



CFN 20210407780

This instrument was prepared by:  
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Boynton Beach, FL 33437

OR BK 32834 PG 0767  
RECORDED 09/01/2021 10:53:04  
Palm Beach County, Florida  
Joseph Abruzzo, Clerk  
Pgs 0767 - 814; (48pgs)

**CERTIFICATE OF AMENDMENT TO THE  
DECLARATION OF  
FAIRWAY CLUB CONDOMINIUM D**

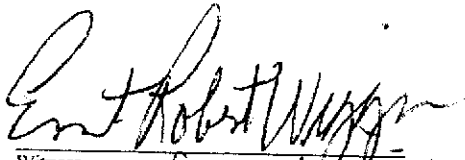
WHEREAS, the Declaration of Fairway Club Condominium D was duly recorded in the Public Records of Palm Beach County, Florida, in Official Record Book 9185 at Page 1141; and

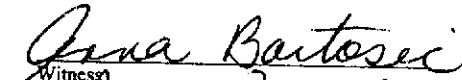
WHEREAS, at a duly called and noticed meeting of the Board of Directors of Fairway Club Condominium D Association, Inc., a Florida not-for-profit corporation, held on April 21, 2021, the aforementioned Declaration of Fairway Club Condominium D was amended by unanimous vote of the Board of Directors pursuant to the provisions of said Declaration.

NOW, THEREFORE, the undersigned hereby certify that the following amendments to the Declaration of Fairway Club Condominium D are a true and correct copy of the amendments as amended by the Board of Directors.

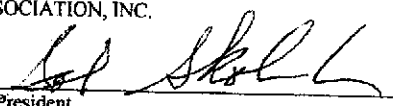
**SEE ATTACHED  
AMENDED AND RESTATED  
DECLARATION OF FAIRWAY CLUB CONDOMINIUM D**

WITNESS our signatures hereto this 16 day of August, 2021, at Lake Worth, Palm Beach County, Florida.

  
Witness  
ERNEST ROBERT WIGGIN'S  
Print Name

  
Witness  
Anna Bartosic  
Print Name

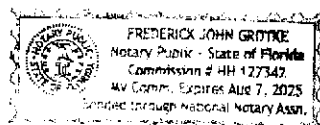
FAIRWAY CLUB CONDOMINIUM D  
ASSOCIATION, INC.


By:   
President

Attest:   
Secretary

STATE OF FLORIDA :  
COUNTY OF PALM BEACH :

The foregoing document was acknowledged by me this 16 day of August, 2021 by Sol Skolnik who is  personally known to me or who  produced Liesove as identification, and MAA Josephine Yankers who is  personally known to me or who  produced Liesove as identification, as President and Secretary respectively of Fairway Club Condominium D Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation.



  
Notary Public of Florida

AMENDED AND RESTATED DECLARATION OF  
FAIRWAY CLUB CONDOMINIUM D

DCA of Lake Worth, Inc., a Florida corporation (the "Developer") does hereby declare as follows:

1. ~~Introduction and Submission:~~

~~1.1 The Land. The Developer owns the fee simple title to that certain land located in Palm Beach County, Florida, as more particularly described in Exhibit "I" annexed hereto (the "Land").~~

~~1.2 Submission Statement. The Developer hereby submits the Land and, except as otherwise provided herein, all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, less and except the Central System as defined in this Declaration, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date hereof.~~

~~1.3 Name. The name by which this condominium is to be identified is:~~

~~Fairway Club Condominium D (herein called the "Condominium").~~

THIS AMENDED AND RESTATED DECLARATION, (hereinafter "Declaration" made this day of \_\_\_\_\_, 2021, by the Fairway Club Condominium D Association, Inc., a Florida not-for-profit corporation (hereinafter "Association").

WHEREAS, Association is the owner of certain property located in Palm Beach County, Florida, more particularly described in Exhibit "I" attached hereto and made a part hereof, (hereinafter the "Property"), and

WHEREAS, in order to preserve and protect the value and desirability of the Property and the Units (as defined infra), Association deems it prudent to place this Amended and Restated Declaration of Fairway Club Condominium D ("Declaration") of record and to impose the same against the Property.

NOW, THEREFORE, Association hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, as contained in this Declaration and Chapter 718 of the Florida Statutes as either may be amended from time to time, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

**Definitions.** The following terms which are used in this Declaration and in its Exhibits, and as they may hereafter be amended, shall have the meaning described to them in this Section, except where the context clearly indicates a different meaning:

1.1 "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as ~~hereafter renumbered~~ may be amended from time to time.

1.2 "Agreement for Deed" means that certain Agreement for Deed recorded in Official Records Book 4544 at Page 1498 of the Public Records of Palm Beach County, Florida, and the Cancellation of Agreement for Deed and Modification Agreement recorded in Official Records Book 4544 at Page 1529 of the Public Records of Palm Beach County, Florida, which Agreement for Deed is incorporated herein by reference.

1.3 "Articles" means the Articles of Incorporation of the Association.

1.4 "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.

1.5 "Association" means Fairway Club Condominium D Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of the Condominium.

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

1.7 "Building" means the structure or structures in which the Units are located on the Condominium Property.

1.8 "By-Laws" means the By-Laws of the Association.

1.9 "Common Elements" shall mean and includes:

- (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 and other services to Units and Common Elements;
- (c) An easement of support in every portion of the 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;
- (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration;
- (f) Common Elements includes Limited Common Elements unless the context otherwise requires.

The Common Elements shall not include the Association's interest in the Recreation Area.

1.10 "Common Expenses" means all expenses incurred and Assessments (and Special Assessments levied against all of the Units of the Condominium) by the Association for the Condominium and shall include:

- (a) Expenses of administration and management of the Condominium Property.
- (b) Expenses of taxes, insurance, maintenance, operation, repair and replacement of Common Elements and Limited Common Elements, and of the portions of the Units, if any, to be maintained by the Association.
- (c) Costs and expenses of capital improvements, betterments and additions to the Common Elements.
- (d) Costs and expenses of carrying out the powers and duties of the Association, including any expenses allowable for services being rendered by a management company with which the Association or Master Association, may contract.
- (e) Expenses declared Common Expenses by the provisions of this Declaration or by any instrument annexed as an Exhibit hereto.
- (f) Any valid charge against the Condominium Property as a whole.

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

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

1.13 "Condominium Property" means the Land and the personal property that are subject to condominium ownership under this Declaration, all improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

1.14 "County" shall mean Palm Beach County, Florida.

1.15 "Declaration" or "Declaration of Condominium" means this instrument or instruments by which the Condominium will be created.

1.16 ~~"Developer" means DCA of Lake Worth, Inc., a Florida corporation, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign only a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Condominium. In the event of such partial assignment, the assignee Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.~~

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

1.18 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, mortgage banker, real estate or mortgage investment trust, pension fund, Developer, GNMA, FNMA, FHLMC, VA, FHA, or any other lender, or its loan correspondent or agency of the United States Government, holding, guaranteeing or insuring a first mortgage on a Unit or Units.

1.19 "Fairway Club Project", "Fairway Club" or the "Project" or Development" means the Fairway Club Condominium project near Delray Beach, Florida. The lands that constitute the Fairway Club Project shall be determined by the ~~Developer~~ Association in its sole discretion.

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

1.21 "Management Contract" means and refers to that certain agreement, which provides for the management of the Condominium Property.

1.22 "Management Firm" means and refers to the corporation, its successors and assigns, identified as the Management Firm in the Management Contract. The Management Firm shall be responsible for the management of the Condominium Property as provided in the Management Contract.

1.23 "Master Association" means Lucerne Lakes Master Homeowners Association Inc., a Florida corporation not for profit.

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

1.25 "Property Owners Association" means Fairway Club Property Owners Association, Inc., a Florida corporation not for profit, the entity responsible for the administration, operation and management of the Common Areas.

1.26 "Recreation Area" means those lands and the improvements thereon which are subject to and more particularly described in the Agreement for Deed and Cancellation of Agreement for Deed and Modification Agreement ("Agreement for Deed").

1.27 "Recreation Area Management Firm" means the Management Firm referred to in the Agreement for Deed.

1.28 "Special Assessment" means any assessment levied against Unit Owners other than the Assessment required by a budget adopted annually, which includes such additional sums which may be assessed directly against one or more Unit Owners (though not necessarily against other Unit Owners).

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

1.30 "Unit Owner" or "Owner of a Unit" means the Owner of a Condominium Parcel. 2.31 "Utility services" shall include, but not be limited to, electric power, water, air conditioning, MA TV and CA TV systems and garbage and sewage disposal.

1.32 "Voting Certificate" means a document which designates one of the record title Owners, or the corporate partnership, or entity representative who is authorized to vote on behalf of a Unit owned by more than one Owner or by any entity.

1.33 "Voting Interest" means the voting rights distributed to the Association members pursuant to the Act and Section 5 of this Declaration.

## ARTICLE II

### Description of Condominium

2.1 Identification of Units. The Land has ~~or will have~~ constructed thereon one building containing ~~forty-two (42)~~ **fifty-two (52)** Units. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Unit is set forth on Exhibit "3" annexed hereto. Exhibit "3" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located and a plot plan thereof. Said Exhibit "3", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. 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 designated in this Declaration with the full voting rights appertaining thereto and (e) other appurtenances as may be provided in this Declaration. Time-share estates will not be created with respect to any Unit in the Condominium.

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

(a) Upper and lower boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(i) Upper boundaries. The horizontal plane(s) of the unfinished lower surface of the ceiling.

(ii) Lower boundaries. The horizontal plane of the unfinished upper surface of the concrete floor.

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

2.3 Limited Common Elements. Each Unit shall have as Limited Common Elements appurtenant thereto:

(a) Patios and Balconies. Each Unit shall have either patio or balcony abutting it for the exclusive use of the Unit Owner owning such Unit. The Unit Owner shall be responsible for maintenance and care of the patio or balcony, including, without limitation, all wiring, electric outlets, lighting fixtures and screening. A Unit Owner may not enclose exterior patios or balconies without the prior written consent of the Management Firm, if applicable, and the Board of Directors of the Association.

(b) Storage Space and Utility Space.

(1) Storage space and/or utility space is located within each patio or balcony area and shall be used exclusively by the Unit Owner entitled to make exclusive use of said patio or balcony.

(2) Additional storage space is also provided on each of floors 2, 3 and 4 and a portion of the 1<sup>st</sup> floor. Each such room shall be shared by the Unit owners on that floor, provided that the decision to utilize such storage space is at the discretion of the individual Unit Owner and the Association assumes no responsibility for any Unit Owners' possessions so stored.

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

(a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(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 and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other services or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, service and drainage facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day notice.

(c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall 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 made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements ( or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such

event, a valid easement shall exist for such encroachment and for 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 and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements 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) shall automatically be subordinate to the rights of Unit Owners with respect to such easements. In addition, there is hereby created a non-exclusive easement in favor of all of the Owners of residential Units, residents and their guests and invitees in the Development for ingress and egress over those portions of the Common Elements designated for vehicular traffic so as to provide reasonable access to the roads built within the Development . All of the lakes, and other waterways located at the Development are intended for the use and enjoyment of all of the residents of the Development. Accordingly, nonexclusive easements for ingress and egress located at the Development shall exist in favor of ~~the Developer (its designees, invitees, agents, licensees, employees, successors and assigns),~~ and all residents of the Development (their respective heirs, successors and assigns), for use of such lakes and other waterways, driveways, walk-ways, and other rights of way established within the Development from time to time.

(e) Construction. ~~The Developer~~ Association (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 and take all ~~other~~ action necessary or convenient for the purpose of completing the construction ~~thereof~~, of any Improvements or Unit located or to be located thereon, provided such

activity does not prevent or unreasonably interfere with the use or enjoyment by the Unit Owners of the Condominium Property.

(f) Sales Activity. ~~For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for model apartments and sales offices, to show model apartments and the Common Elements to prospective purchasers and tenants of the Units, and to erect on the Condominium Property signs and other promotional material to advertise Units and certain Limited Common Elements for sale or lease.~~

(g) Additional Easements. The Association, on ~~their~~ its behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as their attorney-in-fact for this purpose), each shall have the right to grant such additional electric, gas, other utility or service or other easements, or relocate any existing easements or drainage facilities in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Association shall deem necessary or desirable for the proper operations and maintenance of the Improvements, or any portion thereof, or the thereof, or for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration or otherwise, 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. The Association has the authority without the joinder of any Unit Owners, to grant, modify or move any easement, subject to the provisions of the easement, if the easement constitutes part of or crosses the Common Elements.

2.5 Recreation Area. An undivided interest in the Recreation Area is being conveyed by the Developer to the Association for the non-exclusive use and enjoyment of the Unit Owners, all pursuant to the provisions of the Agreement for Deed, and all the rights, privileges, benefits, liabilities and obligations set forth therein, shall be incorporated into this Declaration and all unit Owners shall be bound thereby in every respect. The Association shall perform or cause to be performed all of the duties and obligations required of the Association under the Agreement for Deed. The interest in the Recreation Area being conveyed to the Association shall be an asset of the Association but shall not be part of the Condominium Property or the Common Elements.

2.6 Master Association. The Association is a member of the Master Association, and each ~~Condominium~~ Unit Owner, by virtue of the ownership of a condominium unit in this Condominium, shall be bound by the terms, conditions, duties, liabilities and obligations under the Second Amendment to and Restatement of the Lucerne Lakes Master Declaration of Covenants and Restrictions as recorded in Official Records Book 3673, Page 1658 of the Public Records of Palm Beach County, Florida, and Exhibits and Amendments thereto. The Condominium unit owners, by virtue of their acceptance of the Deed of Conveyance to their units, acknowledge that the aforesaid Master Association has certain rights which supersede and are pertinent to the right of the Association, as more particularly provided in the instrument previously referred to in this Section 2.6, including the right of the Master Association to levy assessments against the Association and the units in this Condominium and the lien rights in favor of said Master Association and other rights, as more fully set forth in said instruments.

### ARTICLE III

#### RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

~~Restraint Upon Separation and Partition of Common Elements.~~ The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, 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, membership in the Association designated in this Declaration, with the full voting rights appertaining thereto, and except as provided herein, the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from and shall pass with the title to the Unit, whether or not separately described. All of these aforescribed appurtenances to a Unit 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.

#### ARTICLE IV

##### OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS AND SHARE OF COMMON EXPENSES; VOTING RIGHTS

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

4.1 Fractional Ownership and Shares. The undivided fractional interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses appurtenant to each Unit, is set forth in Exhibit "2" annexed hereto.

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

#### ARTICLE V

##### AMENDMENTS

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

5.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the voting interests of the members of the Association. 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. Except as elsewhere provided, approvals must be by affirmative vote of:

- (a) Unit Owners owning in excess of 50% of the Voting Interests represented at any meeting at which a quorum has been attained and by not less than 66-2/3% of the Board of Directors of the Association; or
- (b) Unit Owners owning not less than 80% of the Voting Interests represented at any meeting at which a quorum has been attained; or
- (c) 100% of the Board of Directors; or

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

5.2 ~~By the Developer. Provided said changes, alterations, additions and improvements are (1) not inconsistent with the terms and provisions of the Act and the applicable rules of the Florida Department of Business Regulation, and (2) as more particularly described in the Offering Circular or prospectus required under the Act, the Developer shall have the right without the consent or approval of the Board of Directors or Unit Owners to provide additional and/or expand recreational or other commonly used facilities; provided that the relocation does not materially adversely affect the market value or the ordinary use of the Units owned by Unit Owners other than the Developer.~~

5.3 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 date, identifying the Declaration and shall be executed in the form required for the execution of a Deed. ~~Amendments by the Developer must be evidenced in writing, but a certificate of the Association is not required.~~ An amendment of the Declaration is effective when properly recorded in the Public Records of the County.

5.4 Procedure. 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.

5.5 Proviso. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless a majority of the Voting Interests of the Association 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, the Seller under the Agreement for Deed or Institutional First Mortgagees or mortgagees of Units without the consent of said Developer, the Seller under the Agreement for Deed or Institutional First Mortgagees or mortgagees~~ in each instance; or shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty" or "Condemnation" unless all Institutional First Mortgagees whose mortgages are of record shall join in the amendment.

## ARTICLE VI

### Maintenance and Repairs.

6.1 Units. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, the interior side

of the entrance door and all other doors within or affording access to a Unit, and the electrical, plumbing, heating and air-conditioning equipment, fixtures and outlets, if any, within the Unit or the Limited Common Elements or belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein, and shall be in accordance with ~~the~~ with the original plans and specifications therefor or as otherwise directed by the Association's and/or the Architectural Control and Maintenance Standards Committee, if applicable. Additionally, each Unit Owner shall pay all charges for utility services metered directly to his Unit.

6.2 Common Elements. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than Limited Common Elements as provided above) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, 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.

6.3 Specific Unit Owner Responsibility. The obligation to maintain and repair the following specific items shall be the responsibility of the Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units, are Limited Common Elements or are Common Elements other than Limited Common Elements:

(a) Where a Limited Common Element consists of a balcony or patio, the Unit Owner who has the right to the exclusive use of said balcony or patio shall be responsible for the maintenance, care and preservation of the paint and surface of the interior parapet walls, including floor and ceiling, within said area, if any, and the fixed and/or sliding glass door(s) in the entrance way(s) or other portions of said area, if any, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs, if any.

(b) Storage space and/or utility space, if applicable.

6.4 Recreation Area. Maintenance, repair, replacement, alteration and improvement of the Recreation Area shall be by the Association at the Association's expense according to the provisions of the Agreement for Deed.

6.5 Miscellaneous. All work performed on the Condominium Property or any portion thereof shall be in compliance with all applicable governmental building and zoning requirements. All plumbing and electrical maintenance, repairs, and replacements shall be made only by plumbers or electricians duly licensed and qualified to perform such services in ~~either Dade, Broward or Palm Beach Counties,~~ the State of Florida.

## ARTICLE VII

### Additions Alterations or Improvements by the Association and Developer.

7.1 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 Five Hundred Dollars (\$500.00) **[NOTE: CONSIDER INCREASING THIS AMOUNT]** 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 voting interests 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 Five Hundred Dollars (\$500.00) 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.

~~7.2 Additions Alterations or Improvements by Developer. The Developer, provided Developer is the owner of one of the Units in the Condominium, shall have the right, without the vote or consent of the Association or Unit Owners, to change all or any part of the front, rear or side elevations of the Condominium, and provided further that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction.~~

## ARTICLE VIII

### Additions Alterations or Improvements by Unit Owners and Developer

8.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, his Unit or any Limited Common Elements without the prior written consent of the Board of Directors and/or the Architectural Control and Maintenance Standards Committee, if applicable. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within thirty (30) 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. **[NOTE: CONSIDER TO CONTINUE AUTOMATIC CONSENT AFTER 30 DAYS]** 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 and/or the Architectural Control and Maintenance Standards Committee, if applicable, with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise,

A Unit Owner making or causing to be made any such additions, alterations or improvements 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 and all other Unit Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance from and after that date of installation or construction thereof as may be required by the Association. Unless expressly permitted in writing by the Association, the installation of any floor covering, other than padded carpeting or well-padded vinyl tile, **[NOTE: CONSIDER OTHER MATERIALS]** is prohibited. In any event, Unit Owners shall have the duty of causing there to be placed underneath such covering, so as to be between any such covering and the floor of the Unit, generally accepted and approved material for diminution of noise and sound, so that the floors shall be adequately soundproofed according to general architectural and engineering standards presently observed in the community.

~~8.2 Additions Alterations or Improvements by Developer. The Developer shall have the additional right, with the approval of a majority of the Voting Interests in the Association, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the improvements). If the Developer, with the approval of the Association, alters the floor plans of the building, the Association will cause an amendment to the Declaration to be recorded showing such changes.~~

## ARTICLE IX

### Changes in Developer Owned Units

~~Without limiting the generality of the provisions of Section 8.2 above, the Developer shall have the right, with the approval of the Voting Interests of the Association as described in Section 6.1 hereto, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, layout or number of rooms in any Developer owned Units; (iii) combine contiguous Developer owned Units, provided, however, that the number of Units and their proportionate percentage Surplus and Common Expenses of any Units (other than Developer owned Units) shall not be 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 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.~~

## ARTICLE X

### Operation of the Condominium by the Association: Power and Duties

The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Articles and By-Laws of the Association (respectively, Exhibits "4" and "5" annexed hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, 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 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, or to determine compliance with the terms and provisions of this Declaration, the Exhibits annexed hereto, and the rules and regulations adopted pursuant to such documents, as the same may be amended from time to time.

(b) The power to make and collect Assessments and Special Assessments and other charges and surcharges 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.

(d) To contract for the management and maintenance of the Condominium Property and to authorize a management agent (~~which 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 and Special Assessments, preparation of records, enforcement of rules and maintenance, repairs and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association shall, however, retain at all times the powers and duties granted by the Condominium Documents and the Act, including but not limited to the making of Assessments, Special 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 therefor mortgages and security interests in property owned by the Association, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the voting interests of the Unit Owners represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or voting interests of the Unit Owners as may be specified in the By-Laws with respect to certain borrowing.

(f) Subsequent to the recording of this Declaration, the Association, when authorized by a majority of the voting interests of the Units represented at a meeting at which a quorum has been attained, shall have the power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the use or benefit of the Unit Owners (whether or not on an exclusive basis). The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses. ~~No actions authorized hereunder, however, may be taken without prior consent of Developer as long as the Developer owns any Units.~~

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

(h) The power to levy reasonable fines against a Unit for failure of the Owner or its occupant, licensee or invitee to comply with any provision of this Declaration, the By-Laws or the rules and regulations, as such documents may be amended from time to time.

(i) The power to charge a use fee against a Unit Owner for the exclusive or nonexclusive use of all or a portion of the Common Elements or Association Property.

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

In the event of conflict between the powers and duties of the Association or otherwise, the Declaration shall take precedence over the Articles, By-Laws and applicable rules and regulations; the Articles shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time.

10.1 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.

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

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

10.4 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 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.

10.5 Recreation Area. The Association and the Unit Owners shall be bound by all of the terms and provisions of the Agreement for Deed and all Exhibits thereto.

## ARTICLE XI

### Determination of the Common Expenses and Fixing of Assessments Therefore.

The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the 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 Assessment payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of the operation, maintenance, repair and replacement of the Common Elements and Recreation Area or other commonly used facilities and services, Special Assessments levied against all of the Units of the Condominium 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. Except as otherwise provided by law, any reserve funds may be used as the Board shall determine from time to time and need not be restricted to replacements or otherwise. Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws. Additionally, the charges for cable television services and auxiliary services, if any, to be provided to all of the Units of the Condominium, shall be deemed to be a Common Expense. The Board of Directors in determining the amount of the Assessments payable by the Unit Owners shall be authorized to include such charges in the estimated operating budget for the Condominium. Accordingly, the provisions contained in Section 12 of this Declaration with respect to the collection of Assessments shall be applicable to the charges for cable television services and auxiliary services.

In addition, a portion of the common expenses of this Condominium may be determined by the Master Association as provided under Section 2.6 of this Declaration, and the Association, through the Board of Directors, by its execution of this Declaration, agrees to include such sum as the Master Association determines in the budget of the Condominium and to assess the units therein their applicable share of said sum.

## ARTICLE XII

### Collection of Assessments and Special Assessments.

12.1 Liability for Assessments and Special Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments and

Special Assessments coming due while he is the Unit Owner. Except as provided for in Section 12.5, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments and Special Assessments against the grantor for his share of the Common Expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments and Special 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 and Special Assessments are made or otherwise.

12.2 Default in Payment of Assessments or Special Assessments for Common Expenses. Assessments, Special Assessments and installments thereof not paid within ten (10) days **[NOTE: CONSIDER A CHNAGE TO THIS TIME FRAME]** from the date when they are due shall bear interest at the highest rate allowable by law from the due date until paid. The Association has a lien on each Condominium Parcel for any unpaid Assessments and Special Assessments on such Parcel, with interest and for reasonable attorney's fees, legal and collection costs incurred by the Association incident to the collection of the Assessments and Special Assessments or enforcement of the lien. The lien is effective from and after recording a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the due dates. No such lien shall continue for a longer period than one year after the claim of lien has been recorded, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure all unpaid Assessments, Special Assessments, interest, costs, and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for unpaid Assessments and Special Assessments in the manner a mortgage of real property is foreclosed. The debt for any unpaid monetary obligation of the Owner to the Association shall be a personal obligation of the Owner, and the Association may also bring an action at law to recover a money judgment for the unpaid Assessments and Special Assessments without waiving any claim of lien.

12.3 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments and Special Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments and Special Assessments, including those coming due after the claim of lien is recorded, and other sums permitted hereunder 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 and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit the 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 and shall not apply if an action to foreclose a mortgage on the Unit is pending before any court if the Association's rights would be affected by such foreclosure, and if actual, constructive or substitute service of process has been made on the Unit Owner.

12.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to



pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.

12.5 First Mortgagee. A first mortgagee who acquires title to the Unit by foreclosure or by deed in lieu of foreclosure shall be liable for the unpaid common expenses and Assessments that became due prior to the mortgagee's receipt of the deed. However, the mortgagee's liability is limited to a ~~period not to exceed six (6) months, but in no event shall the first mortgagee's liability exceed one (1%) percent of the original mortgage debt. The first mortgagee's liability for such expenses or assessments shall commence 30 days after the date the first mortgagee received the last payment of principal or interest.~~ as provided by Florida Statute, as such statutes may be amended from time to time.

12.6 Developer's Liability for Assessments. ~~(i) The Developer shall be excused from the payment of the share of the Common Expenses and Assessments relating to Units it is offering for sale, for a period beginning with the recording of this Declaration and ending one year from the first day of the following month in which the Certificate of Occupancy is issued (the "Guarantee Expiration Date"), provided that the regular monthly Assessments for Common Expenses imposed on each Unit Owner other than the Developer shall not increase during such period over \$88.17 per unit per month, which is the amount set opposite such Unit's designation (model type) in the Estimated Operating Budget for the first twelve months of operation for the Association attached to the Prospectus as Exhibit "18" delivered to such Unit Owner when such Owner contracted to purchase the Unit, if applicable; and provided further that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed level receivable from Unit Owners. The period that Developer is excused from the payment of the share of Common Expenses and Assessments relating to Units it is offering for sale may be unilaterally extended by the Developer for one or more successive periods of one year each until such time as the Developer does not own any Units in the Condominium.~~

~~(ii) No funds receivable from Unit purchasers or 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 for the first twelve months of operation attached to the Prospectus as Exhibit "18", shall be used for payment of Common Expenses prior to the Guarantee Expiration Date. This restriction shall apply to funds including, but not limited to, capital contributions or start-up funds collected from Unit purchasers at closing.~~

12.7 Certificate of Unpaid Assessments. The Association shall provide a certificate stating all Assessments, Special Assessments and other moneys owed to the Association by the Unit Owner with respect to the Condominium Parcel, within 15 days after request by a Unit Owner or Institutional First Mortgagee.

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

12.9 Recreation Area. The Unit Owners acknowledge that the ~~Developer~~ Association is attempting to create a total environment or "way-of-life" at the Development, (involving a single residence and recreation product). ~~The Developer, insofar as the Agreement for Deed, may be referred to as the Seller.~~ In that connection, each Unit Owner, by acceptance of a deed or other instrument conveying title to a Unit adopts, consents and ratifies the Agreement for Deed and agrees that the terms and provisions thereof are fair and reasonable.

12.10 Special Assessments. The specific purpose or purposes of any Special Assessment approved in accordance with this Declaration, Articles, or By-Laws shall be set forth in a written notice of such Special Assessment sent or delivered to each Unit Owner. The funds collected pursuant to a Special

Assessment shall be used only for the specific purpose or purposes set forth in such notice or returned to the Unit Owners. However, upon completion of such specific purpose or purposes, any excess funds shall be considered Common Surplus. **[NOTE: CONSIDER CHANGING TO LESS SPECIFIC REQUIREMENTS]**

### ARTICLE XIII

#### Insurance

Insurance covering portions of the Condominium Property shall be governed by the following provisions:

13.1 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.~~

(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 additional insured.

(d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), 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. Unit Owners may obtain insurance coverage at their own expense and at their own discretion 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.

13.2 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 initially installed, or replacements thereof, of like kind or quality in accordance with the original plans and specifications therefor, or as existed at the time the Unit was initially conveyed if the original plans and specifications are not available, but excluding floor coverings, wall coverings and ceiling coverings, all furniture, furnishings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit owners) and all Improvements located on the Common Elements from time to time, together with all service machinery contained therein ( collectively, the "Insured Property"), shall be insured in an amount not less than one

hundred (100%) percent of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:

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

(ii) Such other risks as from time to time are customarily covered with respect to buildings 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 \$300,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.

(c) Workers' Compensation and other mandatory insurance, when applicable.

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

(e) Fidelity Insurance covering all directors, officers and employees of the Association and managing agents who handle Association funds, if any.

(f) 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 Owner's individually and as a group, (ii) the clause that reserves to the insurer the right to pay only a fraction of any loss in the event of co-insurer the right to pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, or by a member of the Board of Directors of the Association or by one or more Unit Owners.

13.3 Additional Provisions. All policies of physical damage insurance shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the named insured, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company or other competent appraiser, of the full insurability replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be affected pursuant to this Section.

13.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be paid on a monthly, quarterly or semi-annual basis, as the Board of Directors deems appropriate.

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

to the Insurance Trustee which 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 County. The Insurance Trustee (if appointed) shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee (if appointed) shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

(a) 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 subparagraph (b) below.

(b) Optional Property. Proceeds on account of damage solely to Units and/or certain options 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.

13.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee (if appointed) 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 (if appointed) shall be first paid or provisions shall be made therefor.

(b) Reconstruction or Repair. If the damaged property for which the proceeds re 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, then to the Seller under the Agreement for Deed in an amount sufficient to pay off the balance of the purchase price of the Recreation Area, and the balance, if any, to the beneficial owners. This is a covenant for the benefit of the Seller under the Agreement for Deed and any mortgagee of a Unit and may be enforced by them.

(d) Certificate. In making distribution 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.

13.7 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.

13.8 Unit Owners Personal Coverage. Insurance policies issued to individual Unit Owners shall provide that the coverage afforded by such policies is excess over the amount recoverable under any other policy covering the same property without rights of subrogation against the Association. 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, if such Owner so desires, to purchase and pay for insurance as to all such other risks not covered by insurance carried by the Association.

13.9 Recreation Area. Notwithstanding any other provisions hereof, the terms and provisions of the Agreement for Deed shall govern the distribution of proceeds of insurance on or attributable to the Recreation Area.

13.10 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and the Seller under the Agreement for Deed and may be enforced by them.

13.11 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.

#### ARTICLE XIV

##### Reconstruction or Repair After Fire or Other Casualty.

14.1 Determination to Reconstruct or Repair. 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, unless seventy-five (75%) percent or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is destroyed or substantially damaged and Unit Owners owning eighty (80%) percent or more of the applicable interests in the Common Elements elect to proceed with repairs or restoration and the Primary Institutional First Mortgagee approves such election, the Board of Directors shall arrange for the prompt repair and restoration of the Insurance 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 (75%) percent or more 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 owning eighty (80%) percent of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and the Primary Institutional First Mortgagee approves such resolution, the Condominium Property 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 or 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, nor 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.

14.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association, and if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than eighty percent (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.

14.3 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 (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.

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

14.5 Special Assessments and Additional Charges. 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, Special Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Special Assessments on account of damage to the Insured Property shall be in proportion to all of the Owner's respective shares in the Common Elements. In the case of damage to the Optional Property as defined in Section 14.5(b) hereof, an additional charge shall be made in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

14.6 Construction funds. The funds for payment of the costs of reconstruction and repair, which shall consist of proceeds of insurance held by the Insurance Trustee (if appointed) and funds collected by the Association from Special Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(a) Association. If the total Special Assessments made by the Association in order to provide funds for payment of the costs of reconstruction and repair which are the responsibility of the Association are more than Ten Thousand Dollars (\$10,000), then the sums paid upon such Special Assessments shall be deposited by the Association with the Insurance Trustee (if appointed). In all other cases, the Association shall hold the sums paid upon such Special Assessments and disburse the same in payment of the costs of reconstruction and repair.

(b) 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 Fifty Thousand Dollars (\$50,000), 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 Fifty Thousand Dollars (\$50,000), 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 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 Owners 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 cost of reconstruction and repair shall be from insurance proceeds, U 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 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 Special assessments shall be deposited by the Association with the Insurance Trustee (if appointed), 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 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 Special 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.

14.7 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.

## ARTICLE XV

### Condemnation

15.1 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 (if appointed); and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner. 15.2 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 shall also be deemed to be a casualty.

15.3 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.

15.4 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 charged against 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.

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

(i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and

(ii) divide each Percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit. 15.5 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 Mortgagee in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, then to the Seller under the Agreement for Deed as a prepayment of the principal balance, together with accrued interest thereon, due from those Units which are not habitable; third, to the Association for any due and unpaid Assessments and Special Assessments; fourth, 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 therefor 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), This shall be effected by restating the shares of continuing Unit Owners as follows:

(i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Section 16.4(c) hereof (the "Percentage Balance"); and

(ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Section 16.4(c) hereof, by the Percentage Balance, The result of such division for each Unit shall be the adjusted percentage for such Unit.

(d) Special 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 Special Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium affected by the taking. The Special Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares affected 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 thirty (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 charged against all Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such owners as they exist prior to the adjustments to such shares affected pursuant hereto by reason of the taking.

15.6 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.

15.7 Discretion of Board. In circumstances not covered by this Declaration or by law, a two-thirds (2/3) majority of the Board may, upon an opinion of counsel that its decision is reasonable, deal with the condemnation in such reasonable manner as it determines to be appropriate under the circumstances.

15.8 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 affected by the taking shall be evidenced by an amendment to this Declaration that is only required to be approved by and executed upon the direction of a majority of all Directors of the Association.

## ARTICLE XVI

### 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:

16.1 Occupancy. Each Unit shall be used as a residence only, except as otherwise herein expressly provided. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such person's families and guests: (i) the individual Unit Owner, (ii) an officer, director, stockholder or employee of such corporation, (iii) a partner or employee

of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of the Unit (as described below), as the case may be.

Occupants of an approved lease or subleased Unit must be the following persons, and such persons' families and guests: (i) an individual lessee ~~or sublessee~~, (ii) an officer, director, stockholder or employee of a corporate lessee ~~or sublessee~~, or (iv) a fiduciary or beneficiary of a fiduciary lessee ~~or sublessee~~.

Under no circumstances may more than one family reside in a Unit at one time. "Families" or words of similar import used herein shall be deemed to include spouses, parents, parents-in-law, brothers and sisters. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom. The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above. ~~The provisions of this Section 17.1 shall not be applicable to Units used by the Developer for model apartments, sales offices, other offices or management services.~~

Children shall be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Condominium Property and including full compliance by them of these restrictions and all rules and regulations of the Association. All children under eighteen ( 18) years of age must be accompanied by a responsible adult when entering and/or utilizing the Recreation Area or other commonly used facilities.

~~16.2 Age of Residents; Services and Facilities. Subject to all local ordinances, as they may be amended from time to time, at least one person over the age of fifty five (55) years of age must be a permanent occupant of each Unit, whenever any person") occupies said Unit. Persons under the age of fifty five (55) years and more than eighteen (18) years of age may occupy and reside in a Unit as long as at least one of the occupants is over the age of fifty five (55) years. No person under the age of eighteen (18) may be a permanent occupant of any Unit, except that persons under the age of eighteen ( 18) may be permitted to visit and temporarily reside for periods not to exceed thirty (30) days in total in any calendar year. Notwithstanding the above, if a Unit is transferred by inheritance, the requirement as to one occupant of said Unit being over the age of fifty five (55) years is waived as to occupancy by the heirs so long as no permanent occupant is under the age of eighteen (18) years and further so long as at least eighty (80%) percent of all of the Units in the Condominium are occupied by one person over the age of fifty five (55) years. It shall be the responsibility of the Board of Directors of the Association to determine whether eighty (80%) percent of the Units in the Condominium are occupied by at least one person who is over the age of fifty five (55) years. Subject to the terms of this Declaration, the Articles of Incorporation and By Laws of the Association the Board shall have the authority to make any additional capital improvements upon the common properties necessary to provide facilities or services specifically designed to meet the requirements of the Fair Housing Amendments Act of 1988.~~

16.2 Housing for Older Persons. The Property and Units are designed and intended to be an adult community to provide housing for residents who are fifty-five years of age or older.

(a) Except as provided below, no Unit shall at any time be permanently occupied unless at least one permanent occupant is fifty-five years of age or older, and any additional permanent occupants are at least 18 years of age or older.

(b) A unit may be occupied by an individual below the age of eighteen (18) years of age for temporary periods defined as no more than thirty (30) calendar days (determined on a cumulative basis in any consecutive twelve (12) month period, and provided that at least one permanent occupant of that unit is present during such period.

(c) The Board of Directors in its sole discretion shall have the right to provide a hardship exemption to individuals between the ages of eighteen and fifty-five to reside in any Unit; however, the exemption shall not be permitted or permitted to continue when the exemption would result in more that fifteen percent of the Units not having in each Unit at least one resident fifty-five years of age or older. Exemptions shall be restricted to the following situations:

(1) An Owner who obtained title to a Unit by inheritance or devise, or,

(2) Occupancy is by a surviving spouse, permanent partner, or other permanent Unit resident, of an occupant who died as a resident of the Unit.

If the Association is unable to grant pending applications for exemptions because to do so would result in less than eighty percent of the Units having less than one resident fifty-five years of age or older, then applications shall be given priority in the following order:

1. A surviving spouse, permanent partner or permanent Unit resident occupying the Unit.

2. All others by the date of death of the occupant who died as a resident of the Unit.

16.3 Pets. No animals or pets of any kind shall be kept in any Unit or on any property of the Condominium. ~~except one common household pet, i.e. Dog or Cat not to exceed 12 pounds as owned by the original owner prior to his purchase of his Condominium Unit from the Developer may be permitted to be kept in a Unit and further provided that upon the demise of such pet, such pet shall not be replaced. Such pet may be kept with the written consent of and subject to the Rules and Regulations adopted by the Board of Directors; provided that it is not kept, bred or maintained for any commercial purposes and further provided that such house pets causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property subject to these restrictions upon three (3) days written notice from the Management Firm or the Board of Directors of the Association. Once permission is granted, as provided in this paragraph, it shall not be withdrawn or terminated unless such house pet has caused or created a nuisance or unreasonable disturbance or is being bred, kept or maintained for commercial purposes. Pets shall not be permitted upon the Recreation Area under the Agreement for Deed unless a portion thereof is designated as the Area for pets to relieve themselves. Tropical fish and a bird may be kept upon a Unit Owner's premises only with prior written approval of the Board of Directors. Any pet found to be kept or maintained on any Condominium Property shall be permanently removed from the property upon three (3) days written notice from the Management Firm or the Board of Directors of the Association. The Board of Directors is hereby authorized to take such actions as it deems appropriate in its sole discretion to have the offending pet removed. Tropical fish and a bird may be kept upon a Unit Owners' premise only with prior written approval of the Board of Directors. With respect to Service Animals and/or Emotional Support Animals, the Association shall be bound and guided by the Americans with Disabilities Act (ADA) and/or the Fair Housing Act (FHA), as such statutes may be amended from time to time. A Service Animal is defined as a dog that is individually trained to perform tasks or do work for the benefit of a person with a disability, and an Emotional Support Animal, is defined as an animal that provides a sense of safety, companionship,~~

and comfort to those with psychiatric or emotional disabilities or conditions and shall be permitted subject to reasonable rules adopted by the Board of Directors.

16.4 Alterations. Without limiting the generality of ~~Section 9.1~~ Article VIII hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto or Common Elements, including but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antennae, machinery or air-conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Association (in the manner specified in ~~Section 9.1~~ Article VIII hereof).

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

16.6 Nuisances. ~~No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants.~~ No noxious or offensive activity shall be carried on in or upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Unit Owners. No flammable, combustible or explosive fluid or chemical substance shall be kept in any Unit except such as are required for normal household use and the same shall be kept within the Unit. No Owner shall permit or suffer anything to be done or kept in his Unit which will increase the rates of insurance as to other Owners and/or the Condominium Property. Any pet, previously approve by the Association, and which is determined by the Board, in its sole discretion, to be vicious, threatening or dangerous, shall be deemed to be a nuisance.

16.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and any violation ~~all~~ of any valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover relating to any portion of the Condominium Property, shall be corrected by and at the sole expense of the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth.

16.8 Leases. ~~No portion of a Unit (other than an entire Unit) may be rented. All leases shall be on forms approved by the Association and shall 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 and By Laws of the Association, applicable rules and regulations or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. Leasing of Units shall also be subject to the prior written approval of the Association and the Association may reject the leasing of any Unit on any grounds the Association elects. No lease shall be approved for a term of less than ninety (90) days. Only two (2) leases shall be permitted within a 365-day period, which 365-day period shall be deemed to commence on the date of the lease. Unit Owners wishing to lease their Units shall be required to place in escrow with the Association a sum to be determined by the Association which may be used 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). The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount in excess of such sum which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant. Any balance remaining in the escrow account, less an administrative charge determined by the Association, shall be returned to the Unit Owner within ninety (90) days after the tenant and all subsequent tenants permanently move out. All leases shall also comply with and be subject to the provisions of Section 18 hereof.~~

16.8 Sales, Leases and Conveyances. In order to assure that the Association shall be a community of congenial and responsible residents and that prospective purchasers will comply with the requirements of the Declaration and thus protect the value of the Units, the sale, lease or transfer of Units shall be subject to the following provisions together with such further provisions as may be set forth in the Rules and Regulations adopted by the Association. Nothing in this Declaration should be interpreted as an exemption from compliance with Palm Beach County regulations.

A. Lease or Rental of Units. Owners of Units may lease or rent their Units not more than once in any twelve (12) month period, and for a minimum of four consecutive months and a maximum period of one (1) year, with the option to extend such lease for one (1) additional year at a time. Such rentals shall be to one family only, and solely for use by the lessee and their guests. Subleasing by lessees is not permitted. Renting of individual rooms within the Unit is expressly prohibited. In addition, no transient tenancies shall be allowed, such as, but not limited to, a lease, license or other transfer or tenancy through an organization such as Air BNB, VRBO, or any other similar entity, website, or organization, and it shall be considered a violation of this provision to list or post a Unit on any such website or through and such company, agency or organization.

(1) Lessees are required to comply with the Declaration, By-Laws and Articles of Incorporation of the Association and all Rules and Regulations promulgated by the Board, as such documents may be amended from time to time. No lease shall become effective until such time as the Lessor has obtained a Certificate of Approval of Lease from the Association. The Board may establish rules and guidelines with respect to security deposits which may be required prior to the commencement of any lease.

(2) Lessees are required to participate in security activities approved by the Association and its Board. The requirements for compliance with the Association's Documents, and participation in security activities during the term of the lease must be included in the lease contract for rental of the Units.

(3) If a lessee fails to comply with the above requirements without just cause, the homeowner, Lessor, will be subject to an appropriate assessment, as determined by the Board, to compensate the Association for any costs or expenses incurred as a result of such failure.

(4) Prior to the issuance of a Certificate of Approval, the Owner, Lessor, must provide to the Association, a complete copy of the executed lease for the premises in question, and current contact information for the lessee(s) of the Unit, including the name(s) and age(s) of all occupants of the Unit.

(5) Following a change of ownership, the new homeowner will not be allowed to rent the subject property for a period of eighteen (18) months commencing on the date title is recorded. Any lease in violation of this provision shall be void; provided, however, this prohibition against leasing during the first eighteen months of ownership of a Unit shall not apply to new owners who have acquired ownership via transfers by devise or inheritance, by transfer to a co-Owner of the Unit or to a member of the Owner's immediate family or a transfer by the current Owner to a trust for the benefit of said Owner. Additionally, such eighteen-month restriction shall not apply to the Association in the event the Association takes title to a Unit as a result of foreclosure, deed in lieu of foreclosure or otherwise. An Owner's immediate family shall be defined as the Owner's spouse, permanent partner, parents, siblings, children, grandchildren or grandparents. Renters/Lessees are also subject to the age restrictions of Article XVI, Section 16.2.

(6) Notwithstanding anything to the contrary elsewhere in this Declaration, the Association neither has the duty to provide an alternate lessee, nor assumes any responsibility for the denial of a lease. Without limiting the Association's ability to disapprove of all leases and all occupants, a proposed tenant or occupant may be disapproved by the Association for any reasonable grounds, which reasonable grounds shall include, but not be limited to, the following:

(a) The person(s) seeking approval (which shall include all proposed occupants) fails to qualify for membership in the Association; or

(b) The person(s) seeking approval (which shall include all proposed occupants) has been convicted at any time of a felony involving violence to persons; or a felony involving or concerning moral turpitude; or a felony where the victim was a minor; or a felony where such person has been convicted of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 USC 802) or has been convicted of any other felony within the five (5) years preceding the date of application; or

(c) The person(s) seeking approval (which shall include all proposed occupants) is a registered sex offender or sexual predator pursuant to Florida law or pursuant to any other jurisdiction; or

(d) The person(s) seeking approval (which shall include all proposed occupants) takes possession of the Lot prior to approval by the Association as provided for herein; or

(e) The person(s) seeking approval (which shall include all proposed occupants) has a history of violating the Association's governing documents, or a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in this or any other association as a lessee, guest, owner or occupant of a Unit; or

(f) The person(s) seeking approval (which shall include all proposed occupants) fails to comply with the requirements of this Section, or misrepresents or includes and false information on any of the application materials submitted to the Association; or

(g) The person(s) seeking approval (which shall include all proposed occupants) has a history of bad credit, or has a history of non-payment of assessments or other financial obligations to this or any other association, or is otherwise demonstrated to be a clear financial risk to the Association. Furthermore, the Association may adopt, by Board Resolution, from time to time, further criteria related to an applicant's financial means, such as, but not limited to, a minimum credit score; or

(h) No lease will be approved, if, at the time of the application, the Unit Owner is delinquent in the payment of any financial obligation to the Association under the Declaration or under any of the governing documents or the applicable statute, of it the Unit is in violation of any provision of the Declaration or the Rules & Regulations which remain uncured at the time an application is made hereunder.

(7) With Respect to any tenant or any person present in any Unit or any portion of the Property other than an Owner and the members of said Owners immediate family permanently residing with him in the Unit, if such person materially violates any provision of this Declaration, the Articles or By-Laws, or if such person is a source of annoyance to residents of the community, or

willfully damages or destroys any Common Elements or personal property of the Association, then upon written notice by the Association, such person shall leave the Property, and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

B. Sale or Rental - Approval

(1) In the event any Owner wishes to sell, rent, or lease, or renew a previously approved lease for his/her Home or permit anyone, (including, but not limited to, Owner's and/or the Owner's Tenants/Lessee's family members, guests, and/or invitees) to occupy the unit for more than fifteen (15) consecutive days or thirty (30) total days per year, the owner shall, prior to accepting any offer to purchase, sell, lease, rent or renew a previously approved lease, or, prior to permitting anyone to occupy the Unit, deliver to the Board a completed written notice and application, as prescribed by the Board, of the prospective purchaser, tenant or occupant. A person who sleeps overnight at a unit shall be considered to be occupying a Unit for purposes of this section.

(2) The Board shall, within thirty (30) days following receipt of said application and such supplemental information as may be required by the Board, either consent to the transaction specified in the application, or by written notice delivered to the Owner, or mailed to the address designated in the application, object to the sale, leasing, renting or other occupancy of such unit for good cause, which cause need not be set forth in the notice from the Board to the Owner. The Association shall not unreasonably withhold its consent to the prospective sale, lease, rental or occupancy of the unit, provided, however, that the Association shall have the authority to disapprove of a proposed purchaser(s) or transferee(s) for good cause, which good cause shall be defined as enumerated in this Article XVI, and further provided that the Board may deny any rental application if such approval would cause the total number of units under a rental agreement to exceed a total of five (5) units.

(3) If the prospective purchaser of any Unit within the Property is not an individual(s) but some form of legal entity (including but not limited to a corporation, limited liability company, partnership or trust), then, in that event, required approval from the Association will be subject to receipt from the perspective purchaser of a list of all partners, stockholders, members or the like of the entity, a personal guaranty from an individual, guaranteeing the obligations of the purchaser to the Association, upon such purchaser's acquisition of title to the Unit. Such guarantee shall be in a form that is acceptable to the Board. This requirement is in addition to all other requirements necessary to obtain approval of the sale by the Board.

(4) Any transfer which is not approved, or which is disapproved pursuant to the terms of the Declaration, shall be void unless subsequently approved in writing by the Board. The Association shall have the right to remove any occupant(s) and personal belongings by injunctive relief or by such other means as permitted in this Declaration or by applicable Florida Statutes.

(5) No conveyance of title or interest in the unit, or any lease or rental thereof, shall be valid without the approval of the Board.



(6) The Association shall collect a reasonable fee, as set by the Board, for each application for sale or rental, which fee shall be paid at the time of submission of the application.

(7) No Owner may mortgage his Unit or any interest in it without the approval of the Association, except to a recognized financial institution as mortgagee. The approval of any other mortgage shall be upon such conditions as shall be determined by the Association, in its sole discretion.

(8) No Owner shall be permitted to own more than a total of two (2) Units at a single point in time.

16.9 Exterior Improvements; Landscaping. Without limiting the generality of ~~Section 9-1 Article VIII~~ or Section 17.4 16.4 hereof, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association.

16.10 Effect on Developer; Association. ~~With the exception of Sections 17.3 and 17.8, the restrictions and limitations set forth in this Section 17 shall not apply to the Developer or to the Units owned by the Developer.~~ 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~~ 16 for good cause shown. ,

## ARTICLE XVII

### Selling Leasing and Mortgaging of Units

~~No Unit Owner other than the Developer may sell or lease his Unit except by complying with the following provisions:~~

~~17.1 No Severance of Ownership. Except as elsewhere herein provided, 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.~~

~~17.2 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 17 and Section 16.2.~~

~~17.3 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.~~

## ENFORCEMENT

~~Section 1. 17.1~~ In addition to the enforcement provisions elsewhere provided in this Declaration, the Association is hereby granted an easement over each Lot for the purpose of enforcing the provisions of this Article, and may go upon any Lot to remove or repair any violation of these provisions. In the event that the Association, after notice to the Owner of any violation and the Owner's failure to cure the

same, does in fact exercise its right to cure said violation, all costs incident to said action by the Association shall become the personal obligation of the Owner and shall be imposed as a lien against his Lot in the same manner as if said sums represented monies due for unpaid Assessments.

Section 2. 17.2 Fines.

(a) The Board shall have the power to impose reasonable fines, and any fine which equals or exceeds \$1,000 in the aggregate shall constitute a lien upon the property of the violating Owner, for any violations of the Declaration, By-Laws and Rules and Regulations, as may be amended from time to time. For the purposes of this subsection, the term Owner shall be deemed to include the Owner's family members, tenants and their family members, guests, visitors and any other invitees of the Owner. In the event that any occupant of a Unit is in violation and a fine is imposed, the fine shall first be assessed against said occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws or Rules and Regulations shall not be deemed a waiver of the right of the Board to do so thereafter.

(b) A fine, in an amount not to exceed \$100.00 per day, may be levied on the basis of each day of a continuing violation with a single notice and opportunity for a hearing (as described below). Fines imposed on the basis of a continuing violation may exceed \$1,000.00 but shall not exceed \$5,000.00 in the aggregate. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the Court.

(i) Notice. Prior to the imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation; (b) the proposed sanction to be imposed; (c) a period of not less than fourteen (14) days within which the alleged violator may present a written request for a hearing before the Compliance Committee for a hearing. The Compliance Committee shall be composed of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association. If the Compliance Committee by majority vote does not approve the sanction stated in the notice it shall not be imposed.

(ii) Hearing. If a hearing before the Compliance Committee is requested in a timely manner, the hearing shall be held affording the Owner a reasonable opportunity to be heard, to present written and oral argument on the issues and to have counsel present at the Owner's sole expense. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Compliance Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fourteen (14) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

(iii) Payment. A fine shall be paid not later than thirty (30) days after notice of imposition of the fine.

(iv) Fines. A fine shall be treated as an Assessment subject to the provisions of the collection of Assessments as otherwise set forth herein. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration.

(v) Failure to Pay Assessments. Notwithstanding anything to the contrary contained herein, unless contrary to applicable law, notice and hearing as provided above or elsewhere in the Association's governing documents, shall not be required with respect to the imposition of suspension of use or voting rights or fines upon any Owner because of such Owner's failure to pay Assessments or other charges, or any other monetary obligation due to the Association when due, if such non-payment exceeds more than ninety (90) days.

## ARTICLE XVIII

### Compliance and Default

Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration 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:

18.1 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.

18.2 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 this Declaration, the By-Laws, the Articles, 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, in accordance with the rules and regulations, to sue in a court of law for damages, to charge the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance and to collect such charge.

18.3 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) as may be awarded by the court.

18.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or either provisions of the Act, this Declaration and 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.

## ARTICLE XIX

### Merger of Condominium

The Condominium may be merged with one or more condominiums within the Development to form a single condominium upon (i) the approval of such voting interests of each condominium as is required by the Declaration for modifying the appurtenances to the Units or changing the proportion or percentages by which the owners of the Condominium Parcel share the Common Expenses and own the Common Surplus, (ii) the approval of all of the Institutional First Mortgagees and of all record owners of liens and (iii) upon the recording of new or amended Articles of Incorporation, Declaration(s) of Condominium and By-Laws.

## ARTICLE XX

### Termination of Condominium

The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least eighty (80%) percent of the applicable interests in the Common Elements ( after twenty (20%) percent of the Units have been sold to Unit Owners other than the Developer, the Developer will not vote the Units owned by it for such withdrawal unless the Owners of at least eighty (80%) percent of all other applicable interests in the Common Elements so elect for such withdrawal, at which time Developer may choose to vote either in favor of or against withdrawal from Condominium ownership, as it sees fit), and by the Primary Institutional First Mortgagee. 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 interest 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 of 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. This section may not be amended without the consent of all Institutional First Mortgagees and the Developer so long as it owns any Unit. In the event the Condominium is to be terminated, the undivided interest held by the Association in and to the Recreation Area shall be deeded to the then existing record owners of legal title to the Recreation Area, as their respective interests may appear, for and in consideration only of the prior use and enjoyment of the Recreation Area by the Unit Owners and the sum of Ten Dollars (\$10.00). The conveyance shall be made by quitclaim deed executed by the President and Secretary of the Association in recordable form. and it shall be recorded in the public records of the County, prior to the certificate of termination. Notwithstanding the foregoing rights to terminate the Condominium, it shall be a condition precedent to termination, that the Association prepay in full the remaining principal balance and all accrued interest then owed by the Association under the Agreement for Deed. Thereafter, all Unit Owners who continue to make timely payment of the other sums due under the Agreement for Deed shall be entitled to continue to use the Recreation Area and to be members of the

Recreation Area Association referred to in the Agreement for Deed, and this provision shall survive any such termination.

## ARTICLE XXI

### Additional Rights of Institutional First Mortgagees

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

- 21.1 Examine the Association's books and records; and require copies of the annual reports and other financial data;
- 21.2 Receive notice of Association meetings and attend such meetings;
- 21.3 Receive notice of an alleged default by any Unit Owner, for whom such Institutional First Mortgagee holds a mortgage, which is not cured-within thirty (30) days of notice of default to such Unit Owner; and
- 21.4 Receive notice of any substantial damage or loss to any portion of the Condominium Property.

## ARTICLE XXII

### Reservation of Right to Own Install Provide and Maintain a Closed Circuit Television System Telecommunications System a Master Antennae System and Community Antennae Television System (CATV Service).

22.1 ~~Developer~~ The Association reserves and retains to itself, its successors and assigns: (i) the title to any closed circuit television system, telecommunications system, master antennae system, and related ancillary services and to the equipment, including but not limited to, conduits, wires, amplifiers, towers; antennae and related apparatus and electronic equipment both active and passive (the "Central System") in and upon the Condominium Property and an easement for 99 years for the placement and location of the Central System including, but not limited to conduits, wires, amplifiers, towers, antennae and related apparatus and electronic equipment, both active and passive, and (ii) an easement for 99 years for ingress to and egress from the Condominium Property to service, maintain, install, repair and replace the aforesaid apparatus and equipment; and (iii) the right to connect the Central System to such receiving source as ~~Developer~~ the Association may in its sole discretion deems appropriate, including, without limitation, companies licensed to provide the CATV Service in the County, for which service ~~Developer~~, the Association, its successors and assigns or designees shall have the right to charge the Association and/or individual Unit Owners a reasonable fee not to exceed the maximum allowable charge for CATV Service to single family residences as charged within the general vicinity.

22.2 The Unit Owners acknowledge that the Central System described in Section 23.1 above, includes but is not limited to the CA TV Service as well as the ancillary services which may include security; medical, smoke and fire alert; information retrieval and so forth. Such Central System is offered as part of ~~Developer's~~ the Association's endeavor to provide a total environment to the Unit Owners and enhance the "way- of-life" at the Development.

22.3 Each Unit Owner by the acceptance of a warranty deed to his Unit recognizes that ~~Developer, the Association~~ for the use and convenience of the Unit Owners, has expended substantial sums of money to develop and insure the services for and to equip this Condominium with a quality Central System and in consideration thereof ~~Developer the Association~~ has reserved and retained the ownership of the Central System and the right to charge a reasonable sum to the Association and/or the Unit Owners for its use. ~~If the Association and/or Master Association, at any time, enters into a contract with a company without the Developer's prior written consent or otherwise provides for any or all of the services contemplated by the Central System to the Building, the Association shall, at the option of the Developer, to the extent allowed by law, be required to purchase that part of the Central System that is located within the Units (which does not include such portions of the Central System located on or within the Common Elements) and all such other equipment, electronic (active and passive) or otherwise shall remain the property of the Developer) at a purchase price equal to Five Hundred Dollars (\$500.00) for each Unit in the Condominium. The Association shall purchase that part of the Central System within fifteen (15) days after Developer's written request to do so. If the Association does not purchase that part of the Central System as aforesaid, Developer may file a lien against any or all of the Units in the amount of the aforesaid purchase price. If a lien is filed, Developer will release each Unit from the lien upon the payment of Five Hundred Dollars (\$500.00) per Unit plus interest at the highest rate allowable by law, together with a pro rata share of the court costs, if any, and attorney's fees and appellate attorneys' fees and this covenant shall be a covenant running with the Land.~~

#### ARTICLE XXIII

##### Developer's Additional Rights

(a) ~~Water and Sewer Service.~~ In order to insure the Condominium and the Development with adequate uniform water service and sewage disposal service, the Developer or its designee, prior to completion and sale of the last condominium Unit (or residential dwelling Unit other than a condominium Unit) to be located at the Development, shall have and hereby reserve the exclusive right to contract for the servicing of this Condominium and the Unit Owners therein, and the Development with said services.

#### ARTICLE XXIV

##### Covenant Running With The Land

All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association shall, 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, 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, as they may be amended from time to time by such Unit Owner, tenant or occupant.

ARTICLE XXV

Additional Provisions

25.1 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 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 notice of a change of address, which shall be deemed to have been given when received, or five ( 5) business days after proper mailing, whichever shall first occur.

25.2 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 counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

25.3 Mortgages. 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 written notice of the existence of such mortgage or lien is received by the Association.

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

25.5 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 therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an Assistant Secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

25.6 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.

25.7 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association in its own name and/or on behalf of the Unit Owners unless same is approved by a vote of seventy-five percent (75%) of the voting interests of all of the Unit Owners. This Section shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) proceedings, or (iii) counterclaims brought by the Association in proceedings instituted against it. Notwithstanding the provisions of Section 6 of this Declaration, this Section shall not be amended unless such amendment is approved by the percentage of votes necessary to institute proceedings as provided above.

~~25.8 Construction Litigation. All Units and their appurtenant Common Elements have been or will be sold without any Developer's warranties whatsoever except as provided in the Act (to the~~

~~extent such warranties are not effectively disclaimed and remain in effect, if at all). As to such warranties, if any, and as to any claim arising from or connected with the design or construction of any Unit(s) or the Common Elements including, without limitation, claims alleging negligent construction, failure to build in accordance with any particular plans or specifications or failure to comply with building or other codes, laws, ordinances or regulations (collectively, "Construction Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Construction Matters that (i) the party or parties bringing same shall have first given notice to the Developer or other party against whom which relief or recovery is sought (the "Defendant") of the specific Construction Matters complained of and what actions are necessary to cure or correct same and (ii) the Defendant shall have given at least forty-five (45) days (subject to extension by reason of matters beyond the control of the Defendant or because of the nature of the applicable Construction Matter(s) and the time necessary to cure or correct same) in which to cure or correct the applicable Construction Matter(s) and shall have materially failed to do so. U~~  
~~any Construction Matter is not cured or corrected as aforesaid, all applicable parties shall be bound to submit the disputes or claims regarding the Construction Matters at issue solely to binding arbitration in accordance with the Florida Arbitration Code and the rule, of the American Arbitration Association and the parties and their successors, and assigns shall be bound by the results of such arbitration. Without limiting the general binding effect of this Declaration, each Owner and other person acquiring any right, title or interest in or to any Unit shall be deemed, by virtue of the acceptance of the conveyance, grant, transfer or assignment thereof, to be fully bound by the provisions of this Section 26.8 and of Section 26.7 above, as shall the Association.~~

25.9 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.

25.10 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.

25.11 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.

~~25.12 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, if the County or any other governmental agency requires the approval of the Owners to complete the plan of development of the Development (of which the condominium is a part), as hereinafter amended, and Unit Owner, by reason of the acceptance of a deed to such Unit Owner's Unit, hereby appoints 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 that may be required from time to time by the County. 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.~~

25.13 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.



25.14 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.

IN WITNESS WHEREOF, the Association has caused this Amended and Restated Declaration to be duly executed and its corporate seal to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2019

Signed, sealed and delivered

FAIRWAY CLUB CONDOMINIUM D ASSOCIATION, INC.

IN THE PRESENCE OF:

\_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Return to:  
VM Chesney  
Lennar Homes, Inc.  
12230 Forest Hill Blvd  
West Palm Beach, FL 33414

MAR-28-1996 2:01PM 96-103401  
ORB 7185 PG 1141  
01000010101010000000

DECLARATION OF  
FAIRWAY CLUB CONDOMINIUM D

P93242

DCA of Lake Worth, Inc., a Florida corporation (the "Developer") does hereby declare as follows:

1. Introduction and Submission:

1.1 The Land. The Developer owns the fee simple title to that certain land located in Palm Beach County, Florida, as more particularly described in Exhibit "I" annexed hereto (the "Land").

1.2 Submission Statement. The Developer hereby submits the Land and, except as otherwise provided herein, all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, less and except the Central System as defined in this Declaration, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date hereof.

1.3 Name. The name by which this condominium is to be identified is: Fairway Club Condominium D (herein called the "Condominium").

2. Definitions. The following terms which are used in this Declaration and in its Exhibits, and as they may hereafter be amended, shall have the meaning described to them in this Section, except where the context clearly indicates a different meaning:

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

2.2 "Agreement for Deed" means that certain Agreement for Deed recorded in Official Records Book 4544 at Page 1498 of the Public Records of Palm Beach County, Florida, and the Cancellation of Agreement for Deed and Modification Agreement recorded in Official Records Book 4544 at Page 1529 of the Public Records of Palm Beach County, Florida, which Agreement for Deed is incorporated herein by reference.

2.3 "Articles" means the Articles of Incorporation of the Association.

2.4 "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.

2.5 "Association" means Fairway Club Condominium D Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of the Condominium.

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

2.7 "Building" means the structure or structures in which the Units are located on the Condominium Property.

2.8 "By-Laws" means the By-Laws of the Association.

2.9 "Common Elements" shall mean and includes:

(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 and other services to Units and Common Elements;
- (c) An easement of support in every portion of the 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;
- (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration;
- (f) Common Elements includes Limited Common Elements unless the context otherwise requires.

The Common Elements shall not include the Association's interest in the Recreation Area.

2.10 "Common Expenses" means all expenses incurred and Assessments (and Special Assessments levied against all of the Units of the Condominium) by the Association for the Condominium and shall include:

- (a) Expenses of administration and management of the Condominium Property.
- (b) Expenses of taxes, insurance, maintenance, operation, repair and replacement of Common Elements and Limited Common Elements, and of the portions of the Units, if any, to be maintained by the Association.
- (c) Costs and expenses of capital improvements, betterments and additions to the Common Elements.
- (d) Costs and expenses of carrying out the powers and duties of the Association, including any expenses allowable for services being rendered by a management company with which the Association or Master Association, may contract.
- (e) Expenses declared Common Expenses by the provisions of this Declaration or by any instrument annexed as an Exhibit hereto.
- (f) Any valid charge against the Condominium Property as a whole.

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

2.12 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is 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 and the personal property that are subject to condominium ownership under this Declaration, all improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

2.14 "County" shall mean Palm Beach County, Florida.

2.15 "Declaration" or "Declaration of Condominium" means this instrument or instruments by which the Condominium will be created.

- 2.16 "Developer" means DCA of Lake Worth, Inc., a Florida corporation, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign only a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Condominium. In the event of such partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of the Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.
- 2.17 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) on the Condominium Property, including but not limited to, the Building.
- 2.18 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, mortgage banker, real estate or mortgage investment trust, pension fund, Developer, GNMA, FNMA, FHLMC, VA, FHA, or any other lender, or its loan correspondent or agency of the United States Government, holding, guaranteeing or insuring a first mortgage on a Unit or Units.
- 2.19 "Fairway Club Project", "Fairway Club" or the "Project" or "Development" means the Fairway Club Condominium project near Delray Beach, Florida. The lands that constitute the Fairway Club Project shall be determined by the Developer in its sole discretion.
- 2.20 "Limited Common Elements" mean those Common Elements the use of which are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. Reference herein to Common Elements shall include also all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.21 "Management Contract" means and refers to that certain agreement, which provides for the management of the Condominium Property.
- 2.22 "Management Firm" means and refers to the corporation, its successors and assigns, identified as the Management Firm in the Management Contract. The Management Firm shall be responsible for the management of the Condominium Property as provided in the Management Contract.
- 2.23 "Master Association" means Lucerne Lakes Master Homeowners Association Inc., a Florida corporation not for profit.
- 2.24 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns at any time first mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.25 "Property Owners Association" means Fairway Club Property Owners Association, Inc., a Florida corporation not for profit, the entity responsible for the administration, operation and management of the Common Areas.
- 2.26 "Recreation Area" means those lands and the improvements thereon which are subject to and more particularly described in the Agreement for Deed and Cancellation of Agreement for Deed and Modification Agreement ("Agreement for Deed").
- 2.27 "Recreation Area Management Firm" means the Management Firm referred to in the Agreement for Deed.
- 2.28 "Special Assessment" means any assessment levied against Unit Owners other than the Assessment required by a budget adopted annually, which includes such additional sums which may be assessed directly against one or more Unit Owners (though not necessarily against other Unit Owners).

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

2.30 "Unit Owner" or "Owner of a Unit" means the Owner of a Condominium Parcel.

2.31 "Utility services" shall include, but not be limited to, electric power, water, air conditioning, MATV and CATV systems and garbage and sewage disposal.

2.32 "Voting Certificate" means a document which designates one of the record title Owners, or the corporate partnership, or entity representative who is authorized to vote on behalf of a Unit owned by more than one Owner or by any entity.

2.33 "Voting Interest" means the voting rights distributed to the Association members pursuant to the Act and Section 5 of this Declaration.

3. Description of Condominium.

3.1 Identification of Units. The Land has or will have constructed thereon one building containing fifty-two (52) Units. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on Exhibit "3" annexed hereto. Exhibit "3" consists of a survey of the Land, a graphic description of the Improvements located hereon, including, but not limited to, the Buildings in which the Units are located and a plot plan thereof. Said Exhibit "3", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. 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 designated in this Declaration with the full voting rights appertaining thereto and (e) other appurtenances as may be provided in this Declaration. Time-share estates will not be created with respect to any Unit in the Condominium.

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

(a) Upper and lower boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(i) Upper boundaries. The horizontal plane(s) of the unfinished lower surface of the ceiling.

(ii) Lower boundaries. The horizontal plane of the unfinished upper surface of the concrete floor.

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

3.3 Limited Common Elements. Each Unit shall have, as Limited Common Elements appurtenant thereto:

(a) Patios and Balconies. Each Unit shall have either a patio or balcony abutting it for the exclusive use of the Unit Owner owning such Unit.

The Unit Owner shall be responsible for maintenance and care of the patio or balcony, including, without limitation, all wiring, electric outlets, lighting fixtures and screening. A Unit Owner may not enclose exterior patios or balconies without the prior written consent of the Management Firm, if applicable, and the Board of Directors of the Association.

(b) Storage Space and Utility Space. Storage space and/or utility space is located within each patio or balcony area and shall be used exclusively by the Unit Owner entitled to make exclusive use of said patio or balcony.

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

(a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(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 and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other services or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, service and drainage facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day notice.

(c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall 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 made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for 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 and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements 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) shall automatically be subordinate to, the rights of Unit Owners with respect to such easements. In addition, there is hereby created a non-exclusive easement in favor of all of the Owners of residential Units, residents

and their guests and invitees in the Development for ingress and egress over those portions of the Common Elements designated for vehicular traffic so as to provide reasonable access to the roads built within the Development. All of the lakes, and other waterways located at the Development are intended for the use and enjoyment of all of the residents of the Development. Accordingly, non-exclusive easements for ingress and egress located at the Development shall exist in favor of the Developer (its designees, invitees, agents, licensees, employees, successors and assigns), and all residents of the Development (their respective heirs, successors and assigns), for use of such lakes and other waterways, driveways, walk-ways and other rights of way established within the Development from time to time.

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(e) Construction. 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 and take all other action necessary or convenient for the purpose of completing the construction thereof, of any Improvements or Unit located, or to be located thereon, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the Unit Owners of the Condominium Property.

(f) Sales Activity. For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for model apartments and sales offices, to show model apartments and the Common Elements to prospective purchasers and tenants of the Units, and to erect on the Condominium Property signs and other promotional material to advertise Units and certain Limited Common Elements for sale or lease.

(g) Additional Easements. The Association, on their behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as their attorney-in-fact for this purpose), each shall have the right to grant such additional electric, gas, other utility or service or other easements, or relocate any existing easements or drainage facilities in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Association shall deem necessary or desirable for the proper operations and maintenance of the Improvements, or any portion thereof, or the Development or any portion thereof, or for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration or otherwise, 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. The Association has the authority without the joinder of any Unit Owners, to grant, modify or move any easement, subject to the provisions of the easement, if the easement constitutes part of or crosses the Common Elements.

3.5 Recreation Area. An undivided interest in the Recreation Area is being conveyed by the Developer to the Association for the non-exclusive use and enjoyment of the Unit Owners, all pursuant to the provisions of the Agreement for Deed, and all the rights, privileges, benefits, liabilities and obligations set forth therein, shall be incorporated into this Declaration and all Unit Owners shall be bound thereby in every respect. The Association shall perform or cause to be performed all of the duties and obligations required of the Association under the Agreement for Deed. The interest in the Recreation Area being conveyed to the Association shall be an asset of the Association, but shall not be part of the Condominium Property or the Common Elements.

3.6 Master Association. The Association is a member of the Master Association, and each Condominium unit owner, by virtue of the ownership of a

condominium unit in this Condominium, shall be bound by the terms, conditions, duties, liabilities and obligations under the Second Amendment to and Restatement of the Lucerne Lakes Master Declaration of Covenants and Restrictions as recorded in Official Records Book 3673, Page 1658 of the Public Records of Palm Beach County, Florida, and Exhibits and Amendments thereto. The Condominium unit owners, by virtue of their acceptance of the Deed of Conveyance to their units, acknowledge that the aforesaid Master Association has certain rights which supersede and are pertinent to the right of the Association, as more particularly provided in the instrument previously referred to in this Section 3.6, including the right of the Master Association to levy assessments against the Association and the units in this Condominium and the lien rights in favor of said Master Association and other rights, as more fully set forth in said instruments.

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, 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, membership in the Association designated in this Declaration, with the full voting rights appertaining thereto, and except as provided herein, the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from and shall pass with the title to the Unit, whether or not separately described. All of these aforescribed appurtenances to a Unit 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 Fractional Ownership and Shares. The undivided fractional interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses appurtenant to each Unit, is set forth in Exhibit "2" annexed hereto.
  
  - 5.2 Voting. Each Unit shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles. Each Unit Owner shall be a member 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 a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the voting interests of the members of the Association. 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. Except as elsewhere provided, approvals must be by affirmative vote of:
    - (a) Unit Owners owning in excess of 50% of the Voting Interests represented at any meeting at which a quorum has been attained and by not less than 66-2/3% of the Board of Directors of the Association; or
  
    - (b) Unit Owners owning not less than 80% of the Voting Interests represented at any meeting at which a quorum has been attained; or
  
    - (c) 100% of the Board of Directors; or



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

6.2 By the Developer. Provided said changes, alterations, additions and improvements are (1) not inconsistent with the terms and provisions of the Act and the applicable rules of the Florida Department of Business Regulation, and (2) as more particularly described in the Offering Circular or prospectus required under the Act, the Developer shall have the right without the consent or approval of the Board of Directors or Unit Owners to provide additional and/or expand recreational or other commonly used facilities; provided that the relocation does not materially adversely affect the market value or the ordinary use of the Units owned by Unit Owners other than the Developer.

6.3 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 date identifying the Declaration and shall be executed in the form required for the execution of a Deed. Amendments by the Developer must be evidenced in writing, but a certificate of the Association is not required. An amendment of the Declaration is effective when properly recorded in the Public Records of the County.

6.4 Procedure. 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.

6.5 Proviso. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless a majority of the Voting Interests of the Association 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, the Seller under the Agreement for Deed or Institutional First Mortgagees or mortgagees of Units without the consent of said Developer, the Seller under the Agreement for Deed or Institutional First Mortgagees or mortgagees in each instance; or shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty" or "Condemnation" unless all Institutional First Mortgagees whose mortgages are of record shall join in the amendment.

7. Maintenance and Repairs.

7.1 Units. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical, plumbing, heating and air-conditioning equipment,

fixtures and outlets, if any, within the Unit or the Limited Common Elements or belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein, and shall be in accordance with the original plans and specifications therefor or as otherwise directed by the Association and/or the Architectural Control and Maintenance Standards Committee, if applicable. Additionally, each Unit Owner shall pay all charges for utility services metered directly to his Unit.

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7.2 Common Elements. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than Limited Common Elements as provided above) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, 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.

7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair the following specific items shall be the responsibility of the Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units, are Limited Common Elements or are Common Elements other than Limited Common Elements:

Where a Limited Common Element consists of a balcony or patio, the Unit Owner who has the right to the exclusive use of said balcony or patio shall be responsible for the maintenance, care and preservation of the paint and surface of the interior parapet walls, including floor and ceiling, within said area, if any, and the fixed and/or sliding glass door(s) in the entrance way(s) or other portions of said area, if any, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs, if any.

(b) Storage space and/or utility space, if applicable.

7.4 Recreation Area Maintenance, repair, replacement, alteration and improvement of the Recreation Area shall be by the Association at the Association's expense according to the provisions of the Agreement for Deed.

7.5 Miscellaneous. All work performed on the Condominium Property or any portion thereof shall be in compliance with all applicable governmental building and zoning requirements. All plumbing and electrical maintenance, repairs, and replacements shall be made only by plumbers or electricians duly licensed and qualified to perform such services in either Dade, Broward or Palm Beach Counties, Florida.

8. Additions, Alterations or Improvements by the Association and Developer

8.1 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 Five Hundred Dollars (\$500.00) 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 voting interests 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 Five Hundred Dollars (\$500.00) 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.

8.2 Additions, Alterations or Improvements by Developer. The Developer, provided Developer is the owner of one of the Units in the Condominium, shall have the right, without the vote or consent of the Association or Unit Owners, to change all or any part of the front, rear or side elevations of the Condominium, and provided further that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction.

9. Additions, Alterations or Improvements by Unit Owners and Developer.

9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, his Unit or any Limited Common Elements without the prior written consent of the Board of Directors and/or the Architectural Control and Maintenance Standards Committee, if applicable. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within thirty (30) 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 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 and/or the Architectural Control and Maintenance Standards Committee, if applicable, with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise.

A Unit Owner making or causing to be made any such additions, alterations or improvements 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, all other Unit Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance from and after that date of installation or construction thereof as may be required by the Association. Unless expressly permitted in writing by the Association, the installation of any floor covering, other than padded carpeting or well padded vinyl tile, is prohibited. In any event, Unit Owners shall have the duty of causing there to be placed underneath such covering, so as to be between any such covering and the floor of the Unit, generally accepted and approved material for diminution of noise and sound, so that the floors shall be adequately soundproof according to general architectural and engineering standards presently observed in the community.

9.2 Additions, Alterations or Improvements by Developer. The Developer shall have the additional right, with the approval of a majority of the Voting Interests in the Association, to make alterations, additions or improvements, structural and nonstructural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements). If the Developer, with the approval of the Association, alters the floor plans of the building, the Association will cause an amendment to the Declaration to be recorded showing such changes.

10. Changes in Developer-Owned Units. Without limiting the generality of the provisions of Section 9.2 above, the Developer shall have the right, with the approval of the Voting Interests of the Association as described in Section 6.1 hereto, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or nonstructural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-owned Units; (iii) combine contiguous Developer-owned Units, provided, however, that the number of Units and their proportionate percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than 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 such Units 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.

11. Operation of the Condominium by the Association; Power and Duties. The

Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Articles and By-Laws of the Association (respectively, Exhibits "4" and "5" annexed hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, 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 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, or to determine compliance with the terms and provisions of this Declaration, the Exhibits annexed hereto, and the rules and regulations adopted pursuant to such documents, as the same may be amended from time to time.
- (b) The power to make and collect Assessments and Special Assessments and other charges and surcharges 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.
- (d) To contract for the management and maintenance of the Condominium Property and to authorize a management agent (which 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 and Special Assessments, preparation of records, enforcement of rules and maintenance, repairs and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association shall, however, retain at all times the powers and duties granted by the Condominium Documents and the Act, including but not limited to the making of Assessments, Special 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 therefor mortgages and security interests in property owned by the Association, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the voting interests of the Unit Owners represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or voting interests of the Unit Owners as may be specified in the By-Laws with respect to certain borrowing.
- (f) Subsequent to the recording of this Declaration, the Association, when authorized by a majority of the voting interests of the Units represented at a meeting at which a quorum has been attained, shall have the power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the use or benefit of the Unit Owners (whether or not on an exclusive basis). The expenses of ownership (including the expense of making and carrying any mortgage related to such

ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses. No actions authorized hereunder, however, may be taken without prior consent of Developer as long as the Developer owns any Units.

- (g) The power to adopt and amend the rules and regulations covering the details of the operation and use of the Condominium Property.
- (h) The power to levy reasonable fines against a Unit for failure of the Owner or its occupant, licensee or invitee to comply with any provision of this Declaration, the By-Laws or the rules and regulations.
- (i) The power to charge a use fee against a Unit Owner for the exclusive or non-exclusive use of all or a portion of the Common Elements or Association Property.
- (j) All of the powers which a corporation not for profit in the State of Florida may exercise.

In the event of conflict between the powers and duties of the Association or otherwise, the Declaration shall take precedence over the Articles, By-Laws and applicable rules and regulations; the Articles shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time.

- 11.1 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.
- 11.2 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 11.3 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for the Unit if at an Association meeting, unless the joinder of record Owners is specifically required by the Declaration or by law.
- 11.4 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 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.
- 11.5 Recreation Area. The Association and the Unit Owners shall be bound by all of the terms and provisions of the Agreement for Deed and all Exhibits thereto.
- 12. Determination of the Common Expenses and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the 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 Assessment payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of the operation, maintenance, repair and replacement of the Common Elements and Recreation Area or other commonly used facilities and services, Special Assessments levied against all of the Units of the Condominium 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. Except as otherwise provided by law, any reserve funds may be used as the Board shall determine from time to time and need not be restricted to replacements or otherwise. Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws. Additionally, the charges for cable television services and auxiliary services, if any, to be provided to all of the Units of the Condominium shall be deemed to be a Common Expense. The Board of Directors in determining the amount of the Assessments payable by the Unit Owners shall be authorized to include such charges in the estimated operating budget for the Condominium. Accordingly, the provisions contained in Section 13 of this Declaration with respect to the collection of Assessments shall be applicable to the charges for cable television services and auxiliary services.

In addition a portion of the common expenses of this Condominium may be determined by the Master Association as provided under Section 3.6 of this Declaration, and the Association through the Board of Directors, by its execution of this Declaration, agrees to include such sum as the Master Association determines in the budget of the Condominium and to assess the units therein their applicable share of said sum.

13. Collection of Assessments and Special Assessments.

13.1 Liability for Assessments and Special Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments and Special Assessments coming due while he is the Unit Owner. Except as provided for in Section 13.5, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments and Special Assessments against the grantor for his share of the Common Expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments and Special 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 and Special Assessments are made or otherwise.

13.2 Default in Payment of Assessments or Special Assessments for Common Expenses. Assessments, Special Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest rate allowable by law from the due date until paid. The Association has a lien on each Condominium Parcel for any unpaid Assessments and Special Assessments on such Parcel, with interest and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessments and Special Assessments or enforcement of the lien. The lien is effective from and after recording a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the due dates. No such lien shall continue for a longer period than one year after the claim of lien has been recorded, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure all unpaid Assessments, Special Assessments, interest, costs, and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. A claim of lien shall be signed and acknowledged by an officer or

agent of the Association. Upon payment the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for unpaid Assessments and Special 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 and Special Assessments without waiving any claim of lien.

- 15.3 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments and Special Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments and Special Assessments, including those coming due after the claim of lien is recorded, and other sums permitted hereunder 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 and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit the 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 and shall not apply if an action to foreclose a mortgage on the Unit is pending before any court if the Association's rights would be affected by such foreclosure, and if actual, constructive or substitute service of process has been made on the Unit Owner.
- 13.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.
- 13.5 First Mortgagee. A first mortgagee who acquires title to the Unit by foreclosure or by deed in lieu of foreclosure shall be liable for the unpaid common expenses and assessments that became due prior to the mortgagee's receipt of the deed. However, the mortgagee's liability is limited to a period not to exceed six (6) months, but in no event shall the first mortgagee's liability exceed one (1%) percent of the original mortgage debt. The first mortgagee's liability for such expenses or assessments shall commence 30 days after the date the first mortgagee received the last payment of principal or interest.
- 13.6 Developer's Liability for Assessments. (i) The Developer shall be excused from the payment of the share of the Common Expenses and Assessments relating to Units it is offering for sale, for a period beginning with the recording of this Declaration and ending one year from the first day of the following month in which the Certificate of Occupancy is issued (the "Guarantee Expiration Date"), provided that the regular monthly Assessments for Common Expenses imposed on each Unit Owner other than the Developer shall not increase during such period over \$78.46 per unit per month, with a waiver of reserves for the first 24 month period, which is the amount set forth in the Estimated Operating Budget for the first twelve months of operation for the Association contained in the Offering Circular (Prospectus) delivered to such Unit Owner when such Owner contracted to purchase the Unit, if applicable; and provided further that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed level receivable from Unit Owners. The period that Developer is excused from the payment of the share of Common Expenses and Assessments

relating to Units it is offering for sale may be unilaterally extended by the Developer for one or more successive periods of one year each until such time as the Developer does not own any Units in the Condominium.

(ii) No funds receivable from Unit purchasers or 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 for the first twelve months of operation attached to the Prospectus as Exhibit "18", shall be used for payment of Common Expenses prior to the Guarantee Expiration Date. This restriction shall apply to funds including, but not limited to, capital contributions or start-up funds collected from Unit purchasers at closing.

13.7 Certificate of Unpaid Assessments. The Association shall provide a certificate stating all Assessments, Special Assessments and other moneys owed to the Association by the Unit Owner with respect to the Condominium Parcel, within 15 days after request by a Unit Owner or Institutional First Mortgagee.

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

13.9 Recreation Area. The Unit Owners acknowledge that the Developer is attempting to create a total environment or "way-of-life" at the Development, (involving a single residence and recreation product). The Developer, insofar as the Agreement for Deed, may be referred to as the Seller. In that connection, each Unit Owner, by acceptance of a deed or other instrument conveying title to a Unit adopts, consents and ratifies the Agreement for Deed and agrees that the terms and provisions thereof are fair and reasonable.

13.10 Special Assessments. The specific purpose or purposes of any Special Assessment approved in accordance with this Declaration, Articles, or By-Laws shall be set forth in a written notice of such Special Assessment sent or delivered to each Unit Owner. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in such notice, or returned to the Unit Owners. However, upon completion of such specific purpose or purposes, any excess funds shall be considered Common Surplus.

14. Insurance. Insurance covering portions of the Condominium 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.

(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 additional insured.



- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), 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.

Personal Property and Liability. Unit Owners may obtain insurance coverage at their own expense and at their own discretion 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.

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 initially installed, or replacements thereof, of like kind or quality in accordance with the original plans and specifications therefor, or as existed at the time the Unit was initially conveyed if the original plans and specifications are not available, but excluding floor coverings, wall coverings and ceiling coverings, all furniture, furnishings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners) and all Improvements located on the Common Elements from time to time, together with all service machinery contained therein (collectively, the "Insured Property"), shall be insured in an amount not less than one hundred (100%) percent of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:
- (i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
  - (ii) Such other risks as from time to time are customarily covered with respect to buildings 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 \$300,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.
- (c) Workers' Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance, if required by the Primary Institutional First Mortgagee or if the Association so elects.

- (e) Fidelity Insurance covering all directors, officers and employees of the Association and managing agents who handle Association funds, if any.
- (f) 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 Owner's individually and as a group, (ii) the clause that reserves to the insurer the right to pay only a fraction of any loss in the event of co-insurer the right to pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, or by a member of the Board of Directors of the Association or by one or more Unit Owners.

14.3 Additional Provisions. All policies of physical damage insurance shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the named insured, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall 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. Premiums may be paid on a monthly, quarterly or semi-annual basis, as the Board of Directors deems appropriate.

14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which 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 County. The Insurance Trustee (if appointed) shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee (if appointed) shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

- (a) 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 subparagraph (b) below.
- (b) Optional Property. Proceeds on account of damage solely to Units and/or certain options 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 (if appointed) 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 (if appointed) shall be first paid or provisions shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray 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, then to the Seller under the Agreement for Deed in an amount sufficient to pay off the balance of the purchase price of the Recreation Area, and the balance, if any, to the beneficial owners. This is a covenant for the benefit of the Seller under the Agreement for Deed and any mortgagee of a Unit and may be enforced by them.
- (d) Certificate. In making distribution 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. Insurance policies issued to individual Unit Owners shall provide that the coverage afforded by such policies is excess over the amount recoverable under any other policy covering the same property without rights of subrogation against the Association. 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, if such Owner so desires, to purchase and pay for insurance as to all such other risks not covered by insurance carried by the Association.

14.9 Recreation Area. Notwithstanding any other provisions hereof, the terms and provisions of the Agreement for Deed shall govern the distribution of proceeds of insurance on or attributable to the Recreation Area.

14.10 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and the Seller under the Agreement for Deed and may be enforced by them.

14.11 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.

15. Reconstruction or Repair After Fire or Other Casualty.

15.1 Determination to Reconstruct or Repair. In the event of damage to or destruction of the 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 unless seventy-five (75%) percent or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is destroyed or substantially damaged and Unit Owners owning eighty (80%) percent or more of the applicable interests in the Common Elements elect to proceed with repairs or restoration and the Primary Institutional First Mortgagee approves such election, the Board of Directors shall arrange for the prompt repair and restoration of the Insurance 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 (75%) percent or more 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 owning eighty (80%) percent of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and the Primary Institutional First Mortgagee approves such resolution, the Condominium Property 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 or 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, nor 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; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association, and if the damaged

property which is to be altered is the Building or the Optional Property, by the Owners of not less than eighty percent (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 (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.
- 15.4 Estimate of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.
- 15.5 Special Assessments and Additional Charges. 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, Special Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Special Assessments on account of damage to the Insured Property shall be in proportion to all of the Owner's respective shares in the Common Elements. In the case of damage to the Optional Property as defined in Section 14.5(b) hereof, an additional charge shall be made in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.
- 15.6 Construction Funds. The funds for payment of the costs of reconstruction and repair, which shall consist of proceeds of insurance held by the Insurance Trustee (if appointed) and funds collected by the Association from Special Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:
- (a) Association. If the total Special Assessments made by the Association in order to provide funds for payment of the costs of reconstruction and repair which are the responsibility of the Association are more than Ten Thousand Dollars (\$10,000), then the sums paid upon such Special Assessments shall be deposited by the Association with the Insurance Trustee (if appointed). In all other cases, the Association shall hold the sums paid upon such Special Assessments and disburse the same in payment of the costs of reconstruction and repair.
  - (b) 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 Fifty Thousand Dollars (\$50,000), 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.

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(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 Fifty Thousand Dollars (\$50,000), 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 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 Owners 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 cost 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 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 Special Assessments shall be deposited by the Association with the Insurance Trustee (if appointed), 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 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 Special 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.

15.7 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 (if appointed); and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a charge shall be made against a defaulting Unit Owner in the amount of his award or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

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

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

- (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
- (ii) divide each Percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

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

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UNIT MADE UNINHABITABLE

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 Mortgagee in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, then to the Seller under the Agreement for Deed as a prepayment of the principal balance, together with accrued interest thereon, due from those Units which are not habitable; third, to the Association for any due and unpaid Assessments and Special Assessments; fourth, 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 therefor 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). This shall be effected by restating the shares of continuing Unit Owners as follows:
  - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Section 16.4(c) hereof (the "Percentage Balance"); and
  - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Section 16.4(c) hereof, by the Percentage Balance.

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

- (d) Special 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 Special Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in



the Condominium affected by the taking. The Special Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares affected 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 thirty (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 charged against all Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such owners as they exist prior to the adjustments to such shares affected 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 Discretion of Board. In circumstances not covered by this Declaration or by law, a two-thirds (2/3) majority of the Board may, upon an opinion of counsel that its decision is reasonable, deal with the condemnation in such reasonable manner as it determines to be appropriate under the circumstances.

16.8 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 affected by the taking shall be evidenced by an amendment to this Declaration 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 used as a residence only, except as otherwise herein expressly provided. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families and guests: (i) the individual Unit Owner, (ii) an officer, director, stockholder or employee of such corporation, (iii) a partner or employee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of the Unit (as described below), as the case may be.

Occupants of an approved lease or subleased Unit must be the following persons, and such persons' families and guests: (i) an individual lessee or

sublessee, (ii) an officer, director, stockholder or employee of a corporate lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee.

Under no circumstances may more than one family reside in a Unit at one time. "Families" or words of similar import used herein shall be deemed to include spouses, parents, parents-in-law, brothers and sisters. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom. The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above. The provisions of this Section 17.1 shall not be applicable to Units used by the Developer for model apartments, sales offices, other offices or management services.

Children shall be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Condominium Property and including full compliance by them of these restrictions and all rules and regulations of the Association. All children under eighteen (18) years of age must be accompanied by a responsible adult when entering and/or utilizing the Recreation Area or other commonly used facilities.

17.2 Age of Residents, Services and Facilities. Subject to all local ordinances, as they may be amended from time to time, at least one person over the age of fifty-five (55) years of age must be a permanent occupant of each Unit, whenever any person occupies said Unit. Persons under the age of fifty-five (55) years and more than eighteen (18) years of age may occupy and reside in a Unit as long as at least one of the occupants is over the age of fifty-five (55) years. No person under the age of eighteen (18) may be a permanent occupant of any Unit, except that persons under the age of eighteen (18) may be permitted to visit and temporarily reside for periods not to exceed thirty (30) days in total in any calendar year. Notwithstanding the above, if a Unit is transferred by inheritance, the requirement as to one occupant of said Unit being over the age of fifty-five (55) years is waived as to occupancy by the heirs so long as no permanent occupant is under the age of eighteen (18) years and further so long as at least eighty (80%) percent of all of the Units in the Condominium are occupied by one person over the age of fifty-five (55) years. It shall be the responsibility of the Board of Directors of the Association to determine whether eighty (80%) percent of the Units in the Condominium are occupied by at least one person who is over the age of fifty-five (55) years. Subject to the terms of this Declaration, the Articles of Incorporation and By-Laws of the Association the Board shall have the authority to make any additional capital improvements upon the common properties necessary to provide facilities or services specifically designed to meet the requirements of the Fair Housing Amendments Act of 1988.

17.3 Pets. No animals or pets of any kind shall be kept in any Unit or on any property of the Condominium except one common household pet, i.e. Dog or Cat not to exceed 12 pounds as owned by the original owner prior to his purchase of his Condominium Unit from the Developer may be permitted to be kept in a Unit and further provided that upon the demise of such pet, such pet shall not be replaced. Such pet may be kept with the written consent of and subject to the Rules and Regulations adopted by the Board of Directors; provided that it is not kept, bred or maintained for any commercial purposes and further provided that such house pets causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property subject to these restrictions upon three (3) days written notice from the Management Firm or the Board of Directors of the Association. Once permission is granted, as provided in this paragraph, it shall not be withdrawn or terminated unless such house pet has caused or created a nuisance or unreasonable disturbance or is being bred, kept or maintained for commercial purposes. Pets shall not be permitted upon the Recreation Area under the Agreement for Deed unless a portion thereof is designated as the Area for pets to relieve themselves. Tropical fish and a

bird may be kept upon a Unit Owner's premises only with prior written approval of the Board of Directors.

- 17.4 Alterations. Without limiting the generality of Section 9.1 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto or Common Elements, including but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antennae, machinery or air-conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Association (in the manner specified in Section 9.1 hereof).
- 17.5 Use of Common Elements. The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.
- 17.6 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants.
- 17.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover relating to any portion of the Condominium Property, shall be corrected by and at the sole expense of the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth.
- 17.8 Leases. No portion of a Unit (other than an entire Unit) may be rented. All leases shall be on forms approved by the Association and shall 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 and By-Laws of the Association, applicable rules and regulations or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. Leasing of Units shall also be subject to the prior written approval of the Association and the Association may reject the leasing of any Unit on any grounds the Association elects. No lease shall be approved for a term of less than ninety (90) days. Only two (2) leases shall be permitted within a 365 day period, which 365 day period shall be deemed to commence on the date of the lease. Unit Owners wishing to lease their Units shall be required to place in escrow with the Association a sum to be determined by the Association which may be used 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). The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount in excess of such sum which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant. Any balance remaining in the escrow account, less an administrative charge determined by the Association, shall be returned to the Unit Owner within ninety (90) days after the tenant and all subsequent tenants permanently move out. All leases shall also comply with and be subject to the provisions of Section 18 hereof.
- 17.9 Exterior Improvements; Landscaping. Without limiting the generality of Section 9.1 or Section 17.4 hereof, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association.

17.10 Effect on Developer; Association. With the exception of Sections 17.3 and 17.8, the restrictions and limitations set forth in this Section 17 shall not apply to the Developer or to Units owned by the Developer. 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.

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

18.1 No Severance of Ownership. Except as elsewhere herein provided, 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.

18.2 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 and Section 17.2.

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

19. Compliance and Default. Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration 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 this Declaration, the By-Laws, the Articles, 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, in accordance with the rules and regulations, to sue in a court of law for damages, to charge the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance and to collect such charge.

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 reasonably attorneys' fees (including appellate attorneys' fees) as may be awarded by the court.

19.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provisions of the Act, this Declaration and 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. Merger of Condominium. The Condominium may be merged with one or more condominiums within the Development to form a single condominium upon (i) the approval of such voting interests of each condominium as is required by the declaration for modifying the appurtenances to the Units or changing the proportion or percentages by which the owners of the Condominium Parcel share the Common Expenses and own the Common Surplus, (ii) the approval of all of the Institutional First Mortgagees and of all record owners of liens and (iii) upon the recording of new or amended Articles of Incorporation, Declaration(s) of Condominium and By-Laws.
21. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least eighty (80%) percent of the applicable interests in the Common Elements (after twenty (20%) percent of the Units have been sold to Unit Owners other than the Developer, the Developer will not vote the Units owned by it for such withdrawal unless the Owners of at least eighty (80%) percent of all other applicable interests in the Common Elements so elect for such withdrawal, at which time Developer may choose to vote either in favor of or against withdrawal from Condominium ownership, as it sees fit), and by the Primary Institutional First Mortgagee. 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 interest 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 of 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. This section may not be amended without the consent of all Institutional First Mortgagees and the Developer so long as it owns any Unit. In the event the Condominium is to be terminated, the undivided interest held by the Association in and to the Recreation Area shall be deeded to the then existing record owners of legal title to the Recreation Area, as their respective interests may appear, for and in consideration only of the prior use and enjoyment of the Recreation Area by the Unit Owners and the sum of Ten Dollars (\$10.00). The conveyance shall be made by quit-claim deed executed by the President and Secretary of the Association in recordable form and it shall be recorded in the public records of the County, prior to the certificate of termination. Notwithstanding the foregoing rights to terminate the Condominium, it shall be a condition precedent to termination, that the Association prepay in full the remaining principal balance and all accrued interest then owed by the Association under the Agreement for Deed. Thereafter, all Unit Owners who continue to make timely payment of the other sums due under the Agreement for Deed shall be entitled to continue to use the Recreation Area and to be members of the Recreation Area Association referred to in the Agreement for Deed, and this provision shall survive any such termination.
22. Additional Rights of Institutional First Mortgagees. In addition to all other rights herein set forth, Institutional First Mortgagees shall have the right, upon written request to the Association, to:
- 22.1 Examine the Association's books and records; and require copies of the annual reports and other financial data;
- 22.2 Receive notice of Association meetings and attend such meetings;

- 22.3 Receive notice of an alleged default by any Unit Owner, for whom such Institutional First Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to such Unit Owner; and
- 22.4 Receive notice of any substantial damage or loss to any portion of the Condominium Property.
23. Reservation of Right to Own, Install, Provide and Maintain a Closed Circuit Television System, Telecommunications System, a Master Antennae System and Community Antennae Television System (CATV Service).
- 23.1 Developer reserves and retains to itself, its successors and assigns: (i) the title to any closed circuit television system, telecommunications system, master antennae system, and related ancillary services and to the equipment including but not limited to conduits, wires, amplifiers, towers, antennae and related apparatus and electronic equipment both active and passive (the "Central System") in and upon the Condominium Property and an easement for 99 years for the placement and location of the Central System including, but not limited to conduits, wires, amplifiers, towers, antennae and related apparatus and electronic equipment, both active and passive, and (ii) an easement for 99 years for ingress to and egress from the Condominium Property to service, maintain, install, repair and replace the aforesaid apparatus and equipment; and (iii) the right to connect the Central System to such receiving source as Developer may in its sole discretion deems appropriate, including, without limitation, companies licensed to provide the CATV Service in the County, for which service Developer, its successors and assigns or designees shall have the right to charge the Association and/or individual Unit Owners a reasonable fee not to exceed the maximum allowable charge for CATV Service to single family residences as charged within the general vicinity.
- 23.2 The Unit Owners acknowledge that the Central System described in Section 23.1 above, includes but is not limited to the CATV Service as well as the ancillary services which may include security; medical, smoke and fire alert; information retrieval and so forth. Such Central System is offered as part of Developer's endeavor to provide a total environment to the Unit Owners and enhance the "way-of-life" at the Development.
- 23.3 Each Unit Owner by the acceptance of a warranty deed to his Unit recognizes that Developer, for the use and convenience of the Unit Owners, has expended substantial sums of money to develop and insure the services for and to equip this Condominium with a quality Central System and in consideration thereof Developer has reserved and retained the ownership of the Central System and the right to charge a reasonable sum to the Association and/or the Unit Owners for its use. If the Association and/or Master Association, at any time, enters into a contract with a company without the Developer's prior written consent or otherwise provides for any or all of the services contemplated by the Central System to the Building, the Association shall, at the option of the Developer, to the extent allowed by law, be required to purchase that part of the Central System that is located within the Units (which does not include such portions of the Central System located on or within the Common Elements) and all such other equipment, electronic (active and passive) or otherwise shall remain the property of the Developer) at a purchase price equal to Five Hundred Dollars (\$500.00) for each Unit in the Condominium. The Association shall purchase that part of the Central System within fifteen (15) days after Developer's written request to do so. If the Association does not purchase that part of the Central System as aforesaid, Developer may file a lien against any or all of the Units in the amount of the aforesaid purchase price. If a lien is filed, Developer will release each Unit from the lien upon the payment of Five Hundred Dollars (\$500.00) per Unit plus interest at the highest rate allowable by law, together with a pro rata share of the court costs, if any, and attorney's fees and appellate attorneys' fees and this covenant shall be a covenant running with the Land.

24. Developer's Additional Rights.

(a) Water and Sewer Service. In order to insure the Condominium and the Development with adequate uniform water service and sewage disposal service, the Developer or its designee, prior to completion and sale of the last condominium Unit (or residential dwelling Unit other than a condominium Unit) to be located at the Development, shall have and hereby reserve the exclusive right to contract for the servicing of this Condominium and the Unit Owners therein, and the Development with said services.

25. Covenant Running With The Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association shall, 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, 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, as they may be amended from time to time by such Unit Owner, tenant or occupant.

26. Additional Provisions.

26.1 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 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 notice of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

26.2 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 counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

26.3 Mortgagees. 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 written notice of the existence of such mortgage or lien is received by the Association.

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

26.5 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 therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an Assistant Secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

26.6 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.

26.7 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association in its own name and/or on behalf of the Unit Owners unless same is approved by a vote of seventy-five percent (75%) of the voting interests of all of the Unit Owners. This Section shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) proceedings, or (iii) counterclaims brought by the Association in proceedings instituted against it. Notwithstanding the provisions of Section 6 of this Declaration, this Section shall not be amended unless such amendment is approved by the percentage of votes necessary to institute proceedings as provided above.

26.8 Construction Litigation. All Units and their appurtenant Common Elements have been or will be sold without any Developer's warranties whatsoever except as provided in the Act (to the extent such warranties are not effectively disclaimed and remain in effect, if at all). As to such warranties, if any, and as to any claim arising from or connected with the design or construction of any Unit(s) or the Common Elements including, without limitation, claims alleging negligent construction, failure to build in accordance with any particular plans or specifications or failure to comply with building or other codes, laws, ordinances or regulations (collectively, "Construction Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Construction Matters that (i) the party or parties bringing same shall have first given notice to the Developer or other party against whom which relief or recovery is sought (the "Defendant") of the specific Construction Matters complained of and what actions are necessary to cure or correct same and (ii) the Defendant shall have given at least forty-five (45) days (subject to extension by reason of matters beyond the control of the Defendant or because of the nature of the applicable Construction Matter(s) and the time necessary to cure or correct same) in which to cure or correct the applicable Construction Matter(s) and shall have materially failed to do so. If any Construction Matter is not cured or corrected as aforesaid, all applicable parties shall be bound to submit the disputes or claims regarding the Construction Matters at issue solely to binding arbitration in accordance with the Florida Arbitration Code and the rules of the American Arbitration Association and the parties and their successors and assigns shall be bound by the results of such arbitration. Without limiting the general binding effect of this Declaration, each Owner and other person acquiring any right, title or interest in or to any Unit shall be deemed, by virtue of the acceptance of the conveyance, grant, transfer or assignment thereof, to be fully bound by the provisions of this Section 26.8 and of Section 26.7 above, as shall the Association.

26.9 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.



26.10 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.

26.11 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.

26.12 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, if the County or any other governmental agency requires the approval of the Owners to complete the plan of development of the Development (of which the Condominium is a part), as hereinafter amended, and Unit Owner, by reason of the acceptance of a deed to such Unit Owner's Unit, hereby appoints 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 that may be required from time to time by the County. 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.

26.13 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.

26.14 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.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 21st day of March 19 96.

Signed, sealed and delivered in the presence of:

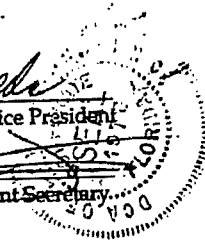
Janet S. English  
Name: JANET S. ENGLISH

Sandra G. Conwell  
Name: SANDRA G. CONWELL

DCA OF LAKE WORTH, INC.

By: M. E. Saleda  
M. E. SALEDA, Vice President

Attest: M. J. Watsky  
M. J. WATSKY, Assistant Secretary



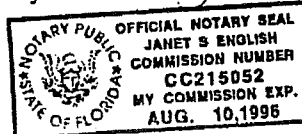
ACKNOWLEDGMENT

STATE OF FLORIDA )

COUNTY OF DADE )

The foregoing Declaration of Condominium was acknowledged before me this 21st day of March, 19 96, by M. E. Saleda and Morris J. Watsky, as Vice President and Assistant Secretary, respectively, of DCA of Lake Worth, Inc., a Florida corporation, on behalf of said corporation.

Janet S. English  
Notary Public, State of Florida





**CARMAHAN-PROCTOR AND ASSOCIATES, INC.**

**CONSULTING ENGINEERS**

**SURVEYORS**

**LAND DEVELOPMENT CONSULTANTS**

**PLANNERS**

6191 West Atlantic Blvd. (305)972-3959 (FAX) 972-4178 Margate, Florida 33063

*This*

**LEGAL DESCRIPTION  
FAIRWAY CLUB  
CONDOMINIUM "D"**

A PORTION OF TRACT "D" AND TRACT "N" OF "LUCERNE POINTE PHASE III-C-3", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 62, PAGE 118 THROUGH 121 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT "D"; THENCE NORTH 00°00'13" EAST, A DISTANCE OF 70.33 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 27.00 FEET; THENCE NORTH 00°00'13" EAST, A DISTANCE OF 17.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 19.67 FEET; THENCE SOUTH 00°00'13" WEST, A DISTANCE OF 17.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 84.48 FEET; THENCE NORTH 00°00'13" EAST, A DISTANCE OF 17.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 19.67 FEET; THENCE SOUTH 00°00'13" WEST, A DISTANCE OF 17.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 45.85 FEET; THENCE NORTH 00°00'13" EAST, A DISTANCE OF 12.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 28.00 FEET; THENCE SOUTH 00°00'13" WEST, A DISTANCE OF 12.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 11.83 FEET; THENCE NORTH 00°00'13" EAST, A DISTANCE OF 17.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 19.67 FEET; THENCE SOUTH 00°00'13" WEST, A DISTANCE OF 17.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 84.67 FEET; THENCE NORTH 00°00'13" EAST, A DISTANCE OF 16.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 19.67 FEET; THENCE SOUTH 00°00'13" WEST, A DISTANCE OF 16.00 FEET; THENCE SOUTH 89°59'47" EAST, A DISTANCE OF 26.82 FEET; THENCE SOUTH 00°00'13" WEST, A DISTANCE OF 70.33 FEET; THENCE NORTH 89°59'47" WEST, A DISTANCE OF 387.33 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA, AND CONTAINING 28,895 SQUARE FEET, MORE OR LESS.

*7/20/03*

EXHIBIT "1" TO DECLARATION

JOB NO.	930608	DWG. BY:	JP	SCALE:	NONE	CONDO "D"
FILE NO.	LUCERNE PT.	CK'D. BY:		DATE:	7-2-83	SHEET 1

Allocation of Percentage Shares of Common Elements,  
Common Expenses and Common Surplus

Each Unit shall have as an appurtenance thereto the percentage share of the Common Elements, Common Expenses and Common Surplus set forth opposite such Unit below:

FAIRWAY CLUB CONDOMINIUM D

<u>UNIT</u>	<u>PERCENTAGE SHARE</u>
101	1/52
102	1/52
103	1/52
104	1/52
105	1/52
106	1/52
107	1/52
108	1/52
109	1/52
110	1/52
111	1/52
112	1/52
113	1/52
201	1/52
202	1/52
203	1/52
204	1/52
205	1/52
206	1/52
207	1/52
208	1/52
209	1/52
210	1/52
211	1/52
212	1/52
213	1/52
301	1/52
302	1/52
303	1/52
304	1/52
305	1/52
306	1/52
307	1/52
308	1/52
309	1/52
310	1/52
311	1/52
312	1/52
313	1/52
401	1/52
402	1/52
403	1/52
404	1/52
405	1/52
406	1/52
407	1/52
408	1/52
409	1/52
410	1/52
411	1/52
412	1/52
413	1/52

EXHIBIT "2" TO DECLARATION



CARNAHAN-PROCTOR AND ASSOCIATES, INC.

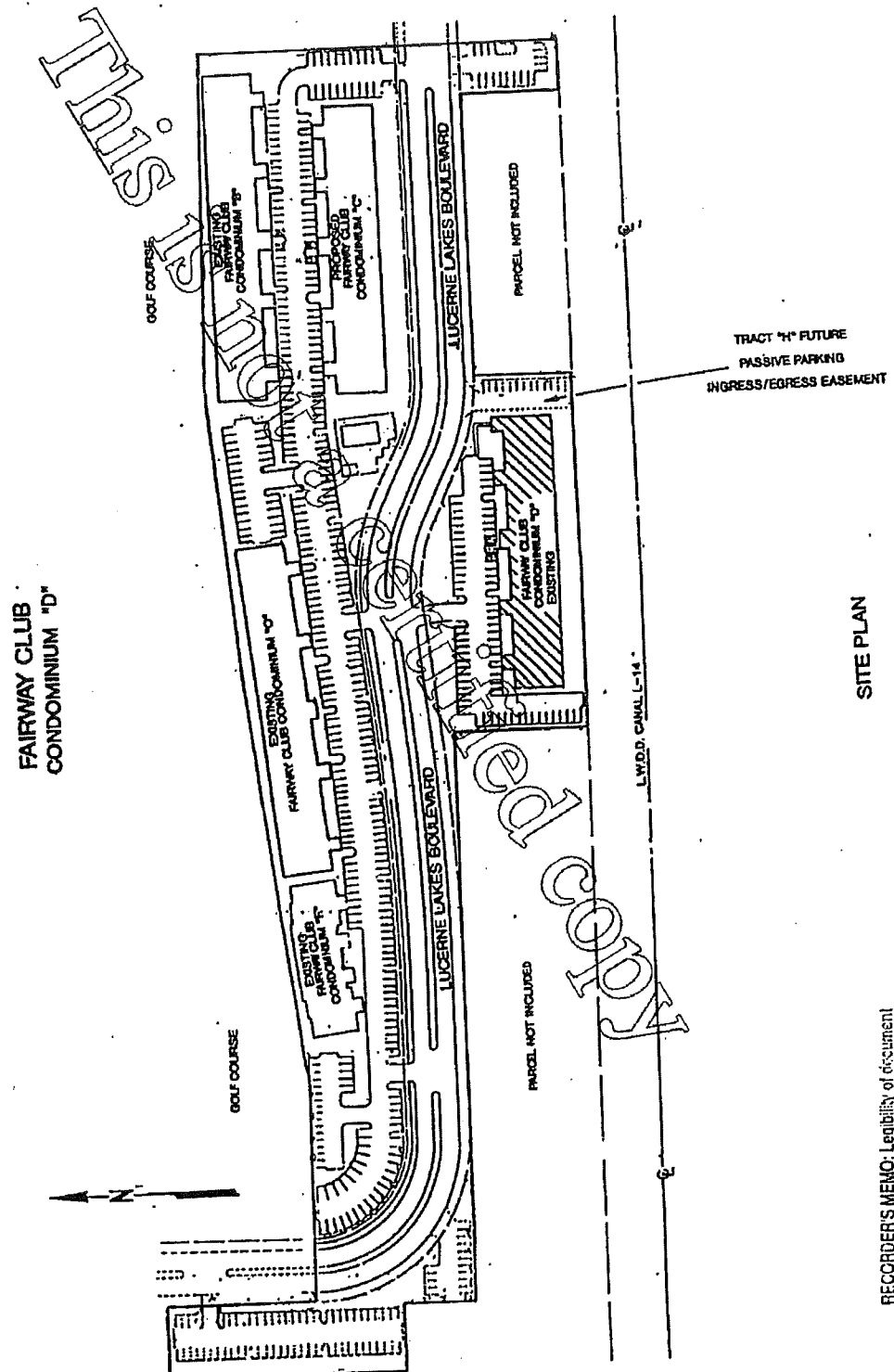
CONSULTING ENGINEERS

LAND DEVELOPMENT CONSULTANTS

PLANNERS

SURVEYORS

6191 West Atlantic Blvd. (305)972-3959 (FAX) 972-4178 Margate, Florida 33063



SITE PLAN

RECORDER'S MEMO: Legibility of document unsatisfactory when received.

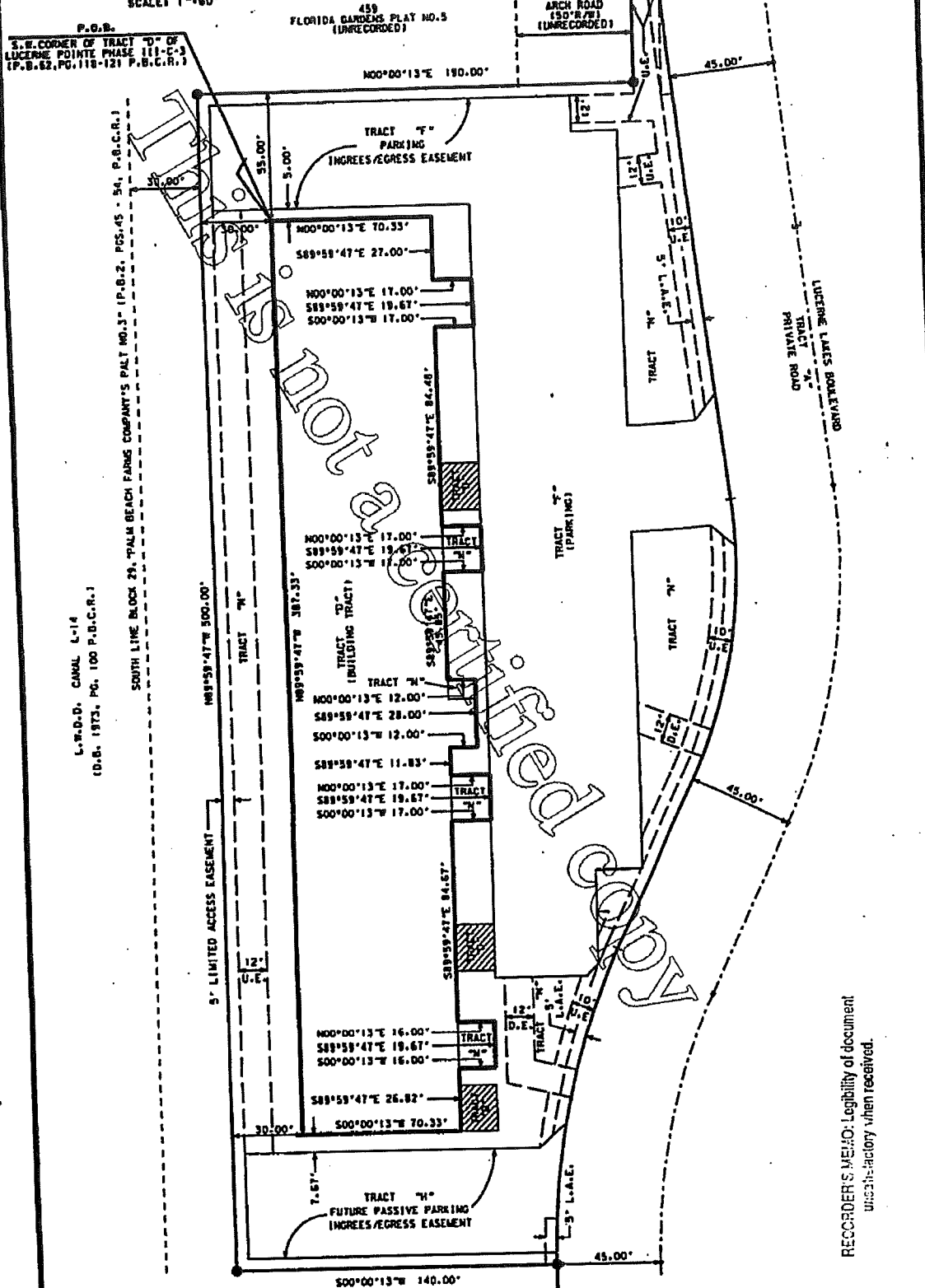
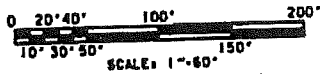
EXHIBIT "3" TO DECLARATION

1 ADD FUTURE PASSIVE PARKING TRACT "H" 3-7-86 JP JLH

JOB NO.	830806	DWG. BY:	JP	SCALE:	NONE	CONDO "D"
FILE NO.	LUCERNE PT.	CK'D. BY:		DATE:	7-2-83	

FAIRWAY CLUB  
CONDOMINIUM "D"  
(BUILDING TRACT)

ORB 9185 Pp 1176



- 4. ADD PARKING INFO. TO PARKING TRACTS B THE DEDICATIONS TO HOMEOWNERS OF TRACT "D" 3-7-96 JP
- 3. FINAL CONDO-DOCS 3-4-96 JP
- 2. REV. BUILDING TRACT 5-1-95 BK
- 1. REV. BUILDING TRACT 4-26-95 JP

NOTE: PROPOSED PORTION BUILDING TRACT "D" DEDICATED TO THE FAIRWAY CLUB PROPERTY OWNERS ASSOCIATION, INC.

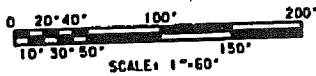
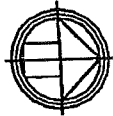
JOB NO. 950313	DWG BY: JP	SCALE: 1" = 50'	CONDO "D"
FILE NO. LUCERNE PTE.	CK'D BY: SAB	DATE: 7-2-93	

FILE: L:\projects\106\106A.dwg

RECORDER'S MEMO: Legibility of document insufficient - factory when received.

FAIRWAY CLUB  
CONDOMINIUM "D"

ORB 9185 P: 1177



P.O.B.  
S.W. CORNER OF TRACT "D" OF  
LUCERNE POINTE PHASE III C-3  
I.P.B. 62, PG. 118-121 P.B.C.R.1

459  
FLORIDA GARDENS PLAT NO. 5  
(UNRECORDED)

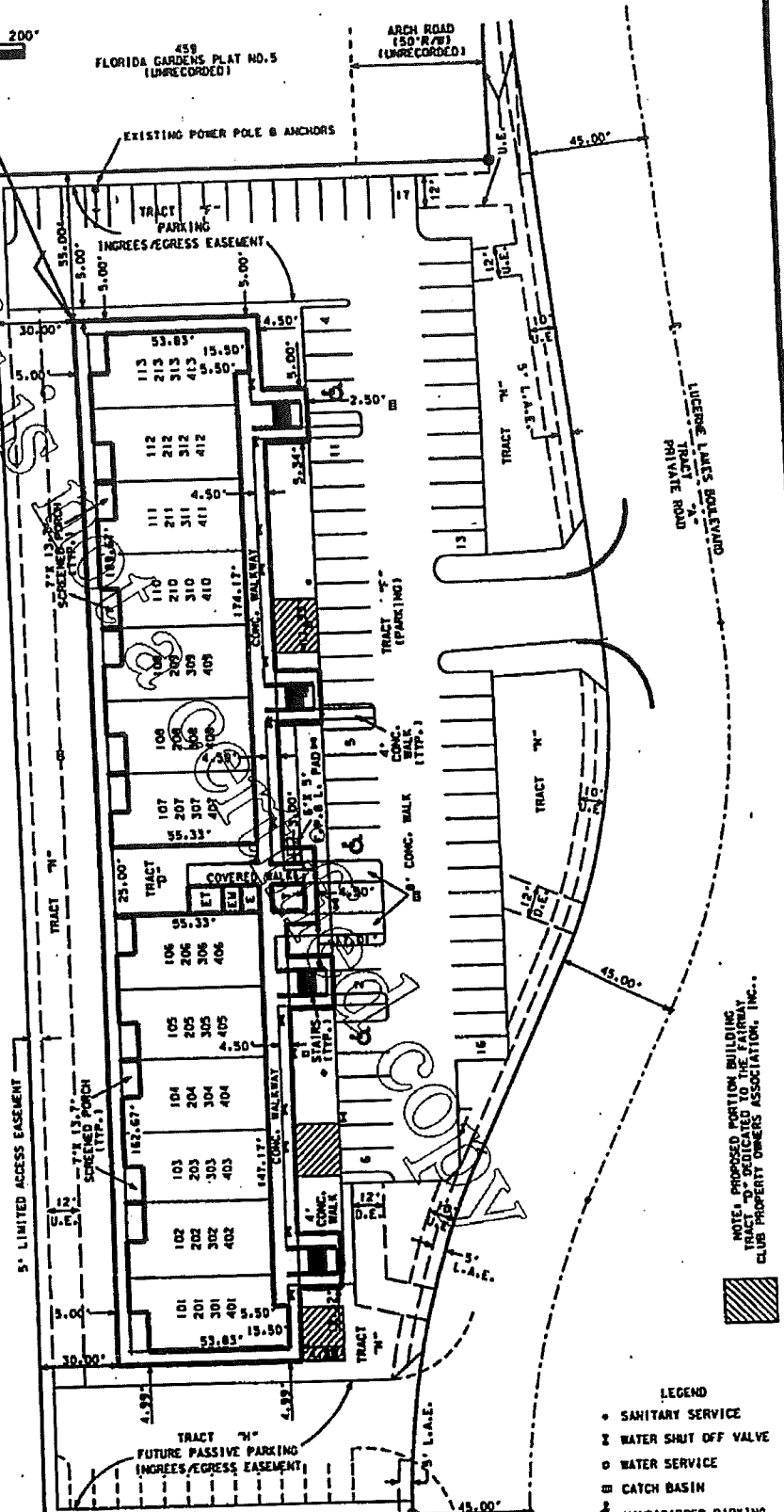
ARCH ROAD  
(50' R.O.W.)  
(UNRECORDED)

EXISTING POWER POLE & ANCHORS

7' x 13' SCREENED PORCH (TYP.)  
 5' x 10' SCREENED PORCH (TYP.)  
 7' x 13' SCREENED PORCH (TYP.)  
 5' x 10' SCREENED PORCH (TYP.)

L.R.D.D. CANAL L-14  
 (D.B. 1973, PG. 100 P.B.C.R.1)  
 SOUTH LINE BLOCK 25, PALM BEACH FARMS COMPANY'S PLAT NO. 3 (I.P.B. 2, PGS. 45-54, P.B.C.R.1)

RECORDERS MEMO: Legibility of document  
 unsatisfactory when received.



NOTE: PROPOSED PORTION BUILDING  
 TRACT "D" DEDICATED TO FAIRWAY  
 CLUB PROPERTY OWNERS ASSOCIATION, INC..

- LEGEND
- SANITARY SERVICE
  - ⊠ WATER SHUT OFF VALVE
  - WATER SERVICE
  - ⊞ CATCH BASIN
  - ♿ HANDICAPPED PARKING

5. FINAL CONDO-DOCS	3-4-96	JP	459 FLORIDA GARDENS PLAT NO. 5 (UNRECORDED)	NOTE: EXISTING POWER POLE & ANCHORS TO BE REMOVED BY F.P.B.L.
4. REV FUTURE PARKING TRACT "F"	2-22-96	JP		
3. ADD PARKING SPACES IN TR. F & FUR. PASSIVE PARKING IN TR. H	1-4-96	JP		
2. REV. TRACTS "H" & "F" INFO.	12-20-95	JP		
1. REV. BUILDING TRACT	4-26-95	JP		
6. REV. WALKS & ADDED THE DEDICATIONS TO HOMEOWNERS OF TRACT "D"	3-4-96	JP		
JOB NO. 950313	DWG BY: JP	SCALE: 1" = 50'	CONDD "D"	
FILE NO. LUCERNE PTE.	CK'D BY: SAB	DATE: 7-2-93		



**CARNAHAN-PROCTOR AND ASSOCIATES, INC.**

**CONSULTING ENGINEERS**

**SURVEYORS**

**LAND DEVELOPMENT CONSULTANTS**

**PLANNERS**

6191 West Atlantic Blvd. (305)972-3959 (FAX) 972-4178 Margate, Florida 33063

**FAIRWAY CLUB  
CONDOMINIUM "D"**

**NOTES:**

1. THIS PLAN COMPILED FROM PLANS AND DATA FURNISHED BY FRED ASTLE, AIA ARCHITECT, SUPPLEMENTED BY SUCH FIELD SURVEY AND MEASUREMENTS AS DEEMED NECESSARY BY CARNAHAN-PROCTOR AND ASSOCIATES, INC.
2. LEGAL DESCRIPTION ATTACHED HERETO IS IN ACCORDANCE WITH THE INSTRUMENTS OF RECORD.
3. BUILDING TIES ARE 90° OR RADIAL TO THE BUILDING TRACT LINE.
4. ANY IMPROVEMENT NOT LOCATED WITHIN A UNIT CONSTITUTES A COMMON ELEMENT (C.E.).
5. ALL AIR CONDITIONERS (A/C) COMPRESSORS ARE LIMITED COMMON ELEMENTS (L.C.E.) AND ARE LOCATED ON ROOF.
6. PARKING SPACES, ONE (1) TO BE ASSIGNED TO EACH UNIT BY THE FAIRWAY CLUB CONDOMINIUM "D" ASSOCIATION, INC. AND SHALL BE COMMON AREA.
7. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.

**LEGEND**

- E ----- ELEVATOR
- EM ----- ELEVATOR MACHINE ROOM
- ET ----- ELEVATOR TELEPHONE ROOM
- T ----- TRASH ROOM
- CE ----- COMMON ELEMENT
- L.C.E. ----- LIMITED COMMON ELEMENT
- U.E. ----- UTILITY EASEMENT
- D.E. ----- DRAINAGE EASEMENT
- D.B. ----- DEED BOOK
- L.W.D.D. ----- LAKE WORTH DRAINAGE DISTRICT
- P.B.C.R. ----- PALM BEACH COUNTY RECORDS
- P.B. ----- PLAT BOOK
- L.A.E. ----- LIMITED ACCESS EASEMENT

JOB NO.	830808	DWG. BY:	JP	SCALE:	NONE	CONDO "D"
FILE NO.	LUCERNE PTE.	CK'D. BY:		DATE:	7-2-83	



# CARNAHAN-PROCTOR AND ASSOCIATES, INC.

## CONSULTING ENGINEERS

### LAND DEVELOPMENT CONSULTANTS

### PLANNERS

SURVEYORS

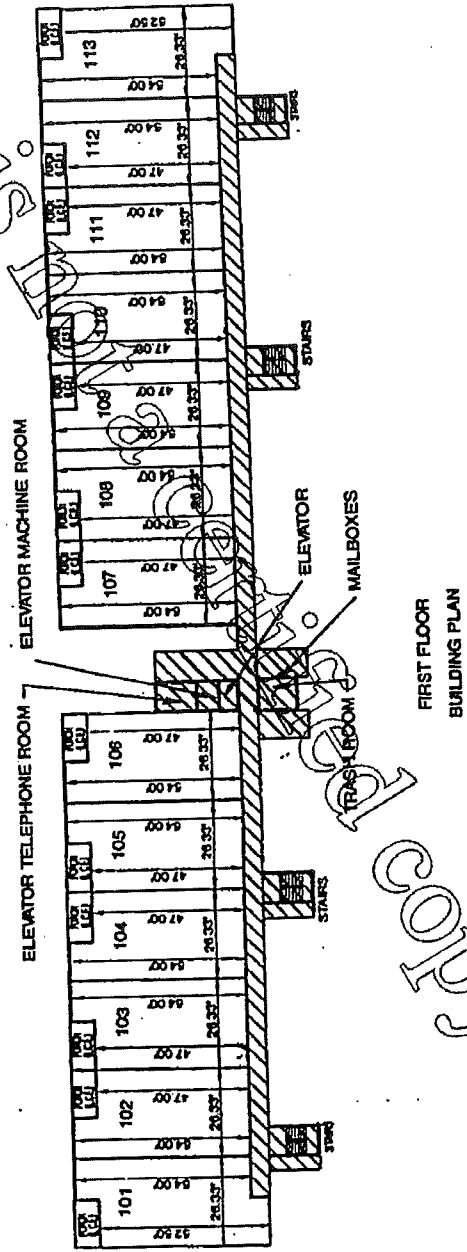
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This is a copy



SCALE IN FEET  
0 5 10 20 30

FAIRWAY CLUB  
CONDOMINIUM "D"



FIRST FLOOR  
BUILDING PLAN

- NOTES:
- ALL CORRIDORS, STAIRS, ELEVATORS, TRASH ROOMS, REFR ROOMS, MAIL ROOMS AND MACHINE ROOMS ARE COMMON ELEMENTS AND SHOWN TRUSSES LOCATED ON ROOF ARE LIMITED COMMON.
  - ALL A/C CONDENSERS LOCATED ON ROOF ARE LIMITED COMMON (I.L.C.).
  - ALL ELEVATIONS REFER TO NATIONAL GEODETIC VERTICAL DATUM OF 1928.

FIRST FLOOR  
UPPER AND LOWER BOUNDARY OF THE UNITS  
THE FIRST FLOOR CONTAINS 13 UNITS HAVING THE FOLLOWING ELEVATIONS:  
UPPER LIMITS OF UNITS: 28.67  
LOWER LIMITS OF UNITS: 20.64  
SUBJECT TO VARIATIONS OF 0.1' FOR EACH INDIVIDUAL UNIT.

RECORDER'S MEMO: Legibility of document unsatisfactory when received.

2 REV. WALKS 3-7-88 JP  
1. FINAL CONDO-DOCS 3-4-88 JP

JOB NO.	830808	DWG. BY:	JP	SCALE:	AS SHOWN	CONDO "D"
FILE NO.	LUCERNE PTE.	CK'D. BY:		DATE:	7-2-83	





# CARNAHAN-PROCTOR AND ASSOCIATES, INC. CONSULTING ENGINEERS

SURVEYORS

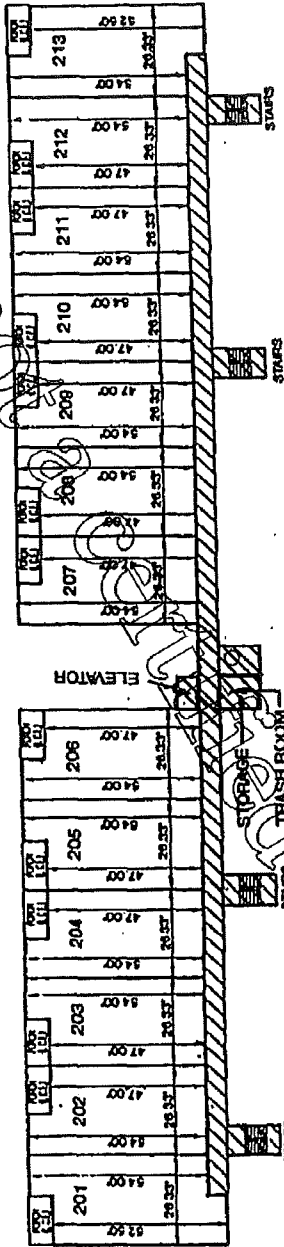
LAND DEVELOPMENT CONSULTANTS

PLANNERS

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FAIRWAY CLUB  
CONDOMINIUM "D"

*Handwritten watermark: This is not a legal document*



SECOND FLOOR  
BUILDING PLAN

- NOTES:
- ALL CORRIDORS, STAIRS, ELEVATORS, TRASH ROOMS, METER ROOMS, MAIL ROOMS AND MACHINE ROOMS ARE COMMON ELEMENTS AND SHOWN THUS: [Symbol]
  - ALL A/C COMPRESSORS LOCATED ON ROOF ARE LIMITED COMMON ELEMENTS, (L.C.E.).
  - ALL ELEVATIONS REFER TO NATIONAL GEODETIC VERTICAL DATUM OF 1928.

- SECOND FLOOR
- UPPER AND LOWER BOUNDARY OF THE UNITS
- THE THIRD FLOOR CONTAINS 19 UNITS HAVING THE FOLLOWING ELEVATIONS:
- UPPER LIMITS OF UNITS: 97.27
- LOWER LIMITS OF UNITS: 28.24
- SUBJECT TO VARIATIONS OF 0.2' FOR EACH INDIVIDUAL UNIT.

2 REV. WALKS 3-7-98 JP  
1. FINAL CONDO-DOCS 3-4-98 JP

RECORDER'S MEMO: Legibility of document  
unsatisfactory when received

JOB NO.	890808	DWG. BY:	JP	SCALE:	AS SHOWN	CONDO "D"
FILE NO.	LUCERNE PTE.	CK'D. BY:		DATE:	7-2-93	



# CARNAHAN-PROCTOR AND ASSOCIATES, INC.

## CONSULTING ENGINEERS

LAND DEVELOPMENT CONSULTANTS

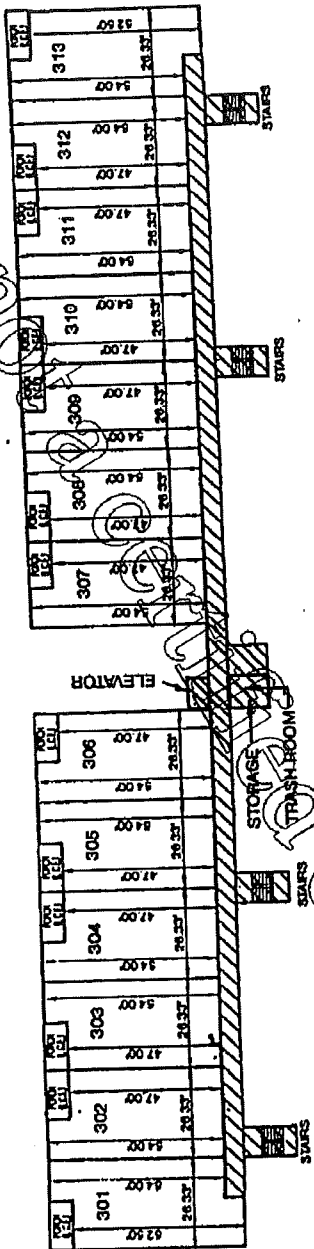
PLANNERS

SURVEYORS

6191 West Atlantic Blvd. (305)972-3959 (FAX) 972-4178 Margate, Florida 33063

*This is not a contract*

FAIRWAY CLUB  
CONDOMINIUM "D"



THIRD FLOOR  
BUILDING PLAN

- NOTES:
- ALL CORRIDORS, STAIRS, ELEVATORS, TRASH ROOMS, METER ROOMS, HALL ROOMS AND MACHINE ROOMS ARE COMMON ELEMENTS AND SHOWN THUS: ALL A/C COMPRESSORS LOCATED ON ROOF ARE LIMITED COMMON ELEMENTS, (I.C.E.).
  - ALL ELEVATIONS REFER TO NATIONAL GEODETIC VERTICAL DATUM OF 1928.

THIRD FLOOR  
UPPER AND LOWER BOUNDARY OF THE UNITS  
THE THIRD FLOOR CONTAINS 13 UNITS HAVING THE FOLLOWING ELEVATIONS:  
UPPER LIMITS OF UNITS: 45.89  
LOWER LIMITS OF UNITS: 37.84  
SUBJECT TO VARIATIONS OF 0.2' FOR EACH INDIVIDUAL UNIT.

RECORDER'S MEMO: If any portion of document unsatisfactory when received.

2 REV. WALKS 3-7-96 JP  
1. FINAL CONDO-DOCS 3-4-98 JP

JOB NO.	830608	DWG. BY:	JP	SCALE:	AS SHOWN	CONDO "D"
FILE NO.	LUCERNE PTE.	CK'D. BY:		DATE:	7-2-83	



# CARNAHAN-PROCTOR AND ASSOCIATES, INC.

## CONSULTING ENGINEERS

SURVEYORS

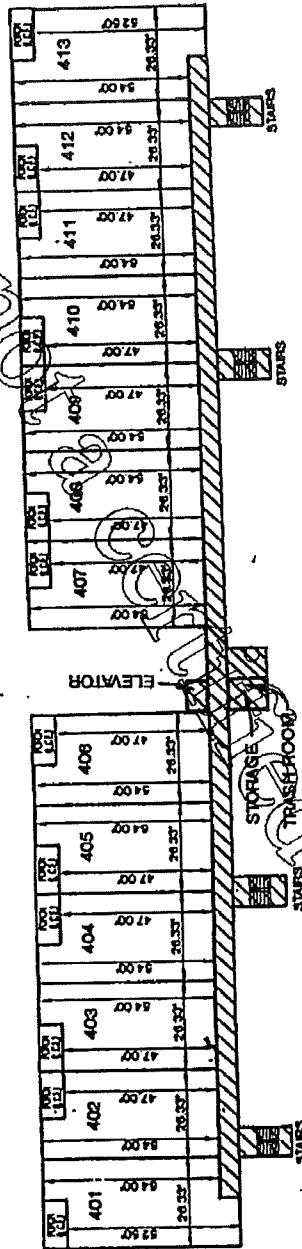
LAND DEVELOPMENT CONSULTANTS

PLANNERS

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FAIRWAY CLUB  
CONDOMINIUM "D"



FOURTH FLOOR  
BUILDING PLAN

- NOTES:
- ALL CORRIDORS, STAIRS, ELEVATORS, TRASH ROOMS, METER ROOMS, MAIL ROOMS AND MACHINE ROOMS ARE COMMON ELEMENTS AND SHOWN THUS.
  - ALL A/C COMPRESSORS LOCATED ON ROOF ARE LIMITED COMMON ELEMENTS. (L.C.E.)
  - ALL ELEVATIONS REFER TO NATIONAL GEODETIC VERTICAL DATUM OF 1928.

FOURTH FLOOR  
UPPER AND LOWER BOUNDARY OF THE UNITS  
THE THIRD FLOOR CONTAINS 13 UNITS HAVING THE FOLLOWING ELEVATIONS:  
UPPER LIMITS OF UNITS: 54.51  
LOWER LIMITS OF UNITS: 48.48  
SUBJECT TO VARIATIONS OF 0.2' FOR EACH INDIVIDUAL UNIT.

2 REV. WALKS 3-7-96 JP  
1. FINAL CONDO-DOCS 3-4-96 JP

RECORDING METHOD: Legibility of document  
unsatisfactory when received.

JOB NO.	930606	DWG. BY:	JP	SCALE:	AS SHOWN	CONDO "D"
FILE NO.	LUCERNE PTE.	CK'D. BY:		DATE:	7-2-83	



**CARNAHAN-PROCTOR AND ASSOCIATES, INC.**

**CONSULTING ENGINEERS**

**SURVEYORS**

**LAND DEVELOPMENT CONSULTANTS**

**PLANNERS**

6191 West Atlantic Blvd. (305)972-3959 (FAX) 972-4178 Margate, Florida 33063

**FAIRWAY CLUB**

**CONDOMINIUM "D"**

*This is a Certified copy*

**CERTIFICATE OF SURVEYOR**

THE UNDERSIGNED SURVEYING FIRM CERTIFIES THAT THE CONSTRUCTION OF THE IMPROVEMENTS TO COMPRISE LUCERNE POINTE CONDOMINIUM "D" ARE SUBSTANTIALLY COMPLETE AND THAT THE MATERIALS WHICH COMPRISE THE EXHIBIT 3 TO THE DECLARATION OF CONDOMINIUM OF LUCERNE POINTE CONDOMINIUM "D" TOGETHER WITH THE PROVISIONS OF SAID DECLARATION OF CONDOMINIUM DESCRIBING THE CONDOMINIUM PROPERTY, ARE AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF SAID IMPROVEMENTS, OF THE COMMON ELEMENTS WITHIN THE CONDOMINIUM AND OF EACH UNIT WITHIN THE CONDOMINIUM CAN BE DETERMINED FROM SAID MATERIALS.

CARNAHAN-PROCTOR AND ASSOCIATES, INC.

DATE: 3/7/96

JAMES LAWRENCE HAGER  
REGISTERED LAND SURVEY NO. 5253  
STATE OF FLORIDA

*Certified copy*



JOB NO.	930608	DWG. BY:	JP	SCALE:	NONE	CONDO "D"
FILE NO.	LUCERNE PT.	CK'D. BY:		DATE:	7-2-83	

# State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of FAIRWAY CLUB CONDOMINIUM D ASSOCIATION, INC., a Florida corporation, filed on July 12, 1993, as shown by the records of this office.

The document number of this corporation is N9300003107.



CR2E022 (2-91)

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Twelfth day of July, 1993

Jim Smith  
Secretary of State

ARTICLES OF INCORPORATION

FOR

FAIRWAY CLUB CONDOMINIUM D ASSOCIATION, INC.

FILED  
1993 JUL 12 PM 1:47  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The undersigned, for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, does hereby adopt the following articles of incorporation.

ARTICLE I

NAME

The name of the corporation shall be Fairway Club Condominium D Association, Inc. For convenience, the corporation shall be referred to in this instrument as the "Association," these Articles of Incorporation as the "Articles" and the By-Laws of the Association as the "By-Laws".

ARTICLE II

PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of a condominium (hereinafter, the "Condominium") to be known as Fairway Club Condominium D, to be developed on property located in Palm Beach County, Florida. The Association is organized to provide a means of administering that condominium. The Unit Owners of a Condominium shall automatically be members of this Association if Lennar Homes, Inc. (or its successors or assigns to this right), as Developer of the Condominium attaches a copy of these Articles of Incorporation as an Exhibit to the recorded Declaration of Condominium.

ARTICLE III

DEFINITIONS

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of Condominium to be recorded in the Public Records of Palm Beach County, Florida, unless herein provided to the contrary, or unless the context otherwise requires.

ARTICLE IV

POWERS

The powers of the Association shall include and be governed by the following:

- 4.1 **General.** The Association shall have all of the common law and statutory powers of a corporation not for profit under the laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the By-Laws or the Act.
- 4.2 **Enumeration:** The Association shall have all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:
  - (a) To make and collect Assessments, Special Assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.
  - (b) To buy, own, operate, lease, sell, trade and mortgage both real and personal property as may be necessary or convenient in the administration of the Condominium.
  - (c) To maintain, repair, replace, reconstruct, add to and operate any Condominium Property, and other property acquired or leased by the Association for use by Unit Owners in the Condominium.
  - (d) To purchase insurance upon any Condominium Property and insurance for the protection of the Association, its officers, directors and members as Unit Owners of the Condominium.

THIS IS TO BE DELETED

- (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of any Condominium Property and for the health, comfort, safety and welfare of the Unit Owners in the Condominium.
  - (f) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of any Condominium Property.
  - (g) To contract for the management and maintenance of any Condominium Property and to authorize a management agent (which 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, Special Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association shall, however, retain at all times the powers and duties granted by the Condominium Documents and the Act, including but not limited to the making of Assessments, promulgation of rules and the execution of contracts on behalf of the Association.
  - (h) To employ personnel to perform the services required for the proper operation of the Condominium.
- 4.3 Condominium Property. All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declarations, these Articles and the By-Laws.
- 4.4 Distribution of Income; Dissolution. The Association shall make no distribution of income to its members, directors or officers. Upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency.
- 4.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act.

ARTICLE V

MEMBERS

- 5.1 Membership. The members of the Association shall consist of all of the record owners of Units in the Condominium from time to time, and after termination of the Condominium shall consist of those who were members at the time of such termination, and their successors and assigns.
- 5.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- 5.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one (1) vote for each Unit, which vote shall be exercised or cast in the manner provided by the Declarations and By-Laws. Any person or entity owning more than one (1) Unit shall be entitled to one (1) vote for each Unit owned.
- 5.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meeting of members other than the annual meeting.

ARTICLE VI

TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE VII  
INCORPORATOR

The name and address of the incorporator to these Articles is:

<u>NAME</u>	<u>ADDRESS</u>
MORRIS J. WATSKY	700 N.W. 107th Avenue Miami, Florida 33172

ARTICLE VIII  
OFFICERS

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

PRESIDENT:	Tammy A. McDonald 1903 South Congress Avenue Boynton Beach, Florida 33426
VICE PRESIDENT:	Jeff Brown 1903 South Congress Avenue Boynton Beach, Florida 33426
SECRETARY:	Mary Lou Jansen 1903 South Congress Avenue Boynton Beach, Florida 33426
TREASURER:	Tammy A. McDonald 1903 South Congress Avenue Boynton Beach, Florida 33426

ARTICLE IX  
DIRECTORS

- 9.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a Board consisting of the number of directors determined in the manner provided by the By-Laws but which shall consist of not less than three (3) directors. Directors need not be members of the Association or residents of Units in the Condominium.
- 9.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declarations, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.
- 9.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.
- 9.4 Term of Developer's Directors. The Developer of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.



9.5 First Directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have qualified, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Tammy A. McDonald	1903 South Congress Avenue Boynton Beach, Florida 33426
Jeff Brown	1903 South Congress Avenue Boynton Beach, Florida 33426
Mary Lou Jansen	1903 South Congress Avenue Boynton Beach, Florida 33426

This is

ARTICLE X

INDEMNIFICATION

10.1 Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a Director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgements, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceedings, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, has no reasonable cause to believe his conduct was unlawful, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or misfeasance or malfeasance in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgement, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

10.2 Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

10.3 Approval. Any indemnification under Section 10.1 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 10.1 above. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the voting interests of the members.

10.4 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in any specific case upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Section 10.

10.5 Miscellaneous: The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Law, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

10.6 Insurance: The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

## ARTICLE XI

### BY-LAWS

The first By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded by the Directors, members and the Developer in the manner provided in the By-Laws.

## ARTICLE XII

### AMENDMENTS

Amendments to these Articles shall be proposed and adopted in the following manner:

- 12.1 Notice. 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.
- 12.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the voting interests of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing the approval is delivered to the Secretary at or prior to the meeting. The approvals must be:
- (a) by not less than a majority of the voting interests of all of the Voting Interests of all of the members of the Association represented at a meeting at which a quorum thereof has been attained and by not less than 66-2/3% of the entire Board of Directors; or
  - (b) by not less than 80% of the voting interests of all of the members of the Association represented at a meeting at which a quorum has been attained; or
  - (c) by not less than 100% of the entire Board of Directors.
- 12.3 Limitation. Provided, however, that no amendment shall make any changes in the qualifications of membership nor in the voting rights or property rights of members, nor any changes in Sections 4.3 and 4.5 of Article 4, entitled "Powers", without the approval in writing of all members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declarations or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Developer, or an affiliate of the Developer, unless the Developer shall join in the execution of the amendment.
- 12.4 Application to Developer. So long as the Developer is in control of the Association, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Elements, and amendment of the Articles.
- 12.5 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the

Secretary of State shall be recorded in the Public Records of Palm Beach County, Florida.

ARTICLE XIII

INITIAL REGISTERED OFFICE, ADDRESS AND NAME OF REGISTERED AGENT

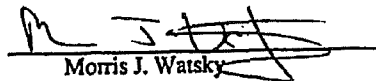
The initial registered office of the corporation shall be at 700 N.W. 107th Avenue, Miami, Florida 33172, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be MORRIS J. WATSKY.

ARTICLE XIV

PRINCIPAL OFFICE AND MAILING ADDRESS

The principal office and mailing address of the Association is 700 N. W. 107 Avenue, Miami, Florida 33172.

IN WITNESS WHEREOF, the incorporator has affixed his signature this 9th day of July, 19 93

  
Morris J. Watsky

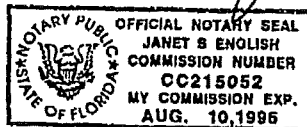
ACKNOWLEDGMENT

STATE OF FLORIDA :  
COUNTY OF DADE :

The foregoing Articles of Incorporation was acknowledged before me this 9th day of July, 19 93, by Morris J. Watsky. He is personally known to me and did not take an oath.

My Commission Expires:

  
Notary Public, State of Florida



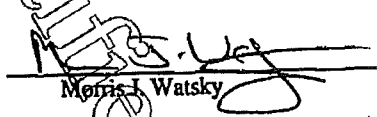
**CERTIFICATE DESIGNATING PLACE OF BUSINESS FOR SERVICE OF PROCESS  
WITHIN THIS STATE, NAMING AGENT UPON WHOM PROCESS MAY BE  
SERVED.**

Pursuant to Chapter 48.091, Florida Statutes, the following is submitted in compliance with said Act:

That, Fairway Club Condominium D Association, Inc., desiring to organize under the laws of the State of Florida, with its principal offices at 700 N.W. 107th Avenue, Miami, Florida 33172, has named MORRIS J. WATSKY, whose office is located at 700 N.W. 107th Avenue, Miami, Florida, as its agent to accept service of process within the State.

**ACKNOWLEDGMENT**

Having been named to accept service of process for the above stated corporation, at the place designated in this Certificate, I hereby accept to act in this capacity, and agree to comply with the provisions of said Act relative to keeping open said office.

  
Morris J. Watsky

FILED  
1993 JUL 12 PM 1:47  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

# State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Amendment, filed on December 16, 1993, to Articles of Incorporation for FAIRWAY CLUB CONDOMINIUM D ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is N93000003107.



CR2E022 (2-91)

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Sixteenth day of December, 1993

Jim Smith  
Secretary of State

AMENDMENT TO ARTICLES OF INCORPORATION  
OF  
FAIRWAY CLUB CONDOMINIUM D ASSOCIATION, INC.

FILED  
1993 DEC 16 PM 2:03  
RECORDS & CLERK  
PALM BEACH COUNTY, FLORIDA

The undersigned, President and Secretary of FAIRWAY CLUB CONDOMINIUM D ASSOCIATION, INC., a Florida corporation not-for-profit (hereinafter referred to as "Corporation"), do hereby certify that the following amendments to the Articles of Incorporation of Fairway Club Condominium Association, Inc. ("Articles") was duly proposed, approved and adopted by the Board of Directors of the Corporation and by a unanimous vote of the members of the Association at a Special Meeting thereof, held on October 5<sup>th</sup>, 1993 at 1903 South Congress Avenue, Boynton Beach, Florida:

- 1. Article II is hereby amended to read, in its entirety, as follows:

ARTICLE II  
PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of a condominium (hereinafter, the "Condominium") to be known as Fairway Club Condominium D, to be developed on property located in Palm Beach County, Florida. The Association is organized to provide a means of administering that condominium. The Unit Owners of a Condominium shall automatically be members of this Association.

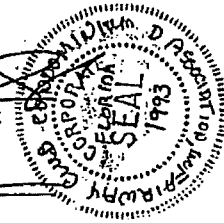
- 2. In all other respects the Articles of Incorporation shall remain as originally filed.

IN WITNESS WHEREOF, the undersigned have signed these Articles of Amendment this 5<sup>th</sup> day of October, 1993.

FAIRWAY CLUB CONDOMINIUM D ASSOCIATION, INC.

By: Tammy A. McDonald  
Tammy A. McDonald, President

Attest: Jeffrey Brown  
Jeffrey Brown, Secretary



STATE OF FLORIDA  
COUNTY OF DADE

BEFORE ME, the undersigned authority, this day personally appeared Tammy A. McDonald and Jeffrey Brown, President and Secretary, respectively, of Fairway Club Condominium D Association, Inc., a Florida corporation not-for-profit, and known to me to be the persons who, as such officers, executed the foregoing Certificate and who acknowledged before me that they executed the same as such officers of said Corporation and for and on behalf of the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 5<sup>th</sup> day of October, 1993.

Jarvis  
Notary Public, State of Florida  
COMMISSION NO. CC140836  
MY COMMISSION EXP. SEPT 3, 1995

BY-LAWS OF  
FAIRWAY CLUB CONDOMINIUM D ASSOCIATION, INC.

A corporation not for profit organized  
under the laws of the State of Florida

1. **Identify.** These are the By-Laws of Fairway Club Condominium D Association, Inc., (the "Association"), a corporation not for profit, incorporated under the laws of the State of Florida and organized for the purpose of administering that certain condominium located in Palm Beach County, Florida, and known as Fairway Club Condominium D (the "Condominium").
  - 1.1 **Principal Office.** The principal office of the Association shall be 700 N.W. 107th Avenue, Miami, Florida, 33172, or at such other place as may be subsequently designated by the Board of Directors.
  - 1.2 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.
  - 1.3 **Seal.** The Seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.
2. **Definitions.** For convenience, the Florida Condominium Act shall be referred to as the "Act", these By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration for the Condominium, unless herein provided to the contrary, or unless the context otherwise requires.
3. **Members.**
  - 3.1 **Annual Meeting.** The annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof.
  - 3.2 **Special Meetings.** Special members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of all the voting interests of the membership of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting. Additionally, special members' meetings may be called by ten (10%) percent of the voting interests of the Association to recall a member or members of the Board of Directors or as provided for in Section 3.1(a)(ii) hereof, which meetings shall be called and held in accordance with the terms and provisions of the Act and Section 4.3 hereof.
  - 3.3 **Notice of Meeting; Waiver of Notice.** Notice of a meeting of members stating the time and place, and identifying and incorporating the agenda items for which the meeting is called must be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property or Association Property. The Board must adopt a rule designating the specific location on the Condominium Property or Association Property upon which all Unit Owner meetings will be posted. However, this requirement does not apply if there is no Condominium Property or Association Property. The notice of the annual meeting shall be sent by mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The posting and mailing of the notice shall be effected not less than fourteen (14) nor more than sixty (60) days prior to the date of the meeting and shall be for fourteen (14) continuous days. An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notice of the Association meeting were mailed or hand delivered in accordance with this provision, to each Unit Owner at the address last furnished to the Association.  
  
Notice of specific meetings may be waived before or after the meeting and the attendance of any member (or person authorized to vote for such member) shall constitute such member's waiver of notice of such meeting, except when his (or his authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.
  - 3.4 **Quorum.** A quorum at members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to thirty-three and one-third percent (33-1/3%) of the votes of the entire membership. If any proposed meeting cannot be organized because a quorum has not been attained, (notwithstanding anything contained herein to the contrary) a new meeting or meetings will be called upon proper notice as described in Section 3.3 of these By-Laws. At such new meeting or meetings, if necessary, at which a quorum exists any business may be

transacted which might have been transacted at the meeting originally called. For the purposes of establishing a quorum at any Association meeting only the Voting Interests present or by proxy shall be counted. The written joinder of any Unit Owner may not be utilized to establish a quorum when such joinder occurs subsequent to the meeting. Notwithstanding the above, there shall be no quorum requirements; however, at least twenty (20%) percent of the eligible voters must cast a ballot in order to have a valid election of Directors.

3.5 Voting.

THIS IS A COPY

(a) Number of Votes. Except when the vote is to be determined by a percentage of shares of ownership in the Condominium as / contemplated in specific portions of the Declaration, in any meeting of members, the Owners of Units shall be entitled to cast one (1) vote for each Unit owned. The vote of a Unit shall not be divisible.

(b) Majority Vote. The acts approved by a majority of the voting interests present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean a majority of the voting interests of Unit Owners and not a majority of members themselves and shall further mean more than fifty (50%) percent of the then total authorized voting interests present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the Declaration, or Articles, it shall mean such greater percentage of the voting interests of members and not of the members themselves.

(c) Voting Member. If a Unit is owned by one (1) person, his right to vote shall be established by the roster of members. If a Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated by a Voting Certificate signed by all of the record owners of the Unit according to the roster of Unit Owners and filed with the Secretary of the Association. Such person need not be a Unit Owner, or one of the joint owners. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a Voting Certificate signed by an appropriate officer of the corporation and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those Voting Certificates shall be valid until revoked or until superseded by a subsequent Voting Certificate or until a change in the ownership of the Unit concerned. A Voting Certificate designating the person entitled to cast the vote for a Unit may be revoked if by a record owner of an undivided interest in the Unit. If a Voting Certificate designating the person entitled to cast the vote for a Unit for which such Voting Certificate is required is not on file or has been revoked, the vote of the Owner(s) of such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such Voting Certificate is filed, except if the Unit is owned jointly by a husband and wife, they may, without being required to do so, designate a voting member in the manner provided above. Such designee need not be a Unit Owner. In the event a husband and wife do not designate a voting member, the following provisions shall apply:

- (i) If both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting, and their vote shall not be considered in determining whether a quorum is present on that subject at the meeting (and the total number of authorized votes in the Association shall be reduced accordingly for such subject only).
- (ii) If only one is present at a meeting, the person present shall be counted for purposes of a quorum and may cast the Unit vote just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.
- (iii) If both are present at a meeting and concur, either one may cast the Unit vote.

3.6 Proxies. Votes may be cast in person or by use of a limited proxy. A limited proxy may be made by any person entitled to vote, but shall only be valid for the limited purpose set forth therein and for the specific meeting for which originally given and any lawful adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. A limited proxy cannot be used to vote in the election of Directors unless otherwise provided for in Chapter 718, Florida Statutes. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as above described), specify the date, time and place of the meeting for which it is given and be filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Holders of proxies need not be Unit Owners. The form of limited proxy shall substantially conform with a form to be adopted by the Division of Florida Land Sales, Condominiums and Mobile Homes ("Division").



3.7 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum as provided in Section 3.4 hereof is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. The notice of the newly scheduled meeting shall provide for among other things, that a quorum shall be attained by the presence either in person or by proxy of persons entitled to cast 33-1/3% of the voting interests of the entire membership. Proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

3.8 Order of Business. If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:

- (a) Call to order by President;
- (b) Appointment by the President of a chairman of the meeting (who need not be a member or a Director);
- (c) Proof of notice of the meeting or waiver of notice;
- (d) Reading of minutes;
- (e) Reports of officers;
- (f) Reports of committees;
- (g) Appointment of inspectors of election;
- (h) Determination of number of Directors;
- (i) Election of Directors;
- (j) Unfinished business;
- (k) New business;
- (l) Adjournment.

Such order may be waived in whole or in part by direction of the chairman.

3.9 Minutes of Meeting. The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

3.10 Participation at Meetings. Unit Owners shall have a right to speak at all Owner meetings as to all agenda items. The Board shall adopt reasonable rules governing the frequency, duration and manner of Unit Owner participation. Unit Owners shall have the right to tape, record or videotape an Owner's meeting.

3.11 Action Without a Meeting. With the exception of a special meeting called for the purpose of adopting a budget for the Association which requires assessments against the unit owners in any fiscal or calendar year which exceed 115 percent of the assessments for the preceding year, any action required to be taken at any annual or special meeting of members, or any action which may be taken at any annual or special meeting of such members shall be taken at a duly noticed meeting of members; except that any action may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken shall be signed by the members (or persons authorized to cast the vote of any such member as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to approve such matters. Within ten (10) days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

#### 4. Directors.

4.1 Membership. The affairs of the Association shall be governed by a Board of not less than three (3) nor more than five (5) directors, the exact number to be determined in the first instance in the Articles and thereafter, except as provided herein, from time to time, upon the vote of a majority of the voting interests of the membership. Any Director designated or appointed by Developer need not be a Unit Owner or a resident of a Unit in the Condominium. All other Directors must be Unit Owners and residents of Units in the Condominium.

4.2 Election of Directors. The election of Directors shall be conducted in the following manner:

- (a) Election of Directors shall be held at the annual members' meeting, or if not at the annual members meeting, then the same day as the annual members meeting, except as provided herein to the contrary.
- (b) If there is only one candidate for election to fill a vacancy, no election is required.

(c) The regular annual elections, as well as elections to fill vacancies, shall be by written ballot or by voting machine, and by a plurality of the votes cast, each person voting shall be entitled to cast his vote for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. There shall be no quorum requirement; however, at least 20% of the eligible voters must cast a ballot in order to have a valid election of Directors. Notwithstanding the provisions of this subparagraph, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board of Directors.

(d) Notwithstanding anything to the contrary set forth in this Section 4.2, the procedure for the election of Directors shall be in accordance with Rule 61B-23.0021, Florida Administrative Code, may, by the affirmative vote of a majority of the total Voting Interests, provide for different voting and election procedures, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

4.3 Notice of Meeting to Elect Directors shall be given in two steps as follows:

(a) First Notice. Not less than 60 days before the scheduled election, the Association must send notice to each Unit Owner of the date of the election. Not less than 40 days prior to the election, eligible candidates must give notice to the Association of his or her desire to run for the Board in order to be placed on the ballot. A candidate may furnish the Association with an information sheet. Any Unit Owner or other eligible person may nominate himself or may nominate another Unit Owner or eligible person, if permission has been given by the other eligible person, in writing, to nominate the other person.

(b) Second Notice. The Association must send a notice to all owners reminding them of the election, together with a ballot listing all eligible candidates, and upon the request of a candidate, the Association shall include an information sheet no larger than 8-1/2 inches by 11 inches, which must be furnished by the candidate not less than 35 days before the election, which information sheet is to be included with the mailing of the ballot, with the costs of mailing or delivery and copying to be borne by the Association. The Association shall have no liability for the contents of the information sheet, however, the Association may print or duplicate the information sheets prepared by the candidates, using both sides of the paper.

(c) Notwithstanding anything to the contrary set forth in this Section 4.3, the procedure for giving notice for the election of Directors shall be in accordance with Rule 61B-23.0021, Florida Administrative Code.

4.4 Vacancies and Removal.

(a) Except as to vacancies resulting from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the unit owners, provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of Section 4.17 hereof shall be filled by the Developer without the necessity of any meeting.

(b) Directors elected or appointed by Unit Owners other than the Developer shall be subject to recall only by the Unit Owners other than the Developer. Voting interests owned or controlled by the Developer shall not vote in such recall, whether in person or by proxy. For the purposes of establishing percentages of voting interests, and for establishing a quorum, only units owned by Unit Owners other than Developer shall be counted.

(c) Directors elected or appointed by Developer shall be subject to recall only by Developer. Voting interests owned or controlled by Unit Owners other than Developer shall not vote in such recall, whether in person or by proxy. For the purposes of establishing percentages of voting interests and for establishing a quorum, only units owned by Developer shall be counted.

(d) Developer only may vote, in person or by proxy, to fill a vacancy on the Board of Directors previously occupied by a Board member elected or appointed by Developer. A quorum for the purposes of that vote shall consist of a majority of units owned by Developer. Only Unit Owners other than Developer may vote, in person or by proxy, to fill a vacancy on the Board previously occupied by a Board member elected or appointed by Unit Owners other than Developer. A quorum for the purposes of that vote shall consist of a majority of Unit Owners other than Developer.

(e) Subject to the provisions of the Act and Section 4.17 of these By-Laws, any member of the Board may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests of the members. A special meeting of the Unit Owners to recall a member or members of the Board may be called by ten percent (10%) of the voting interests giving notice of the meeting as required for a meeting of Unit Owners, and the notice shall state the purpose of the meeting.

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(i) If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall shall be effective as provided herein. The Board shall duly notice and hold a board meeting within five (5) full business days of the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all records and property of the Association in their possession, or shall proceed as set forth in Paragraph (iii) below.

(ii) If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing, or a copy thereof, shall be served on the Association by certified mail or by personal service in the manner authorized by Chapter 48 and the Florida Rules of Civil Procedure. The Board shall duly notice and hold a meeting of the Board within five (5) full business days after receipt of the agreement in writing. At the meeting, the Board shall either certify the written agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days, any and all records and property of the Association in his or their possession, or proceed as described in subparagraph (iii) below.

(iii) If the Board determines not to certify the written agreement to recall a member or members of the Board, or does not certify the recall by a vote at a meeting, the Board shall, within five (5) full business days after the meeting, file with the Division of Florida Land Sales, Condominiums and Mobile Homes (the "Division"), a petition for arbitration pursuant to the procedures in section 718.1255 of the Act. For purposes of this Section 4.3(c), the Unit Owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the Board, the recall shall be effective upon mailing of the final order of arbitration to the Association. If the Association fails to comply with the order of the arbitrator, the Division may take appropriate action pursuant to the Act. Any member or members so recalled shall deliver to the Board any and all records of the Association in his or their possession within five (5) full business days of the effective date of the recall.

(iv) If the Board fails to duly notice and hold a board meeting within five (5) full business days of the adjournment of the Unit Owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the Board any and all records and property of the Association.

(v) If a vacancy occurs on the Board as a result of a recall and less than a majority of the Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the Board as a result of a recall and a majority or more of the Board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the Division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the Association during the period after a recall but prior to the recall election.

(f) Notwithstanding anything to the contrary set forth in this Section 4.4, the procedure for filling vacancies or removing Directors shall be in accordance with Rule 61B-23.0021 of the Florida Administrative Code except where a vacancy occurs on the Board of Directors as a result of a recall and less than a majority of the Directors are removed, in which instance the vacancy may be filled by the affirmative vote of a majority of the Directors.

4.5 **Term.** Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.

4.6 **Organizational Meeting.** The organizational meeting of newly-elected or appointed members of the Board of Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to the Board of the organizational meeting shall be necessary.

4.7 **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board of Directors shall be open to all Unit Owners and notice of such meetings shall be posted conspicuously on the Condominium Property for at least forty-eight (48) continuous hours in advance for the attention of the members of the Association except in the event of an emergency. Upon notice to Owners given by mail or personally to each Owner, the

Board of Directors shall adopt a rule designating a specific location on the Condominium Property upon which all notices of Board of Directors meetings, both regular and special, shall be posted.

Notwithstanding the above, at any meeting at which there will be proposed, discussed or approved (i) non-emergency special assessments, or (ii) amendments to rules regarding unit use, additional notice must be mailed or hand delivered to each Owner as well as posted conspicuously on the Condominium Property, not less than fourteen (14) continuous days prior to the meeting. The Association Secretary shall sign an affidavit attesting to the mailing and posting of this additional notice; no other person is qualified to sign this affidavit, which shall be placed in the official records of the Association. All notices for a regular meeting must specifically incorporate an identification of agenda items. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the Directors. Such emergency action shall be noticed and ratified at the next regular meeting of the Board of Directors.

- 4.8 Special Meetings. Special meetings of the Directors may be called by the President and must be called by the President or Secretary at the written request of one-third (1/3) of the Directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time and place and specifically identify the agenda items of the meeting and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board of Directors shall be open to all Unit Owners and notice of a special meeting shall be posted conspicuously on the Condominium Property or Association Property for at least forty-eight (48) continuous hours in advance for the attention of the members of the Association except in the event of an emergency. If there is no Condominium Property or Association Property upon which notices can be posted, notice of Board of Directors meetings shall be mailed or delivered at least fourteen (14) days before the meeting to the Owner of each Unit.

Notwithstanding the above, at any meeting at which there will be considered (i) non-emergency special assessments, or (ii) amendments to rules regarding unit use, additional notice must be mailed or hand delivered to each Owner as well as posted conspicuously on the Condominium Property, not less than fourteen (14) continuous days prior to the meeting. The person providing the notice shall sign an affidavit attesting to the mailing and posting of this additional notice; no other person is qualified to sign this affidavit which shall be placed in the official records of the Association. All notices for a special meeting must specifically incorporate an identification of agenda items.

- 4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to be due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.
- 4.10 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.
- 4.11 Adjourned Meetings. If at any proposed meeting of the Board of Directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted.
- 4.12 Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting.
- 4.13 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside). In the absence of the presiding officer, the Directors present may designate any person to preside.
- 4.14 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:
- (a) Proof of due notice of meeting;
  - (b) Reading and disposal of any unapproved minutes;
  - (c) Reports of officers and committees;
  - (d) Election of officers;
  - (e) Unfinished business;
  - (f) New business;
  - (g) Adjournment.

Such order may be waived in whole or in part by direction of the presiding officer.

4.15 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

4.16 Executive Committee; Other Committees. The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more members of the Board of Directors. Such Executive Committee shall have and may exercise all of the powers of the Board of Directors in management of the business and affairs of the Condominium during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall not have power (a) to determine the Common Expenses required for the affairs of the Condominium, (b) to determine the Assessments or Special Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium, (c) to adopt or amend any rules and regulations covering the details of the operation and use of the Condominium Property, or (d) to exercise any of the powers set forth in Paragraph (g) and (p) of Section 5 below.

The Board or a member of the Board may also create a committee and appoint Board Members and/or Unit Owners to such committee and invest in such committee such powers and responsibilities as the Board shall deem advisable to make recommendations to the Board regarding the Association Budget or to take action on behalf of the Board.

Committee meetings at which a quorum is present shall be open to Unit Owners and notice of such meeting shall be given just as is given for a meeting of the Board.

4.17 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the Board shall consist of three (3) directors during the period that the Developer is entitled to appoint a majority of the directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit Owners other than the Developer own fifteen (15%) percent or more of the Units that will be operated ultimately by the Association. When Unit Owners other than the Developer own fifteen (15%) percent or more of the Units that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors (a) three (3) years after fifty (50%) percent of the Units that will be operated ultimately by the Association have been conveyed to Purchasers, (b) three (3) months after ninety (90%) percent of the Units that will be operated ultimately by the Association have been conveyed to Purchasers, (c) when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers and none of the others are being offered for sale by the Developer in the ordinary course of business, (d) when some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, or (e) seven (7) years after the recordation of the Declaration of Condominium, or if the association ultimately operates more than one condominium, seven (7) years after recordation of the Declaration for the first condominium it operates, whichever occurs first. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business five (5%) percent of the Units that will be operated ultimately by the Association.

The Developer may turn over control of the Association to Unit Owners other than the Developer prior to such dates in its sole discretion by causing all of its appointed Directors to resign, whereupon it shall have the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer nor such appointees shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control.

Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, or if the Developer has elected to accelerate such events aforesaid, the Association shall call, and give proper notice as set forth in Section 4.3 hereof of a meeting of the Unit Owners to elect such member or members of the Board of Directors. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

Within a reasonable time after Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association (but not more than sixty (60) days after such event), Developer shall relinquish control of the Association and, at the Developer's expense, deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Developer, including but not limited to the following items, if applicable:

- (a) The original or a photocopy of the recorded Declaration of Condominium and all amendments thereto. If a photocopy is provided, the

Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration;

- (b) A certified copy of the Articles of Incorporation for the Association;
- (c) A copy of the By-Laws of the Association;
- (d) The minute books, including all minutes, and other books and records of the Association;
- (e) Any rules and regulations which have been adopted;
- (f) Resignations of resigning officers and Board members who were appointed by the Developer;
- (g) The financial records, including financial statements of the Association, and source documents since the incorporation of the Association through the date Developer relinquishes control of the Association. The records shall be reviewed by an independent certified public accountant. The minimum report required shall be an audit in accordance with generally accepted accounting standards as defined by rule by the Board of Accounting. The accountant performing the audit shall examine, to the extent necessary, supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for Association purposes, and billings, cash receipts and related records to determine that the Developer was charged and paid the proper amounts of Assessments and Special Assessments, if any. The audit shall be for the period in which Developer controlled the Association, but may start from the ending date of an earlier audit. The audit shall be delivered on or before ninety (90) days after turnover of control of the Association.
- (h) Association funds or the control thereof;
- (i) All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such property;
- (j) A copy of the plans and specifications utilized in the construction or remodeling of Improvements and the supplying of equipment, and for the construction and installation of all mechanical components servicing the Improvements and the Condominium Property, with a Certificate, in affidavit form, of an officer of the Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the mechanical components servicing the Improvements and the Condominium Property;
- (k) Insurance policies;
- (l) Copies of any Certificates of Occupancy which may have been issued for the Condominium Property;
- (m) Any other permits issued by governmental bodies applicable to the Condominium Property in force or issued within one (1) year prior to the date the Unit Owners take control of the Association;
- (n) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective;
- (o) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records;
- (p) Leases of the Common Elements and other leases to which the Association is a party, if applicable;
- (q) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service; and
- (r) All other contracts to which the Association is a party.

4.18 Attendance. A Director who is present at any Director's meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest.

4.19 Voting. A Director may not vote by proxy and there shall be no secret ballot voting by Directors at a Board of Directors meeting except that officers may be

elected by secret ballot. The minutes of the meeting must reflect each Board Member's vote or abstention.

4.20 Action Without a Meeting. Anything to the contrary herein notwithstanding, and to the extent lawful, any action required to be taken at a meeting of the Directors, or any action which may be taken at a meeting of Directors or a committee thereof, may be taken without a meeting if a consent in writing setting forth the action so to be taken signed by all of the Directors or all of the members of the committee, as the case may be, is filed in the minutes of the proceedings of the Board or of the committee. Such consent shall have the same effect as a unanimous vote. No prior notice of such intended action shall be required to be given to the Directors or to the Unit Owners. Notice of the taking of such action pursuant hereto shall, however, be posted conspicuously on the Condominium Property for the attention of Owners after such action shall have been effected. Such notice shall fairly summarize the material features of the action so taken.

4.21 Owners Right. Owners present at a meeting shall have the right to speak with reference to all designated agenda items subject to any reasonable rules adopted by the Board of Directors governing the frequency, duration and manner of Owner statements.

5. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Condominium and may take all acts, through the proper officers of the Association, in executing such powers, except such acts which by law, the Declaration, the Articles or these By-Laws may not be delegated to the Board of Directors by the Unit Owners. Such powers and duties of the Board of Directors shall include, without limitation (except as limited elsewhere herein) the following:

- (a) Operating and maintaining the Common Elements.
- (b) Determining the expenses required for the operation of the Condominium and the Association.
- (c) Collecting the Assessments and Special Assessments from Unit Owners.
- (d) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
- (e) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 13 hereof.
- (f) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (g) Purchasing, leasing, holding or otherwise acquiring Units or other property in the name of the Association or its designee for the use and benefit of its members.
- (h) Purchasing Units at foreclosure or other judicial sales, in the name of the Association or its designee.
- (i) Selling, leasing, mortgaging or otherwise dealing with Units acquired by, and subleasing Units leased by, the Association or its designee.
- (j) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (k) Obtaining and maintaining adequate insurance to protect the Association, the Association Property, if any, and the Condominium Property.
- (l) Making repairs, additions and improvements to, or alterations of, the Condominium Property, and repairs to and restoration of the Condominium Property in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings or otherwise.
- (m) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper to the sound management of the Condominium.
- (n) Levying fines where appropriate against Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners.
- (o) Purchasing or leasing Units for use by resident superintendents.
- (p) Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association Property; provided, however, that the consent of the Owners of at least two-thirds (2/3) of the voting interests of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum in excess of \$20,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (p) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his

interest in his Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file or which will affect such Unit Owner's Unit.

- (q) Contracting for the management and maintenance of the Condominium Property and authorizing a management agent (which 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, Special Assessments, preparation of records, re-enforcement of rules and maintenance, repair and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association shall, however, retain at all times the powers and duties granted by the Condominium Documents and the Act, including but not limited to the making of Assessments, Special Assessments, promulgation of rules and the execution of contracts on behalf of the Association.
- (r) At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements or Association Property for private parties and gatherings and imposing reasonable charges for such private use provided such use is the subject of a lease between the Association and the Unit Owner.
- (s) At its discretion, initiating or authorizing mandatory non-binding arbitration of internal disputes arising from the operation of the Condominium among Unit Owners, the Association, their agents and assigns in accordance with the rules of procedure promulgated by the Department of Business and Professional Regulation.
- (t) Imposing a transfer fee in connection with the approval of the transfer, lease, sale or sublease of Units.
- (u) To grant, modify or move any easement, subject to the provisions of the easement, without the joinder of any Unit Owners, if the easement constitutes part of or crosses the Common Elements.
- (v) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws, and in the Act (ii) all powers specifically set forth in the Agreement for Deed and exhibits thereto and the Articles and By-Laws of the Master Association with respect to the collection of the Assessments for and on behalf of the Master Association and (iii) all powers incidental to (a) and (b) above and all other powers a Florida corporation not for profit under Florida Statutes, Chapter 607 and 617, (as they exist on the date hereof and as hereafter renumbered) as applicable, if not inconsistent with the Act.
- (w) Levying Assessments for Common Expenses against Unit Owners for their share of the items in the budget, and/or Special Assessments for Common Expenses for emergencies for the Association and for the Master Association.
- (x) Electing a Delegate, who must be a Director, to the Master Association, and who may be pre-emptively removed at any meeting by concurrence of a majority of all the Directors.
- (y) Maintaining, since the inception of the Association, a copy of each of the following, where applicable, which shall constitute the official records of the Association:
- (1) The plans, permits, warranties, and other items provided by the Developer pursuant to Section 4.16 of these By-Laws;
  - (2) A photocopy of the recorded declaration of each condominium operated by the Association and all amendments thereto;
  - (3) A photocopy of the recorded By-Laws of the Association and all amendments thereto;
  - (4) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
  - (5) A copy of the current rules of the Association;
  - (6) A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than 7 years;
  - (7) A current roster of all Unit Owners, their mailing addresses, Unit identifications, Voting Certificates, and if known, telephone numbers;
  - (8) All current insurance policies of the Association and condominiums operated by the Association;
  - (9) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owner's have an obligation or responsibility;
  - (10) Bills of sale or transfer for all property owned by the Association;



- (11) Accounting records for the Association and separate accounting records for each condominium it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but are not limited to:
- (a) Accurate, itemized, and detailed records of all receipts and expenditures.
  - (b) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, Special Assessment, if any, the amount paid upon the account, and the balance due.
  - (c) All audits, reviews, accounting statements, and financial reports of the Association or Condominium.
  - (d) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.
- (12) Ballots, sign-in sheets and all other papers relating to voting by Unit Owners, which shall be maintained for a period of one (1) year from the date of the election, vote, or meeting to which the document related.
- (13) All rental records where the Association is acting as agent for the rental of Units.
- (14) Minutes of any meeting of the Association or of the Board of Directors shall be available for inspection by Unit Owners, or their authorized representatives, within thirty days after the date of the meeting.
- (z) The Association shall prepare a Question and Answer Sheet as described in F. S. 718.504, and shall update it annually.

The official records of the Association shall be maintained within the State of Florida, and shall be open to inspection and made available on the Condominium Property or Association Property to any Association member or the authorized representative of such member at all reasonable times and within five (5) working days after receipt of a written request by the Board or its designee. The failure of the Association to provide the records within ten (10) working days after receipt of a written request shall create a rebuttable presumption that the Association willfully failed to comply with the Statute. A Unit Owner who is denied access to official records is entitled to minimum damages of \$50.00 per calendar day up to ten (10) days, the calculation to begin on the 11th day after receipt of the written request. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The Association shall maintain an adequate number of copies of the Declaration, Articles of Incorporation, By-Laws and Rules, and all amendments of each of the foregoing, as well as the Question and Answer Sheet provided for in F. S. 718.504, on the Condominium Property or Association Property to ensure their availability to Unit Owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting them. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Association member. Notwithstanding the provision of this paragraph, the following records shall not be accessible to Unit Owners:

1. A record which was prepared by an Association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy or legal theory of the attorney of the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative procedures, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings.
2. Information obtained by the Association in connection with the approval of the lease, sale or transfer of a Unit.
3. Medical records of Unit Owners.

If the Association owns, leases or has reasonable access to a photocopy machine the Association shall, at the request of any Association member or the authorized representative of such member, make photocopies of Association official records as requested by such Association member or the authorized representative of such member. The Association shall not charge any fee to the Unit Owner or his authorized representative in connection with his inspection of the official records except the Association may charge a reasonable fee for the cost of making any copies provided such fee does not exceed 25 cents per page.

#### 6. Officers.

- 6.1 Executive Officers. The executive officers of the Association shall be a President, who shall be a Director, a Vice President, who shall be a Director, a Treasurer/Secretary, who shall be a Director and an Assistant Secretary who need not be a Director, all of whom shall be elected by the Board of Directors and who may be pre-emptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office, except that the President

may not also be the Secretary or Assistant Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers need not be Unit Owners except if the officer is also a Director.

6.2 **President.** The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.

6.3 **Vice President.** The Vice President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the Vice President of an association and as shall otherwise be prescribed by the Directors.

6.4 **Secretary.** The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.

6.5 **Assistant Secretary.** The Assistant Secretary shall exercise the powers and perform the duties of the Secretary in the absence or disability of the Secretary.

6.6 **Treasurer.** The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices, which together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. He shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of Treasurer. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.

7. **Compensation.** Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.

8. **Resignations.** Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective.

9. **Fiscal Management.** The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

9.1 **Budget.**

(a) **Adoption by Board: Items.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium (which shall detail all accounts and items of expenses and contain at least all items set forth in Section 718.504(20) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners and allocate and assess expenses among the Unit Owners in accordance with the provisions hereof and of the Declaration. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing. The amount of reserves shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost of each reserve item. Reserves shall not be required if the members of the Association have, at a duly called meeting of members, by a vote of a majority of the voting interests of the members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. If a meeting of the Unit Owners has been called to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget, shall go into effect. The adoption of a budget for the Condominium shall comply with the requirements hereinafter set forth:

(i) **Notice of Meeting.** A copy of the proposed budget of Common Expenses shall be mailed to each Unit Owner not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meetings. The meeting shall be

open to Unit Owners, provided that such Unit Owners shall not have the right to participate and need not be recognized at such meeting.

(ii) **Special Membership Meeting.** If a budget is adopted by the Board of Directors which requires Assessments against such Unit Owners in any year exceeding one hundred fifteen (115%) percent of such Assessments for the preceding year, as hereinafter defined, upon written application of ten (10%) percent of the voting interests to the Board of Directors, a special meeting of Unit Owners shall be held within thirty (30) days of delivery of such application to the Board of Directors. Each Unit Owner shall be given at least ten (10) days' notice of said meeting. At the special meeting, Unit Owners shall consider and adopt a budget. The adoption of said budget shall require a vote of not less than a majority of all the voting interests of the Unit Owners (including the voting interests of the Developer).

(iii) **Determination of Budget Amount.** In determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen (115%) percent of Assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium Property or in respect of anticipated expenses of the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded from such computation Assessments for improvements to the Condominium Property and expenses which are unique to specific Unit Owners.

(iv) **Proviso.** As long as the Developer is in control of the Board of Directors of the Association, such Board shall not impose an Assessment for a year greater than one hundred fifteen (115%) percent of the prior year's Assessment, as herein defined, without the approval of Unit Owners owning a majority of the voting interests (including the voting interests of the Developer).

(b) **Adoption by Membership.** In the event that the Board of Directors shall be unable to adopt a budget in accordance with the requirements of Section 9.1(a) above, the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for special meetings in Section 9.1(a), or propose a budget in writing to the members. If such budget is approved by a majority of the voting interests at the meeting or in writing, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

(c) **Failure of Quorum or to Adopt Substitute Budget.** If a meeting of the Unit Owners has been called and a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.

9.2 **Assessments.** Assessments against the Unit Owners for their share of the items of the budget shall be made for the applicable calendar year annually in advance on or before December 20th preceding the year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the Assessments are made. If an annual Assessment is not made as required, an Assessment shall be presumed to have been made in the amount of the last prior Assessment, and monthly (or quarterly) installments on such Assessment shall be due upon each installment payment date until changed by an amended Assessment. In the event the annual Assessment proves to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors. Unpaid Assessments for the remaining portion of the calendar year for which an amended Assessment is made shall be payable in as many equal installments as there are full months (or quarters) of the calendar year left as of the date of such amended Assessment, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter) commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessment shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

9.3 **Charges by the Association.** Charges by the Association against members for other than Common Expenses shall be payable in advance. Charges for other than Common Expenses may be made only after approval of a member or when expressly provided for in the Declaration or the exhibits annexed thereto, as the same may be amended from time to time, which charges may include, without limitation, charges for the use of the Condominium Property or recreation areas, maintenance services furnished at the expense of an Owner, other services furnished for the benefit of an Owner and surcharges, fines and damages and other sums due from such Owner.

9.4 **Special Assessments for Emergencies.** Assessments for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be due only after ten (10) days' notice is given to the Unit Owners concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of Special Assessment.

9.5 Depository. The depository of the Association shall be such bank or banks in the County as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from these accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All funds shall be maintained separately in the Association's name. In addition, reserve funds shall be maintained separately from operating funds in separate accounts, except that for the purpose of investment reserves and operating funds, may be co-mingled, but separate ledgers must be maintained for each account. No manager or business entity required to be licensed or registered under F.S. 468.432, and no agent, employee, officer, or director of a condominium association shall co-mingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in F.S. 468.431.

9.6 Acceleration of Assessment (or Special Assessment) Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon an Assessment or Special Assessment, the Board of Directors may, upon the filing of a claim of lien, accelerate the remaining installments of the Assessments for the remainder of the budget year in which the claim of lien was filed. Accelerated Assessments shall be due and payable on the date the claim of lien was filed.

9.7 Fidelity Bonds. To the extent required by law, fidelity bonds shall be required for those persons who control and disburse funds of the Association in the following amounts: If the Association's annual gross receipts do not exceed \$100,000, the bond shall be in the principal sum of not less than \$10,000 for each such person. If the Association's annual gross receipts exceed \$100,000, but do not exceed \$300,000, the bond shall be in the principal sum of \$30,000 for each such person. If the Association's annual gross receipts exceed \$300,000, the bond shall be in the principal sum of not less than \$50,000 for each such person. The premiums on such bonds shall be paid by the Association as a Common Expense.

- (a) Such fidelity bonds shall name the Association as an obligee;
- (b) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;
- (c) The premiums on all bonds required herein, except those maintained by the management agent, shall be paid by the Association as a common expense;
- (d) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association or Insurance Trustee;
- (e) When required, such bonds shall provide that the FNMA Servicer receive notice of any cancellation or modification of the bonds, on behalf of FNMA.

9.8 Accounting Records and Reports. Written summaries of the records described in Section 5(y)(11)(a) of these By-Laws, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within sixty (60) days following the end of the fiscal year, the Board shall mail, or furnish by personal delivery to each Unit Owner, a complete financial report of actual receipts and expenditures for the previous twelve (12) months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting principals. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- (a) Cost for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Costs for recreation facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Costs for building maintenance and repair;
- (h) Insurance costs;
- (i) Administrative and salary expenses; and
- (j) General reserves, maintenance reserves and depreciation reserves.

9.9 Application of Payment. All Assessment and Special Assessment payments made by a Unit Owner shall be applied as provided herein and in the Declaration or as determined by the Board.

9.10 Notice of Meetings. Notice of any meeting where Special Assessments against Unit Owners are to be considered for any reason shall specifically contain

a statement that Special Assessments will be considered and the nature of any such Special Assessments. If "non-emergency" special assessments are to be proposed, discussed or approved, the Association notice shall be both written and posted at least fourteen (14) continuous days prior to said Meeting. The Association Secretary shall sign an affidavit attesting to the mailing and posting of said notice.

10. **Roster of Unit Owners.** Each Unit Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.
11. **Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.
12. **Amendments.** Except as in the Declaration provided otherwise, these By-Laws may be amended in the following manner:
  - 12.1 **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.
  - 12.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the voting interests of the Association. 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. The approval must be:
    - (a) by not less than a majority of the voting interests of all members of the Association represented at a meeting at which a quorum has been attained and by not less than 66-2/3% of the entire Board of Directors; or
    - (b) by not less than 80% of the voting interests of the members of the Association represented at a meeting at which a quorum has been attained; or
    - (c) by not less than 100% of the entire Board of Directors.
  - 12.3 **Proviso.** 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 the Units without the consent of said Developer and mortgagees in each instance. No Amendment shall be made that is in conflict with the Articles or Declaration.
  - 12.4 **Execution and Recording.** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and By-Laws, which certificate shall be executed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County; provided, however, no amendment to these By-Laws shall be valid unless the first page of the amendment to be recorded shows the book and page of the public records where the Declaration is recorded.
  - 12.5 **Procedure.** The By-Laws shall not be revised or amended by reference to its title or number only. Proposals to amend the By-Laws shall contain the full text of the By-Laws 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, underlining and hyphens as indicative of words added or deleted shall not be used, but instead a notation shall be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of by law. See by law....for present text." Non-material errors or omissions in the by law process shall not invalidate an otherwise properly promulgated amendment.
13. **Rules and Regulations.** Annexed hereto as Schedule A and made a part hereof are rules and regulations concerning the use of portions of the Condominium. The Board of Directors may, from time to time, modify, amend or add to such rules and regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer, Owners of a majority of the voting interests of the members represented at a meeting at which a quorum is present may overrule the Board with respect to any such modifications, amendments or additions.

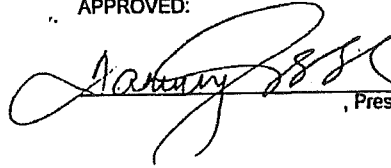
Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior

to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.

14. Construction. 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 genders.
15. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define or limit the scope of these By-Laws of the intent of any provision hereof.

The foregoing was adopted as the By-Laws of the Association, on the 22<sup>nd</sup> day of March 1996

APPROVED:

  
\_\_\_\_\_  
, President

This is not a certified copy

SCHEDULE "A" TO BY-LAWS  
 RULES AND REGULATIONS FOR  
FAIRWAY CLUB CONDOMINIUM D

1. The sidewalks, entrances, and like portions of the Common Elements shall not be obstructed nor used for any purpose other than for ingress and egress to and from the Condominium Property; nor shall any carts, bicycles, carriages, chairs, tables or any other similar objects be stored therein.
2. The personal property of Unit Owners must be stored in their respective Units or in storage areas.
3. No garbage cans, supplies, milk bottles or other articles shall be placed on the balconies or other Common Elements. No linens, cloths, clothing, curtains, rugs, mops or laundry of any kind, or other articles, shall be shaken or hung from any of the windows, doors, fences, balconies, terraces or other portions of the Condominium Property.
4. No Unit Owner shall permit anything to fall from a window or door of the Condominium Property, nor sweep or throw from the Condominium Property any dirt or other substance into any of the balconies or upon the Common Elements.
5. All refuse must be deposited with all other refuse in areas designated for such purpose by the Developer.
6. Employees of the Association are not to be sent out by Unit Owners for personal errands. The Board of Directors shall be solely responsible for directing and supervising employees of the Association.
7. No Unit Owner shall make or permit any disturbing noises in his Unit by himself or his family, servants, employees, agents, visitors or licensees, nor permit any conduct by such persons that will interfere with the rights, comforts or conveniences of other Unit Owners. No Unit Owner shall play or permit to be played any musical instrument, nor operate or permit to be operated a phonograph, television, radio or sound amplifier in his Unit in such a manner as to disturb or annoy other residents. No Unit Owner shall conduct, nor permit to be conducted, vocal or instrumental instruction at any time which disturbs other residents.
8. No radio or television installation may be permitted in any Unit which interferes with the television or radio reception of another Unit.
9. No sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, on or upon any part of the Condominium Property, except signs used or approved by the Developer. Additionally, no awning, canopy, shutter or other projection shall be attached to or placed upon the outside walls or roof of the Building or on the Common Elements.
10. The Association may retain a pass key to all Units. No Unit Owner shall alter any lock nor install a new lock without the prior written consent of the Board of Directors. Where such consent is given, the Unit Owner shall provide the Association with an additional key.
11. Barbecuing shall be permitted only in designated areas.
12. No flammable, combustible or explosive fluids, chemicals or substances shall be kept in any Unit or on the Common Elements, except for use in barbecuing.
13. A Unit Owner who plans to be absent during the hurricane season must prepare his Unit prior to his departure by designating a responsible firm or individual to care for his Unit should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of the Association.
14. Food and beverages may not be consumed outside of a Unit except in designated areas.
15. A Unit Owner shall not cause anything to be affixed or attached to, hung, displayed or place on the exterior walls, doors, balconies or windows of the Building.

Curtains and drapes (or linings thereof) which face on exterior windows or glass doors of Units shall be subject to disapproval by the Board, in which case they shall be removed and replaced with acceptable items.

16. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted, on, upon or in the Condominium Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Condominium Property. No derrick or other structure designed for use in boring for oil, natural gas or minerals shall be erected, maintained or permitted upon any portion of the Condominium Property.

17. The requirements from time to time of any governmental agency for disposal or collection shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

18. No air-conditioning units may be installed by Unit Owners. No Unit shall have any aluminum foil placed in any window or glass door or any reflective substance placed on any glass.

19. No exterior antennae shall be permitted on the Condominium Property or improvements thereon provided that Developer shall have the right to install and maintain community antennae and radio and television lines and other temporary communications systems.

20. No chain link fences shall be permitted on the Condominium Property or any portion thereof, except during construction by Developer.

21. Children shall be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Condominium Property and including full compliance by them of these rules and regulations. All children under eighteen (18) years of age must be accompanied by a responsible adult when entering and/or utilizing the Recreation Area or other commonly used facilities.

22. Age of Residents; Services and Facilities. Subject to all local ordinances, as they may be amended from time to time, at least one person over the age of fifty-five (55) years of age must be a permanent occupant of each Unit, whenever any person occupies said Unit. Persons under the age of fifty-five (55) years and more than eighteen (18) years of age may occupy and reside in a Unit as long as at least one of the occupants is over the age of fifty-five (55) years. No person under the age of eighteen (18) may be a permanent occupant of any Unit, except that persons under the age of eighteen (18) may be permitted to visit and temporarily reside for periods not to exceed thirty (30) days in total in any calendar year. Notwithstanding the above, if a Unit is transferred by inheritance, the requirement as to one occupant of said Unit being over the age of fifty-five (55) years is waived as to occupancy by the heirs so long as no permanent occupant is under the age of eighteen (18) years and further so long as at least eighty (80%) percent of all of the Units in the Condominium are occupied by one person over the age of fifty-five (55) years. It shall be the responsibility of the Board of Directors of the Association to determine whether eighty (80%) percent of the Units in the Condominium are occupied by at least one person who is over the age of fifty-five (55) years. Subject to the terms of this Declaration, the Articles of Incorporation and By-Laws of the Association the Board shall have the authority to make any additional capital improvements upon the common properties necessary to provide facilities or services specifically designed to meet the requirements of the Fair Housing Amendments Act of 1988.

23. No animals or pets of any kind in any Unit or on any property of this Condominium except one common household pet, i.e. Dog or Cat not to exceed 12 pounds as owned by the original owner prior to his purchase of his Condominium Unit from the Developer may be permitted to be kept in a Unit under certain terms and conditions set forth in Section 17.3 of the Declaration of Condominium.

24. No Unit Owner shall install a screen enclosure to or upon the outside walls of the Building or on the Common Elements or Limited Common Elements without the prior consent of the Board of Directors.

25. No sign, advertisement, notice, lettering or descriptive design shall be posted, displayed, inscribed or affixed to the exterior of a Unit. No "FOR SALE" or "FOR RENT" or similar signs or notices of any kind shall be displayed or placed upon any part of a Unit by Unit Owners other than the Developer and the Association.



26. Every Owner and occupant shall comply with these Rules and Regulations as set forth herein, and any and all rules and regulations which from time to time may be adopted, and the provisions of the Declaration and By-Laws as amended from time to time. Failure of an Owner or occupant, licensee or invitee to so comply shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, licensees, invitees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, or By-Laws, provided the following procedures are adhered to:

- (a) **Notice:** The Association shall notify the Owner or occupant and if applicable, his licensee or invitee in writing not less than fourteen (14) days before the hearing, which hearing shall be before the Board of Directors. The notice, at a minimum shall include: (1) a statement of the date, time and place of the hearing; (2) a statement of the provisions of the Declaration, Association By-Laws, or Association Rules which have allegedly been violated; and, (3) a short and plain statement of the matters asserted by the Association. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. At such meeting, the Owner or occupant shall be entitled to be represented by counsel (at his expense) and cross-examine any present witnesses and other testimony or evidence.
- (b) **Hearing:** The non-compliance shall be presented to a Committee of other Unit Owners ("Committee") appointed by the Board of Directors, after which the Committee shall hear reasons why penalties should not be imposed. Formal rules of evidence shall not apply. A written decision of the Committee shall be submitted to the Owner or occupant by not later than twenty one (21) days after the Committee meeting.
- (c) **Penalties:** The Board of Directors may impose a fine not in excess of One Hundred Dollars (\$100.00) for each non-compliance or each violation, but shall not exceed \$1,000.00 in the aggregate.
- (d) **Payment of Penalties:** Fines shall be paid not later than thirty (30) days after notice of the imposition or levy of the penalties.
- (e) **Collection of Fines:** No fine shall become a lien against a Unit. However, the Board may take such other affirmative and appropriate action as may be necessary to effect collection of fines.
- (f) **Application of Penalties:** All monies received from fines shall be allocated as directed by the Board of Directors.
- (g) **Non-Exclusive Remedy:** These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

27. These Rules and Regulations shall not apply to the Developer, nor its agents or employees and contractors, or to Institutional First Mortgagees, nor to the Units owned by either the Developer or such Mortgagees. All of these Rules and Regulations shall apply, however, to all other Unit Owners and occupants, and, if applicable, their licensees or invitees even if not specifically so stated in portions hereof. The Board of Directors shall be permitted (but not required) to grant relief to one or more Unit Owners from specific Rules and Regulations upon written request therefor and good cause shown in the sole opinion of the Board.

