and outlets, appliances, built-in cabinets, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or the Limited Common Elements (or dividing a Unit from its Limited Common Elements) or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. In the event of casualty or other acts of God, the Association shall have the responsibility to replace and repair any such items that may be required to be caused by the Association's insurance policy under applicable law.

7.2 Common Elements or Association Property. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefore, all maintenance, repairs and replacements in or to the Common Elements or Association Property (other than Limited Common Elements as provided above) shall be performed by the Association and the cost and expense thereof shall be assessed to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners in the form of a Special Assessment levied by the Association.

7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any equipment, all air conditioning equipment, plumbing or electrical feed, fixtures, screens, enclosures and doors or other items of property which service a particular Unit or Units (to the exclusion of other Unit Owners) shall be the responsibility of the applicable Unit Owner(s), individually, and not the Association, without regard to whether such items are included within the boundaries of the Units, provided that if not within the boundaries of a Unit, same must constitute or lie within a Limited Common Element appurtenant thereto.

8. Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of 10% of the then applicable budget of the Association in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate of 10% of the then applicable budget of the Association or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

9. Additions, Alterations or Improvements by Unit Owner.

9.1 Consent of the Board of Directors. No Residential Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Condominium Property, any structural addition, alteration or improvement in or to his or her Unit, the Common Elements or any Limited Common Element or any change to his or her Unit which is visible from any other Unit, the Common Elements and/or the Condominium Property, without, in each instance, the prior written consent of the Board of Directors of the Association. Without limiting the generality of this Subsection 9.1, no Unit Owner shall cause or allow improvements or changes to his or her Unit, or to any Limited Common Elements, Common Elements or any property of the Condominium Association which does or could in any way affect, directly or indirectly, the structural, electrical, plumbing, or mechanical systems, or any landscaping or drainage, of any portion of the Condominium Property without first obtaining the written consent of the Board of the Association. The Board shall have the obligation to answer, in writing, any written request by a Residential Unit Owner for approval of such an addition, alteration or improvement within forty-five (45) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor, or others, to perform the work, imposing conduct standards on all such workers, establishing permitted work hours and requiring the Unit Owner to obtain insurance naming the Developer and the Association as additional named insureds. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction,

and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked.

A Residential Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Unit Owner, and such Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them against any liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. 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 the Developer, the Association nor any of its 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, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer and/or the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Developer 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, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder. Without limiting the generality of the foregoing, inasmuch as the Condominium has been constructed with post tensioned cables and/or rods, absolutely no penetration shall be made to any floor, roof or ceiling slabs without the prior written consent of the Board of Directors and review of the as-built plans and specifications for the Building to confirm the approximate location of the post tensioned cables and/or rods. The plans and specifications for the Building shall be maintained by the Association as part of its official records. Each Owner hereby releases Developer, its members, contractors, architects, engineers, and its and their officers, directors, shareholders, employees and agents from and against any and all liability that may result from penetration of any of the post tensioned cables and/or rods.

9.2 Improvements, Additions or Alterations by Developer. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Association, the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it or them and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, windows, doors, sliding glass doors, floors, ceilings and other structural portions of the Improvements and/or the installation of divider walls



and/or signs). Further, Developer reserves the right, without the consent or approval of the Board of Directors or other Unit Owners, to expand, alter or add to all or any part of the commonly used facilities. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9 shall be adopted in accordance with Section 3, Section 6, and Section 10 of this Declaration.

10. Changes in Developer-Owned Units. Without limiting the generality of the provisions of Subsection 9.2 above, and anything to the contrary notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-owned Units; (iii) change the size of Developer-owned Units by combining separate Developer-owned Units into a single apartment (although being kept as two separate legal Units), or otherwise; and (iv) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units, or portions thereof, into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Subsection 6.5, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Subsection 6.2 above. Without limiting the generality of Subsection 6.5 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

11. Operation of the Condominium by the Association; Powers and Duties.

11.1 Powers and Duties. The Association shall be the entity 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 Articles of Incorporation and By-Laws of the Association (respectively, Exhibits "2" and "3" annexed hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

(a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any

Common Elements therein or elsewhere, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.

(b) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements.

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

(d) The power to contract for the management and maintenance of the Condominium Property or any Association Property and the Association and to authorize a duly licensed management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements and any Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, 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 therefore mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, provided further that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.

(f) The power to charge a fee for the exclusive use of any Common Elements or Association Property by an Owner having a right to such use.

(g) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property and any Association Property.

(h) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to Florida Statutes and the Act.

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

11.2 Limitation upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9 hereof.

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

11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.

11.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations 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 Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

11.6 Effect on Developer. So long as Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken by the Association (subsequent to control thereof being assumed by Unit Owners other than the Developer) without the prior written approval of the Developer:

(a) Assessment of the Developer as a Unit Owner for capital improvements;  
or

(b) Any action by the Association that would be detrimental to the sales of Units by the Developer or the assignment of Limited Common Elements by the Developer for consideration; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.

**NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE**

**ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, TENANTS, EMPLOYEES, PATRONS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:**

(c) It is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the Condominium Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Condominium Property and the value thereof;

(d) The Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Lee County, and/or any other jurisdiction or the prevention of tortuous activities; and

(e) Any provisions of the Association Documents setting forth the uses of Assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of Association funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if Association funds are chosen to be used for any such reason.

**EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS 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 PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION, EXCEPT THOSE RIGHTS WHICH ARE NOT WAIVEABLE PURSUANT TO THE ACT AND OTHER APPLICABLE LAW.**

**AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, MANAGERS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS AND SHALL ALSO INCLUDE THE DEVELOPER, WHICH SHALL BE FULLY PROTECTED HEREBY.**

12. Determination of Common Expenses and Fixing of Assessments Therefore. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium

and the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses and Limited Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by law and not lawfully waived) the operation, maintenance, repair and replacement of the Common Elements, Limited Common Elements, to the extent applicable, and Association Property costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted in a manner consistent with the provisions of the By-Laws. The Master Association shall also promulgate annual budgets in accordance with the Master Declaration and each Unit Owner shall be obligated to pay assessments to the Master Association as provided for in the Master Declaration. Master Association assessments shall be remitted by each Unit Owner directly to the Master Association.

### 13. Collection of Assessments.

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

13.2 Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

(a) "Special Assessments" shall mean and refer to an Assessment against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.

(b) "Capital Improvement Assessments" shall mean and refer to an Assessment against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property.

Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed ten percent (10%) of the then estimated operating budget of the Association, the Board must obtain approval of a majority of the voting interests represented at a meeting at which a quorum is attained.

13.3 Default in Payment of Assessments for Common Expenses. If any Assessments and installments thereof are not paid within ten (10) days from the date when they are due, a late fee of the greater of Twenty-Five and No/100 Dollars (\$25.00) or five percent (5%) of each installment that is late shall be due and payable. Such late fee may be changed by the Board, from time to time, but such late fee shall not exceed the maximum amount allowed under the Act (as amended from time to time). If any Assessments or installments thereof are not paid within thirty (30) days from the date they are due, interest shall accrue at the rate of eighteen percent (18%) per annum, commencing on the date when due, and shall be due and payable to the Association. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest, late fees and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. No lien may be filed by the Association until 30 days after the date the owner is provided with notice of the Association's intent to file a lien. Such notice shall be delivered by registered or certified mail, return receipt requested, and by first class mail to the Owner at the address reflected in the records of the Association. The lien is effective as of the date of the recording of this Declaration and shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, and costs and attorneys fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments 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 without waiving any claim of lien.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner, the Association may declare the Assessment installments for the remainder of the budget year to be accelerated and shall be due and payable upon the recording of the claim of lien for same. In the event that the amount of such installments changes during the twelve (12) month period, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

13.4 Notice of Intention to Foreclose Lien. No foreclosure action shall be filed until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty

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

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

13.6 Institutional First Mortgagee. In the event an Institutional First Mortgagee shall obtain title to a Unit as a result of foreclosure of a mortgage thereon, or as a result of a deed given in lieu of foreclosure or in satisfaction of debt, such first mortgagee shall be liable for the share of Assessments imposed by the Association pertaining to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due prior to acquisition of title as well as all Assessments and charges coming due after the date of acquisition. However, the liability of an Institutional First Mortgagee or its successor or assignee, who acquires title as aforesaid, for Assessments which became due prior to the date of acquisition of title, shall be limited to the lesser of (a) the unpaid regular periodic Assessments which accrued or came due with respect to the Unit during the twelve (12) months immediately preceding acquisition of such title for which payment in full has not been received by the Association, or (b) one percent (1%) of the original mortgage debt secured by such Unit; provided that, except as provided by applicable law, the Association was joined as a defendant in the foreclosure action. Any unpaid Assessment which cannot be collected as a lien against any Unit(s) by reason of the provisions of this Section shall be deemed to be an Assessment divided equally among and payable by all Unit(s) subject to assessment by the Association, including the Unit(s) as to which the foreclosure (or conveyance in lieu of foreclosure) took place. The provisions of this Section are provided for in accordance with the Act, as the same may be amended from time to time.

Developer's Liability for Assessments. Developer guarantees to each Unit Owner that Condominium Association Assessment for each Unit shall not exceed \$400.00 per month beginning on the date of recordation of this Declaration and ending six (6) months following the date on which the closing on the purchase and sale of the first Unit in Phase 1 of the Condominium occurs (the "Guarantee Period"). During the Guarantee Period, the Developer shall be excused from the payment of the Developer's share of the Common Expenses for Units owned by the Developer; provided, however, if at any time during the Guarantee Period the Assessments receivable from Unit Owner Assessments up to the guaranteed level of Assessments are not sufficient to provide payment, on a timely basis, of all Common Expenses, including the full funding of the reserves, unless the funding of reserves has been properly waived, the Developer shall advance money to the Association at the time such payments are due

so that there is no deficit. For purposes of this subsection, income to the Association other than Assessments (as defined herein and in the Act) shall not be taken into account when determining the deficits to be funded by the Developer. The Developer shall have the option of extending the Guarantee Period by an unlimited amount of extensions of six (6) months each, in Developer's sole discretion, on the same terms provided herein by providing the Association notice of the Developer's intent to extend the Guarantee Period prior to the expiration of the then current Guarantee Period, or paying the share of Common Expenses and Assessments attributable to Units it is then offering for sale; provided, however, the Developer, in its sole discretion, may elect for the Guarantee Period to expire at such time during the Guarantee Period as the Developer elects not to add additional Phases to the Condominium or the Guarantee Period shall expire automatically upon the turnover of control of the Association to Unit Owners other than the Developer. No funds receivable from Unit purchasers or 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 this Declaration and disclosed in the Estimated Operating Budget of the Association, shall be used for the payment of Common Expenses during any period in which the Developer is excused from payment of Assessments. This restriction shall apply to funds, including, but not limited to, capital contributions or start-up funds, collected from Unit purchasers at closing. The guarantee of Condominium Assessments provide for herein shall not relate to the Master Common Expenses, which shall be governed by Master Association and Master Declaration.

Notwithstanding the above and as provided in Section 718.116(9)(a)(2) of the Act, in the event of an Extraordinary Financial Event (hereinafter defined), the cost necessary to effect restoration shall be assessed against all Unit Owners owning Units on the date of such Extraordinary Financial Event, and their successors and assigns, including the Developer (with respect to Units owned by the Developer). As used in this subsection, an "Extraordinary Financial Event" shall mean a casualty loss affecting the Condominium resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a) of the Act.

**13.7 Certificate of Unpaid Assessments.** Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

**13.8 Installments.** Regular Assessments shall be collected monthly or quarterly (as determined by the Board of Directors), in advance. Initially, assessments will be collected monthly, due on the first calendar day of the month for the month in which they are due.

**13.9 Application of Payments.** Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.



13.10 Assessments Payable to Master Association. Pursuant to Section 12 of this Declaration, each Unit Owner shall be responsible for the payment of assessments for the Common Expenses payable to the Master Association. The Master Association shall collect from each Unit Owner their share of assessments payable to the Master Association pursuant to the terms of the Master Declaration and the Master Association operations budget. Each Unit Owner shall remit such assessments directly to the Master Association. The Master Association shall have any and all lien rights allocated to the Master Association in the Master Declaration and under applicable law against such Unit Owner's Unit for the failure of a Unit Owner to make payment(s) of such Unit Owners applicable share of the assessment(s) when due to the Master Association.

13.11 Working Capital Contribution. Upon each conveyance of a Unit, including the initial conveyance of Units from the Developer and all subsequent conveyance, at the time of the closing, the Unit purchaser shall pay to the Association the sum of \$100.00 as a working capital contribution. These funds shall be deposited in the Association's accounts for the purpose of establishing working capital and operating funds to be used in the Association's discretion in accordance with the Act. Such contributions shall not be credited to any Assessments owed by an Owner and no refund of the working capital contribution will be made on re-sale.

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

14.1 Purchase, Custody and Payment.

(a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.

(b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.

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

(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), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).

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

(f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith. Each Unit Owner shall, at minimum, obtain personal property and liability insurance for their Unit in accordance with the Law.

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

(a) Casualty. The Building, including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), but excluding the items listed in the second sentence of this paragraph, and all insurable Improvements located on the Common Elements and Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or owned by the Association (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, if reasonably available, excluding foundation and excavation costs. Casualty insurance shall not be required to insure unit floor, wall or ceiling coverings or the following equipment if it is (i) located within a Unit and (ii) the repair and replacement obligation of the Unit Owner: electrical fixtures, appliances, water heaters, water fillers, countertops, window treatments or built-in cabinets. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:

(i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;

(ii) Reconstruction expenses caused by intervening changes in laws, codes, ordinances or regulations; and

(iii) Such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(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 of the Association, but with combined single limit liability of not less than \$1,000,000 per occurrence with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa, if reasonably available.

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

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

(e) Fidelity Insurance. Fidelity insurance, if required by the Act or if so desired by the Board of Directors, covering all persons who control or disburse Association funds and the President, Secretary and Treasurer of the Association, such insurance to be in an amount which is the greater of that required by the Act or as determined by the Board.

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

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

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, a committee of the Board of Directors or members of any such committee, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association, if required by FNMA/FHLMC and, if generally available, shall have endorsements covering (i) agreed amount and inflation guard and (ii) steam boiler coverage (at least \$50,000 coverage for each accident at each location, if applicable).

14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may (or shall if required by FNMA/FHLMC, if applicable) obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value 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 Section.

14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.

14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering

property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida or one or more of the Directors of the Association. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares 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 in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.

(b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), 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 such 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 as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

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

(a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefore.

(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 the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.

(c) Failure to Reconstruct or Repair. If it is determined in the manner 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 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

(d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

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

14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, in accordance with the Act, to purchase and pay for insurance as to all such risks and others not covered by insurance carried by the Association, including risk of special assessment. The Association shall require each Owner to provide evidence of insurance not more than once a year. The Association shall be named as an additional insured and loss payee on all owners' casualty insurance policies.

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

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

14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

## 15. Reconstruction or Repair after Fire or Other Casualty.

15.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If seventy-five percent (75%) or more, measured in terms of replacement cost, of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners, if the Insured Property is or includes the portion of the Condominium Property in which same are located) owning eighty percent (80%) of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (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 Unit Owners in proportion to the damage suffered by each such affected Unit 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); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee (if 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.

**15.2 Plans and Specifications.** Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.

**15.3 Special Responsibility.** If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or

reconstruction exceeds the insurance proceeds held for such repair or reconstruction 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.

(a) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

(ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

(iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

(iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to 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 part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

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

15.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements.

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

## 16. Condemnation.

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

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

16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided 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 condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and



shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.

16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (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 payable by the Owner of the Unit.

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

16.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

(a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of 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 shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefore shall exceed the balance 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 appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units), each Unit to receive a fractional interest equal to one (1) over the remaining number of Units.

(d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking.

The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto 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 Unit 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 Units 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 effected pursuant hereto by reason of the taking.

16.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that 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 Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto 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.

16.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

17. 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:

17.1 Occupancy. Each Unit shall be occupied and used only in accordance with zoning and other land use regulations applicable thereto, as same may be amended from time to time (and including any variance granted for a particular Unit), with all applicable local, state and federal regulations and in accordance with the terms of the Master Declaration.

17.2 Pets. Not more than two (2) domestic pets (limited to either dogs, cats or other common household pets) may be kept in a Unit, provided said pets: (i) are not kept, bred, or maintained for any commercial purpose; (ii) are not a nuisance or annoyance to neighbors; (iii) are not left unattended on balconies or outside the Units; and (iv) comply with the restrictions set forth in the Master Declaration. Unit Owners must pick up all solid wastes of their pets and

dispose of such waste appropriately. All pets, including cats, must be leashed at all times when outside the Unit. Pets may not be kept in or on a Limited Common Element. Neither the Developer, Board of Directors, nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of this subsection, and any occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Developer, the Board of Directors, the Association, and each Unit Owner in such regard. Further, any Unit Owner maintaining a pet within a Unit shall carry necessary liability insurance coverage for such pet, naming the Association as an additional insured. The Association shall have the right to request proof of such insurance on an annual basis. If any Owner fails to comply with the insurance requirements herein, the Association shall have the right to require any pet be removed from occupancy of a Unit until proper insurance is obtained. Without limiting the generality of Section 17 hereof, a violation of the provisions of this subsection shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in the By-Laws and Rules and Regulations) and/or to require, through order of the Board, any pet to be permanently removed from the Condominium Property.

17.3 Alterations. Without limiting the generality of Subsection 9.1 hereof, but subject to Section 11 hereof, no Residential Unit Owner shall cause or allow improvements or physical or structural changes to any Unit, Limited Common Elements appurtenant thereto, Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing or altering any electrical wiring or plumbing systems, installing television antennae, satellite dishes, electronic devices, transmitting and/or receiving equipment, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of said Residential Unit, without obtaining the prior written consent of the Association (in the manner specified in Subsection 9.1 hereof).

Curtains, blinds, shutters, levelors, or draperies (or linings thereof) which face the exterior windows or glass doors of Residential Units shall be white or off-white in color and shall be subject to disapproval by the Association, in which case unapproved window coverings shall be removed and replaced by the Residential Unit Owner, upon the Board's written request, with items acceptable to the Association, all at the Residential Unit Owner's sole expense.

17.4 Use of Common Elements and Association Property. 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. In that regard, each Unit Owner, by acceptance of a deed for a Unit, thereby covenants and agrees that it is the intention of the Developer that the stairwells of the Building are intended primarily for ingress and egress, and as such may be constructed and left unfinished solely as to be functional for said purpose, without regard to the aesthetic appearance of said stairwells. Similarly, the parking areas and utility pipes serving the Condominium are intended primarily for functional purposes, and as such may be left unfinished without regard to the aesthetic appearance of same. The foregoing is not intended to prohibit the use of the stairwells, parking areas and utility pipes for any other proper purpose.

17.5 Garages. Garages shall be utilized for the parking of motor vehicles and incidental storage only. No garage shall be converted in air conditioned living space, offices, business or other uses which would prohibit the parking of a vehicle therein.

17.6 Nuisances. No nuisances (as reasonably determined by the Association) shall be allowed on the Condominium Property or Association 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. No activity specifically permitted by this Declaration shall be deemed a nuisance.

17.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property or Association Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 17.7. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.

17.8 Hurricane Protection. No type of hurricane protection may be installed in or around the Units other than hurricane shutters meeting the specifications (including as to location) adopted by the Board of Directors as required by the Act and applicable building code (provided that, if laminated impact glass is installed, no shutters shall also be installed). No hurricane shutters shall be installed or affixed across entrance areas of the Units.

17.9 Exterior Improvements; Landscaping, Window Treatments, Signs. Without limiting the generalities of Sections 9.1 or 17.3 hereof, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior doors, walls or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment) except any Unit 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, may display in a respectful way portable, removable official flags, not larger than 4 1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard and any owner may attach to the mantel or door frame a religious object not to exceed 3 inches wide, 9 inches high and 1.5 inches deep; nor shall any Unit Owner plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit unless same is approved by the Board of Directors. The Developer and subsequently the Board of Directors shall adopt standards for uniform signage for Units. The Board of Directors may also permit landscape planters, awnings and the like which are (i) specifically approved for the particular Unit or (ii) in accordance with uniform standards adopted by the Board of Directors. Any such exterior items or additions shall be the sole maintenance responsibility of the applicable Unit Owner, and the Board of Directors shall have all rights and remedies provided in this Declaration should such Owner fail to maintain same in a neat, clean and attractive fashion.

17.10 Commercial/Recreational Vehicles and Trailers. Except as permitted below, no commercial trucks, other commercial vehicles, campers, mobile homes, recreational vehicles or boats or other trailers shall be kept on the Condominium Property other than in a Unit garage

provided that a sport utility vehicle, passenger truck or van shall not be considered a commercial truck. For purposes of the foregoing, "commercial vehicles" shall mean those not designed or used for customary personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall be dispositive as to whether same is a commercial vehicle. The foregoing shall not prohibit, however, (i) the parking of otherwise prohibited vehicles on the Condominium Property in the course of providing services to the Condominium Property, the occupants thereof or the Association, (ii) unmarked pick-up trucks, (iii) vans with windows along the entirety of both sides and which contain seating for at least four (4) persons, provided that such vans and trucks shall not bear commercial-type lettering or graphics or (iv) vehicles expressly approved by the Board of Directors, even if such vehicles would otherwise be in violation of this Section or the parking of any vehicles within the enclosed garage. In addition, commercial vehicles that are also utilized as a primary personal vehicle shall be permitted on the Condominium Property so long as the owner of such vehicle registers the commercial vehicle as a primary personal vehicle with the Association. The Association may elect to issue vehicle decals for such registered commercial vehicles and the Association reserves the right to require that a decal be displayed on the vehicle while it is parked on the Condominium Property. All vehicles kept on the Condominium Property shall be operational and in good condition. In the event of doubt or dispute as to whether a vehicle is prohibited by this Section, the good-faith determination of the Board shall be binding and conclusive.

17.11 Weight and Sound Restrictions. Unless installed by the Developer or otherwise first approved by the Board, hard and/or heavy surface floor coverings, such as tile, marble, wood and the like must be submitted to and approved, in writing, by the Board, which approval may be conditioned upon the use of appropriate soundproofing materials under such floor coverings, and must meet applicable structural requirements. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building. The Board may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. No tile shall be permitted on balconies and the Board will have the right to specify the exact material to be used on balconies. These use guidelines are consistent with good design practices for waterproofing and structural design. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. APPLICABLE WARRANTIES OF THE DEVELOPER, IF ANY, SHALL BE VOIDED BY VIOLATIONS OF THESE RESTRICTIONS AND REQUIREMENTS. FURTHER, EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF THEIR UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND TRANSMISSION IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY UNITS AND/OR MECHANICAL EQUIPMENT CAN OFTEN BE HEARD IN ANOTHER UNIT. THE DEVELOPER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND TRANSMISSION BETWEEN AND AMONG UNITS AND THE OTHER PORTIONS OF THE CONDOMINIUM PROPERTY, AND EACH UNIT OWNER HEREBY WAIVES AND EXPRESSLY RELEASES ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND TRANSMISSION.

17.12 Mitigation of Dampness and Humidity. 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. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at not more than 78°F, to minimize humidity in the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. The Developer does not make any representations or warranties regarding the existence or development of molds or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. In furtherance of the rights of the Association as set forth in the Declaration, in the event that the Association reasonably believes that these provisions are not being complied with, then, the Association shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the 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 (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). The Association agrees to notify Unit Owner and Unit Owner agrees to notify Association of the discovery of mold, mildew and/or water intrusion and/or damage pertaining to the property of the Condominium they respectively maintain.

The Association and each Unit Owner shall agree to: (i) regularly inspect the parts of the Condominium that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or damage; (ii) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Condominium that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that they respectively maintain in accordance with current industry-accepted methods.

17.13 Effect on Developer. Subject to the following exceptions, the restrictions and limitations set forth in this Section 17 and Section 18 shall not apply to the Developer or to Units owned by the Developer. The Developer shall not be exempt from the restrictions, if any, relating to requirements that leases or lessees be approved by the Association, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to the Developer's construction, maintenance, sales, re-sales, leasing and other marketing and financing activities, which activities the Developer can perform without the prior consent of the Unit Owners. Further, notwithstanding anything herein contained to the contrary, the

provisions of this Section 17 shall not be amended, altered or modified in any manner affecting the Developer without the prior consent of the Developer.

17.14 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 17 for good cause shown.

17.15 Changes in Permitted Uses. No amendments to this Section 17, any other provision of this Declaration governing the use of Units or the Common Elements or to any Rules and Regulations of the Association shall operate to prohibit the parking of a vehicle or then-current leasing or occupancy of a Unit where same was (i) permitted prior to the effectiveness of the amendment, (ii) being conducted in reliance on such permissibility and (iii) is continuing with the same pet, vehicle, lessee or occupant that existed prior to the effectiveness of the amendment. Likewise, no improvement made to or about any Unit (e.g., the installation of signs, plantings or awnings) which was permitted at the time of its making shall be required to be removed by virtue of a change in the permissibility of such types of improvements.

18. Selling, Leasing and Mortgaging of Units. Units may be made subject to mortgages without restrictions, but sales and leases thereof shall be subject to the provisions of this Section 18.

18.1 Sales. There shall be no restriction on the right of any Unit Owner to sell, convey, or transfer his Unit. However, every new Unit Owner must notify the Association of his purchase or acquisition of the Unit by providing the Association with a copy of the deed whereby the Unit Owner acquired title to his Unit within 30 days of the transfer of ownership. Any deed or conveyance to a new Unit Owner shall automatically be deemed to provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, the Rules and Regulations, and all other agreements, documents or instruments affecting the Condominium Property, as the same may be amended from time to time.

18.2 Leases. No portion of a Residential Unit (other than an entire Unit) may be leased. All leases of Residential Units shall be in writing and shall be deemed to provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and the By-Laws of the Association, Rules and Regulations, or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. Further, leases shall provide that the Association shall have the right to collect all rental or lease payments due to the Owner and apply same against unpaid Assessments, if, and to the extent that, the Unit Owner is in default in the payment of Assessments. Every lease of a Unit shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all exhibits hereto) and with any and all Rules and Regulations adopted by the Association from time to time and that any failure by the lessee to comply with the terms under the lease shall empower the Association with the right and authority on behalf of the Owner to commence legal proceedings to cause the lessee to be evicted. All Unit Owners shall be jointly and severally liable with their tenants to the Association for any

amount which is required by the Association to repair any damage to the Common Elements resulting from acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant or for the acts and omissions of the tenant(s) which constitute a violation of, or non-compliance with, the provisions of this Declaration and of any and all Rules and Regulations of the Association. Leases for all Units shall comply with and be subject to the provisions of the Declaration of Condominium, Articles of Incorporation, Rules and Regulations, By-Laws, and the Act, and the provisions of same shall be deemed expressly incorporated into any lease of a Unit. This subsection shall also apply to subleases and assignments and renewals of leases. All leases of Units are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease. No lease of a Residential Unit shall be for a period of less than seven (7) months and no Residential Unit may be leased in excess of two (2) times a calendar year except for renewals. Notwithstanding the aforesaid, the Association reserves the right to grant an exception to the requirement that no Residential Unit may be leased in excess of two (2) times per calendar year. The Association shall have the right to review and approve all leases and lessees prior to execution of any lease and charge a reasonable administrative fee for the same and require that each lease contain certain uniform provisions, including provisions reflecting the foregoing terms and conditions.

18.3 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.

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

19. Compliance and Default. Each Unit owner and every occupant (including a lessee) of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

19.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents 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.

19.2 Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Master Declaration, Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required,



the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines or to sue in a court of law for damages.

19.3 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).

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

20. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration and in accordance with Chapter 718, Florida Statutes, as amended from time to time, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least seventy-five percent (75%) of the Units if not more than 10% of the total voting interest of owners vote in opposition of termination of the Condominium. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County..

21. Additional Rights of Mortgagees and Others.

21.1 Institutional First Mortgagees shall have the right, upon written request to the Association, to: (i) examine the Condominium documents and the Association's books and records, (ii) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (iii) receive notices of and attend Association meetings, (iv) receive notice of an alleged default in any obligations hereunder by any Unit Owner, on whose Unit such Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to the Unit Owner, and (v) receive notice of any substantial damage or loss to any portion of the Condominium Property.

21.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Condominium Property or the affected mortgaged Unit, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity

bond maintained by the Association, (iv) any proposed termination of the Condominium, and (v) any proposed action which requires the consent of a specified number of mortgage holders.

21.3 The approval of a majority of Institutional First Mortgagees shall be required to effect an amendment to the Declaration which materially alters, or adds, a provision relating to: (i) assessments and lien rights; (ii) insurance or fidelity bonds; (iii) maintenance responsibilities for the various portions of the Condominium Property; (iv) boundaries of any Unit; (v) convertibility of Units into Common Elements or Common Elements into Units; (vi) leasing of Units; and (vii) restrictions on Owners' rights to sell or lease Units. Such approval shall not be unreasonably withheld.

22. Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association shall, as well as the Master Declaration, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, and the Master Declaration as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, and the Master Declaration, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

23. Disclaimer of Warranties. TO THE MAXIMUM EXTENT LAWFUL DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, WHETHER ESTABLISHED BY STATUTE, COMMON LAW, CASE LAW OR OTHERWISE AS TO VIEW, DESIGN, SOUND AND/OR ODOR TRANSMISSION, EXISTENCE AND/OR DEVELOPMENT OF MOLDS, MILDEW, TOXINS OR FUNGI, CONSTRUCTION, 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, EXCEPT ONLY THOSE SET FORTH IN SECTION 718.203 OF THE ACT, TO THE EXTENT APPLICABLE AND NOT YET EXPIRED. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

ALL UNIT OWNERS, BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

IN ADDITION TO THE FOREGOING, DEVELOPER HEREBY DISCLAIMS (AND EACH UNIT OWNER, BY VIRTUE OF ACCEPTING TITLE TO A UNIT THEREBY) HEREBY WAIVES ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO THE NUMBER OF SQUARE FEET CONTAINED IN THE UNIT OR ANY APPURTENANT LIMITED COMMON ELEMENTS, NOTWITHSTANDING ANY STATEMENTS OR ESTIMATES OF SAME CONTAINED IN ANY SALES MATERIALS.

Without limiting the generality of the foregoing, each Owner recognizes and agrees that because of the proximity of the Condominium to an active railroad, vibration and/or noise from the railroad (and the trains on the railroad tracks) may be detectable and create a nuisance. By acquiring title to a Unit, each Owner (for itself, and on behalf of its heirs, successors and assigns) shall be deemed to have assumed the risks associated with vibration and/or noise resulting from the proximity to, and activities on, the nearby railroad, and to have fully released the Developer, its members, contractors, architects, engineers, and its and their officers, directors, shareholders, employees and agents from any and all liability resulting from same.

Further, given the climate and humid conditions in Florida, molds, mildew, toxins and fungi may exist and/or develop with the Unit and/or the Condominium Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, of 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 the Developer from any and all liability resulting from same, including, without limitation, any liability for incidental or consequential damages (which may result from, without limitation, the inability to possess the Unit, inconvenience, moving costs, hotel costs, storage costs, loss of time, lost wages, lost opportunities and/or personal injury). Without limiting the generality of the foregoing, leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that Developer is not responsible, and the Developer hereby disclaims any responsibility for any illness or allergic reactions, personal injury or death which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees and to any pets of persons aforementioned in this sentence, as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free of contamination.

Each Owner understands and agrees that for some time in the future, it, and its guests, tenants and invitees may be disturbed by the noise, commotion and other unpleasant effects of nearby construction activity and as a result Owner and its guests, tenants and invitees may be impeded in using portions of the Condominium Property by that activity. Because the Condominium is located in an urban area, demolition or construction of buildings and other structures within the immediate area or within the view lines of any particular Unit or of any part of the Condominium (the "Views") may block, obstruct, shadow or otherwise affect Views, which may currently be visible from the Unit or from the Condominium. Therefore, each Owner, for itself, its successors and assigns, agrees to release Developer, its partners and their officers, members, directors and employees and every affiliate and person related or affiliated in any way with any of them, including but not limited to contractors, engineers, architects and their officers, directors, shareholders, employees, and agents, ("Developer's Affiliates") from and

against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind, including attorney's fees and costs, including those incurred through all arbitration and appellate proceeds, related to or arising out of any claim against the Developer or Developer's Affiliates related to Views or the disruption, noise, commotion and other unpleasant effects of nearby development or construction. As a result of the foregoing there is no guarantee of view, security, privacy, location, design, density or any other matter.

Each Owner is hereby advised that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage of a Unit may vary. Additionally, as a result of in the field construction and other permitted changes to the Unit, actual square footage of a Unit may also be affected. Accordingly, during the pre-closing inspection, each purchaser should, among other things, review the size and dimensions of the Unit. By closing, each purchaser shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Developer's promotional materials or otherwise. Developer does not make any representation or warranty as to the actual size, dimensions (including ceiling heights) or square footage of any Unit, and each Owner shall be deemed to have waived and expressly released any such warranty and claim for loss or damages resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage.

Each Owner is hereby advised that the Condominium Property and all Condominium Units are within the Parklands West Community Development District. THE COMMUNITY DEVELOPMENT DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THE UNITS. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS, ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW AND ASSOCIATION ASSESSMENTS. The Developer makes no representation or warranty regarding the facilities and services provided by the Community Development District or the amount of the Community Development District's taxes and assessments on the Units. Each Owner shall be deemed to have waived and released any claim against the Developer or the Association for losses or damages resulting from actions or inactions of the Community Development District.

#### 24. Additional Provisions.

24.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been

designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

24.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel to the Association or the counsel having drafted this Declaration that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

24.3 Mortgagees. Anything herein to the contrary notwithstanding (except as provided in Section 13.4 hereof), the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless actual (vs. constructive) written notice of the existence of such mortgage or lien is received by the Association.

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

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

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

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

24.8 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.

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

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

24.11 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.

24.12 Captions. The captions herein and in the Exhibits annexed hereto 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.

24.13 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, By-laws, any rules or regulations of the Association or any other document governing or binding the association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

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

(b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, County and/or any other jurisdiction or the prevention of tortuous activities; and

(c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to

protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

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

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

- (a) The Act, as it existed on the date of recording of the Declaration;
- (b) The Declaration;
- (c) The Articles; and
- (d) The By-Laws.

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 17<sup>th</sup> day September, 2013.

Signed, sealed and delivered in the presence of these witnesses:

WITNESSES:

Rebecca Sarver  
Print Name: REBECCA SARVER

Kay Plein  
Print Name: Kay Plein

**D.R. HORTON, INC.**, a Delaware corporation

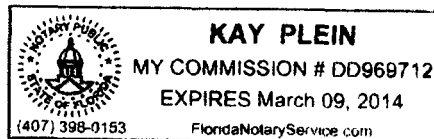
By: [Signature]  
Name: JONATHAN PENTECOST  
Title: VICE PRESIDENT

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of September, 2013, by JONATHAN PENTECOST as VICE PRESIDENT of D.R. Horton, Inc., a Delaware corporation, on behalf of the company, (☒) who is personally known to me OR ( ) who produced a \_\_\_\_\_ as identification.

My Commission Expires:

Kay Plein  
Notary Public, State of Florida





### JOINDER AND CONSENT OF ASSOCIATION

The undersigned officer of the Sorrento Condominium Association, Inc.(the "Association") does hereby join in and consent to the foregoing Declaration of Condominium of Sorrento, a Condominium and accepts the rights and obligations set forth therein. The undersigned hereby confirms that they are duly authorized to execute this Joinder and Consent on behalf of the Association.

The undersigned has caused this Joinder to be executed by its duly authorized officer this 17<sup>th</sup> day of September, 2013.

WITNESSES:

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

Rebecca Sarver  
Print Name: REBECCA SARVER

By: James Ratz  
Name: JAMES RATZ  
Its: VICE PRESIDENT

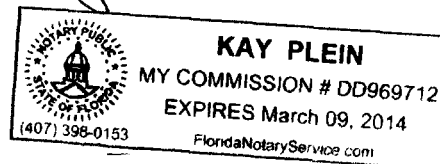
Kay Plein  
Print Name: Kay Plein

STATE OF FLORIDA  
COUNTY OF LEE

I HEREBY CERTIFY that on the 17<sup>th</sup> day of September, 2013, before me, an officer duly authorized to take acknowledgements, personally appeared James Ratz, as VICE PRESIDENT of the SORRENTO CONDOMINIUM ASSOCIATION, INC., a Florida not for profit corporation, for and on behalf of the entity, who is personally known to me or has produced his/her Florida driver's license as identification.

Kay Plein  
Name: Kay Plein  
Notary Public

(Notary Seal)



**JOINDER AND CONSENT OF MASTER ASSOCIATION**

The undersigned officer of the Sorrento Master Association, Inc.(the "Association") does hereby join in and consent to the foregoing Declaration of Condominium of Sorrento, a Condominium and accepts the rights and obligations set forth therein. The undersigned hereby confirms that they are duly authorized to execute this Joinder and Consent on behalf of the Association.

The undersigned has caused this Joinder to be executed by its duly authorized officer this 17<sup>th</sup> day of September, 2013.

WITNESSES:

SORRENTO MASTER ASSOCIATION, INC., a  
Florida not for profit corporation

Rebecca Sarver  
Print Name: REBECCA SARVER

By: Steven M. Boyette  
Name: STEVEN BOYETTE  
Its: VICE PRESIDENT

Kay Plein  
Print Name: Kay Plein

STATE OF FLORIDA  
COUNTY OF LEE

I HEREBY CERTIFY that on the 17<sup>th</sup> day of September, 2013, before me, an officer duly authorized to take acknowledgements, personally appeared STEVEN BOYETTE, as VICE PRESIDENT of the SORRENTO MASTER ASSOCIATION, INC., a Florida not for profit corporation, for and on behalf of the entity, who is personally known to me or has produced his/her Florida driver's license as identification.

Kay Plein  
Name: Kay Plein  
Notary Public

(Notary Seal)

