

Exhibit "A"

Prepared By and Return To:  
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**DECLARATION**

**OF**

**PURA VIDA RESIDENCES, A CONDOMINIUM, A CONDOMINIUM**

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**AVALON LAND HOLDINGS, LLC, a Florida limited liability company**, ("Developer"), hereby declares:

1. Introduction and Submission

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

1.2 Submission Statement. The Developer hereby submits the Land described in Exhibit "1" and all improvements erected or to be erected thereon to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter amended.

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

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

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

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

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

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

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

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

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

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

2.9 "Common Elements" mean and include:

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

(b) Easements through Units for conduits, ducts, plumbing, wiring and other

facilities for the furnishing of utility and other services to Units and the Common Elements.

- (c) An easement of support in every portion of a Unit which contributes to the support of the Building.
- (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
- (e) Any other parts of the Condominium Property designated as Common Elements or "CE" in this Declaration or in Exhibit "1" hereto.

2.10 "Common Expenses" means all expenses and assessments which are properly incurred by the Association for the Condominium for the operation, maintenance, repair, replacement, or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include without limitation, the following as same may relate only to the general Common Elements: (a) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (b) the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract; (c) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house and/or interactive communications and surveillance systems; (d) the cost of any bulk contract for broadband, telecommunications, satellite and/or internet services, if any; (e) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property; (f) any lease payments required under leases for mechanical equipment, including without limitation, leases for recycling equipment, if same is leased by the Association rather than being owned by it; (g) all expenses related to the installation, repair, maintenance, operation, alteration and/or replacement of Life Safety Systems; (h) expenses associated with any Sovereign Submerged Land Lease with the State of Florida and common facilities associated therewith and (i) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or deed in lieu of foreclosure. Common Expenses shall not include any separate obligations of individual Unit Owners.

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

2.12 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which 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, improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.

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

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

2.16 "Developer" means AVALON LAND HOLDINGS, LLC, a Florida limited liability company, its successors and such of its assigns as to which its rights hereunder are assigned by written instrument recorded in the Public Records of the County. Such assignment may be made on an exclusive or non-exclusive basis and may be an assignment of all or only portions of its rights as Developer hereunder; provided, however, that no such assignment shall make any assignee the "Developer" for purposes hereof unless such assignment is an assignment of all of Developer's rights hereunder and is exclusive, except as to any previously assigned rights.

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

2.18 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States



Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.

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

2.20 "Limited Common Elements" means those Common Elements the use of which is reserved to a certain Unit to the exclusion of other Units, as specified herein. References to Common Elements shall include Limited Common Elements unless the context would prohibit or it is otherwise provided.

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

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

2.23 "Unit Owner" or "Owner of a Unit" or "Owner" means a record Owner of legal title to a Condominium Parcel.

### 3. Description of Condominium.

3.1 Identification of Units. The Land has constructed thereon One Building containing 22 Units. Each such Unit is identified by a separate numerical or alphanumeric designation. The designation of such Units is set forth on Exhibit "1" attached hereto. Exhibit "1" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Buildings in which the Units are located, and a plot plan thereof. Said Exhibit "1", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration or the Act.

3.2 Unit Boundaries. Each unit shall include that part of the Building containing the Unit that lies within the following boundaries:

- (a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
  - (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling.
  - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.



- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, thereof, together with exterior surfaces made of glass or other transparent materials; provided, however, that exteriors of doors facing interior Common Element hallways and exterior surfaces made of glass or other transparent material shall not be included in the boundaries of the Unit and shall therefore be Common Elements. Further, notwithstanding anything to the contrary, the structural components of the Building and the Life Safety Systems, regardless where located, are expressly excluded from the Units and are instead deemed Common Elements. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO POST TENSION WIRING CONTAINED IN THE BUILDING SHALL BE CONSIDERED A PART OF THE UNIT AS SUCH WIRING IS ESSENTIAL TO THE STRUCTURE AND SUPPORT OF THE BUILDING. ALL POST TENSION WIRING SHALL BE DEEMED COMMON ELEMENTS OF THE CONDOMINIUM AND MAY NOT BE DISTURBED OR ALTERED WITHOUT THE WRITTEN CONSENT OF THE BOARD.
- (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "1" hereto shall control in determining the boundaries of a Unit, except that the provisions of Section 3.2(c) above shall control unless specifically depicted otherwise on such survey.

3.3 Limited Common Elements. Each Unit may have as Limited Common Elements appurtenant thereto, the exclusive right to use such Limited Common Elements subject to the terms hereof.

- (a) Balconies, Patios, and Terraces Appurtenant to Units. Any balcony or terrace (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be Limited Common Element of such Unit(s). The Association shall be responsible for the maintenance of the structural and mechanical elements of any such Limited Common Elements, with the costs of same being part of the Common Expenses. Each Owner shall, however, be responsible for the maintenance of any other portions of such areas, for the general cleaning, plant care and upkeep of the appearance of the area(s) and for the repair and replacement of any floor coverings placed or installed on any balcony or terrace. A Unit Owner using a balcony or terrace making or causing to be made any additions, alterations, or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors, and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom.
- (b) Parking Spaces/Storage Spaces/Storage Lockers. Each Unit shall be assigned by the Developer, at least two (2) Parking Spaces. Each unit will be assigned one (1) Storage Space and one Storage Locker. The location of the vertical plane of the centerline of the line or divider shown on Exhibit "1" as designated or constructed by the Developer shall be the common boundary between the adjoining Parking Spaces and Storage Spaces or Storage Lockers. A divider wall, if any, or wall shall not be removed or constructed by an Owner. Parking Spaces, Storage Spaces and Storage Lockers shall initially be assigned by the Developer. Unit Owners may assign their Parking Spaces or Storage Spaces to another Unit Owner but may not assign nor allow use of a Parking Space or Storage Space to or by any person or entity who is not a Unit Owner. Further, parking space(s) may be relocated at any time, and from time to time, by the Board to comply with applicable Federal, State, and local laws and regulations regarding or affecting handicap accessibility. The maintenance of any parking space shall be the responsibility of the Association. All other spaces not assigned by the Developer may be used by the Unit Owners on a first come first serve basis



but no Unit Owner shall use or occupy more than two (2) Parking Spaces. Additionally, no Unit Owner shall use or occupy an unassigned parking space for the storage of vehicle(s) or equipment, including without limitation, trailers, kayaks, jet skis and wave runners. EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT THE PARKING AND STORAGE FACILITIES ARE LOCATED BELOW FEMA FLOOD PLAIN OR IN A FLOOD PRONE AREA, AND ACCORDINGLY IN THE EVENT OF FLOODING, ANY AUTOMOBILES AND/OR PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE RATES, BOTH FOR THE ASSOCIATION IN INSURING THE PARKING FACILITIES AND FOR OWNERS, MAY BE HIGHER THAN NORMAL. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF A UNIT, OR ACCEPTING THE ASSIGNMENT OF A PARKING AND STORAGE SPACE(S), EACH OWNER, FOR SUCH OWNER AND THE OWNER'S TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

- (c) Enclosed Hallways and Enclosed Elevator Lobbies. Any portion of a hallway which is common to any two (2) or more Units and separated from the balance of the hallway by a door, and any elevator lobby situated within or constituting an enclosed hallway, shall be a Limited Common Element(s) of such Unit(s) but shall be the maintenance responsibility of the Association as provided in Section 7.1 of this Declaration. Notwithstanding the foregoing, any upgrades of such Limited Common Elements, including items which have been added to such hallways and elevator lobbies by the adjoining Unit Owners shall become the maintenance and insurance responsibility of the Owners of the Units to which such Limited Common Elements are appurtenant. Furthermore, any enclosed hallway and enclosed elevator lobby which has been altered so as to become functionally part of two (2) Units, shall remain a Limited Common Element, but shall become the maintenance responsibility of the Owner of the Units to which it is appurtenant.
- (d) Other areas. Any other portion of the Common Elements, which, by its nature, cannot serve all Units but serves one Unit or more than one Unit (i.e. hallways and/or elevator landings serving a single Unit or more than one (1) Unit owned by the same Owner) shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by said Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board and shall be binding and conclusive when so made.

Notwithstanding the foregoing, the designation of an area as a Limited Common Element hereunder shall not allow the Owner of the Unit to which the Limited Common Element is appurtenant to preclude passage through such areas as may be needed from time to time for emergency ingress and egress and for the maintenance, repair, replacement, alteration and/or operation of the elevators, Life Safety Systems, mechanical equipment, and/or other Common Elements which are most conveniently serviced (in the sole discretion of the Board) by accessing such areas (and an easement is hereby reserved for such purposes). The Maintenance of any improvements and/or alterations installed by an Owner shall be maintained by the Owner. All other maintenance, including without limitation maintenance of elevator doors, shall be by the Association.

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, cable television, a master antenna television system, communications and security systems, or other services or drainage facilities or the use of these easements. The Association shall have the irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any Common Elements, or of any portion of a Unit to be maintained by the Association pursuant to the terms hereof, or as necessary to prevent damage to the Common Elements or any Unit.
- (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 Developer, as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, 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 purposes 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) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.
- (e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of undertaking and completing the construction thereof, or any Improvements, structures, facilities and/or Units located or to be located thereon, and for repair, replacement and maintenance or warranty purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so. The Association (and its designees, contractors, subcontractors and/or employees) shall have the right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units.
- (f) Sales Activity. For as long as the Developer is offering Units for sale in the ordinary course of business, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for guest accommodations, model apartments and sales, management and construction offices, to show model Units and the Common Elements to prospective purchasers and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease. This paragraph shall not be amended without the consent of the Developer.
- (g) Association. The Association shall have an easement of access over, under and through the Condominium Property for the purpose of performing



its functions pursuant to the Declaration.

- (h) Additional Easements. The Developer (as long as it is offering Units for sale in the ordinary course of business) and the Association, on their behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as its attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate existing access easements in any portion of the Condominium or Association Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare or the Unit Owners, or for the purpose of carrying out any provisions of this Declaration, 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.
  - (i) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express, or implied, for act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time and without requiring prior approval of the Association and/or any Unit Owner (provided, however, that absent an emergency situation, Developer shall provide reasonable advance notice), to enter the Condominium Property, including the Units, Common Elements and Limited Common Elements, for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. The easements reserved in this Section shall expressly survive the transfer of control of the Association to Unit Owners other than the Developer and the issuance of any certificates of occupancy or the Condominium Property (or portions thereof). Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in Section 21 below.
  - (j) Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors) to perform roof repairs and/or replacements, repair, replace, maintain and/or alter rooftop mechanical equipment, to stage window washing equipment and to perform window washing and/or any other exterior maintenance and/or painting of the Building.
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 shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.
5. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.
- 5.1 Percentage Ownership and Shares. Upon recordation of this Declaration, each Unit shall have an undivided share in the ownership of the Common Elements and Common Surplus in the percentages set forth on Exhibit "4" attached hereto and made a part hereof. The percentages were



established by dividing the total square footage of all Units into the approximate square footage of each Unit. This calculation was undertaken to establish a fair and equitable method of assessments for each Unit. Every purchaser agrees to be bound by said calculations, and hereby irrevocably waives the right to assert that such calculations were unfair or in error.

5.2 Voting. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of the Association. Any two (2) Units which have been combined into one (1) combined Unit shall be deemed to be two (2) Units (as if they had not been so combined) and shall therefore be entitled to two (2) votes to be cast by its Owner. In such event, the provisions of 718.110, Florida Statutes, shall first be met.

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

6.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Except as elsewhere provided, approvals of proposed amendments must be by affirmative vote of Unit Owners owning in excess of two-thirds (2/3) of the Units. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval or disapproval in writing, provided that such approval or disapproval is delivered to the secretary at or prior to the meeting, however such approval or disapproval may not be used as a vote for or against the action taken and may not be used for the purpose of creating a quorum.

6.2 By the Developer or the Association. Pursuant to Section 718.110 (9) and 718.110 (2) Florida Statutes, the Developer, without a vote of Unit owners, or the Association upon a vote of a majority of the voting interests, may amend the Declaration, the Articles or the By-Laws of the Association to correct an omission or error, or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent thereto.

Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of Board Directors of the Association, the Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever in order to (a) identify, locate and dimension any Units which are not completed at the date of this Declaration; (b) to correct any errors or omissions in this Declaration or any exhibits hereto; (c) to make the documents comply with the requirements of any statutory provisions of any state or federal rules or regulations or county or municipal ordinances; or (d) to gain acceptance or approval of any institutional mortgage lender or title insurer; except for an amendment: (a) to permit time-share estates (which must be approved, if at all, by all Unit Owners and mortgagees on Units); or (b) to effect a Material Amendment which must be approved, if at all, in the manner set forth in Section 6.4 below. Such amendments may be executed by the Developer without the written consent of the Unit Owners, institutional first mortgagees, or other holders of recorded liens or other interests therein. The unilateral amendment right set forth herein shall include, without limitation, the right to correct scrivener's errors. 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, without the consent of the Developer in each instance. All amendments shall take effect immediately upon recordation in the Public Records of Pinellas County.

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 data identifying the Declaration and shall be executed either by the President of the Association or a majority of the members of the Board of Directors and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment to the Declaration is effective when the applicable amendment is properly recorded in the public records of the County.

6.4 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 all Owner(s) thereof and all record owner of mortgages or other liens thereon, shall join in the execution



of the amendment and the amendment is otherwise approved by in excess of 2/3 or more of the voting interests of Unit Owners. 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 in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment. The provisions of this paragraph of Section 6.4 may not be amended in any manner. 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 the present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.

## 7. Maintenance and Repairs

7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, screen enclosures, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as to the maintenance of all parking spaces, cabana and balconies although limited common elements shall be maintained by the Association.

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 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 any air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Unit or Units (to the exclusion of other Units), as same may be deemed to be Limited Common Elements in accordance with Subsection 3.3 above, shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units.

## 8. Additions, Alterations or Improvements by the Association

Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of \$10,000 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate \$10,000 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 be as a "Capital Improvement Assessment" of the Unit Owners as provided in Section 12.2 hereof. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.



## 9. Additions, Alterations or Improvements by Unit Owner

9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, his Unit or any Limited Common Element without the prior written consent of the Board of Directors provided that the Board of Directors shall not withhold its consent to the installation of window film or laminated glass, as long as same have the character, location and other attributes approved by the Board. 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 forty-five (45) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. 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 and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof as may be required by the Association. Notwithstanding the foregoing, in order to allow the Association to obtain the operating history and experience necessary to provide for uniformity in the nature of Unit Owner improvements and to protect the aesthetic appeal of the Condominium, no such requests for additions, alterations or improvements may be presented to the Board for its consideration until such time as the Unit Owners, other than the Developer, have elected a majority of the Board of Directors.

9.2 Life Safety Systems. No Unit Owner shall make any additions, alterations or improvements to the Life Safety Systems, and/or to any other portion of the Condominium Property which may impair the Life Safety Systems or access to the Life Safety Systems, without first receiving the prior written approval of the Board. In that regard, no lock, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency signage shall not be altered or removed by any Unit Owner whatsoever. No barrier including, but not limited to personality, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

9.3 Improvements, Additions or Alterations by Developer. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it or them and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements and/or the installation of signs), and (b) expand or add to all or any part of the recreational facilities. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.3 shall be adopted in accordance with Section 6 and Section 6.2 of this Declaration.

9.4 Changes in Developer-Owned Units. Without limiting the generality of the provisions of paragraph 9.3 above, and anything to the contrary notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-owned Units (iii) change the size of Developer-owned Units by combining separate developer owned Units into a single apartment (although being kept as two separate legal Units), or otherwise; and (iv) reapportion among the Developer-owned Units affected by such in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially or adversely affect the market value or ordinary use of Units owned by



Units Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section, shall be effected by the Developer alone pursuant to Section 6.2, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 6.4 above. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

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

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

- (a) The irrevocable right to have access to each Unit and its Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein or performing extermination services, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.
- (b) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements including Assessments against members of the Association for the cost of maintenance and operation of the storm water management system.
- (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- (d) The power to contract for the management and maintenance of the Condominium Property and to authorize a duly licensed management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing.
- (f) The power to charge a fee for the exclusive use of any Common Elements by an Owner having a right to such use.
- (g) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property.
- (h) The limited power to convey a portion of the Common Elements pursuant to 718.112(2)(m), Florida Statutes.
- (i) All of the powers which a corporation not for profit in the State of Florida may exercise including without limitation all of the powers provided by Section 718.1265, Florida Statutes.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached hereto, this Declaration shall



take precedence over the Articles, 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. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

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 that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.

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 Association Maintenance Recommendations. It is recommended that the Association, in carrying out its responsibilities under this Article 10.5, comply with the following minimum standards, requirements and guidelines:

The Board shall cause all Utilities and Utility systems forming a part of the Common Elements to be maintained properly and in good condition, and effect repairs thereto as needed. It is recommended that the Board cause all water and/or sewer infrastructure to be inspected annually by a licensed and qualified contractor or engineer, with expertise in the construction and maintenance of such water/sewer infrastructure.

All landscaping should be maintained in accordance with the following minimum maintenance standards:

- (a) Lawn and ground cover should be kept mowed and/or trimmed regularly;
- (b) Planting should be kept in a healthy and growing condition;
- (c) Fertilization, cultivation, spraying and tree pruning should be performed as part of the regular landscaping program;
- (d) Stakes, guides, and ties on trees should be checked regularly to insure the correct function of each; ties shall be adjusted to avoid creating abrasions or girdling of the trunk or stem;
- (e) Damage to planting should be ameliorated within thirty (30) days of occurrence; and
- (f) Irrigation systems should be kept in sound working condition; adjustments, replacement or malfunctioning parts and cleaning of systems should be an integral part of the regular landscaping program.

It is recommended that the Board cause all hardscape and paved areas within the Condominium to be inspected annually by a licensed and qualified contractor or engineer with expertise in the construction and maintenance of such hardscape and paved areas.

It is recommended that the Board cause the swimming pool and pool deck to be inspected each year by a licensed and qualified contractor or engineer with expertise in the construction and maintenance thereof.

It is recommended that the Board cause the structures and roofs of all improvements



within the Condominium to be inspected each year by a licensed and qualified contractor or engineer with expertise in the construction and maintenance of such structures and roofs.

It is recommended that the Board carry out such other periodic inspections and obtain such other expert reports, as may be prudent and appropriate. In each instance in which a contractor, engineer, architect or other professional with the expertise in a specific area is engaged to conduct an investigation or inspection, such expert shall promptly provide a written report thereof to the Board. The written report shall identify all items of maintenance or repair which either requires current action by the Association, or which will need further review, inspection or analysis. The Board shall, in each case, cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage.

This Section 10.5 is intended only to provide specific minimum maintenance and inspection recommendations in particular areas, and shall in no way limit the Association's general responsibility with respect to maintenance designed to prevent avoidable deterioration or property damage.

11. Determination of 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 Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners. The Common Expenses shall include the expenses of and reserves for (if required by law) the operation, maintenance, repair and replacement of the Common Elements, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws. Common Expenses shall include a pro rata portion of the lease fees to the State of Florida, if any. The maintenance of the seawall and dock area exclusive of the individual boat slips shall be a common expense.

12. Collection of Assessments

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

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

- (a) "Special Assessments" shall mean or refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.
- (b) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements



located or to be located within the Common Elements.

- (c) Special Assessments and Capital Improvement Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special and Capital Improvement Assessments, in the aggregate in any year, exceed \$10,000.00, or cause the total Assessments levied to exceed 115% of Assessments for the proceeding calendar year, the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum is attained.

12.3 Defaults in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the date due until paid together with a late fee not to exceed the greater of \$25.00 or 5% of each delinquent installment due. The Association has a lien on each Unit to secure payment of Assessments, with interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien is effective from, and shall date back to as of the date of the recording of this Declaration and shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates and the claim of lien must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, and costs and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage on real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. Upon the filing of a Claim of Lien, the Association may declare the Assessment installments due for the balance of the budget year to be accelerated and immediately due and payable. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

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

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

12.6 Institutional First Mortgagee. In the event an Institutional First Mortgagee shall obtain title to a Unit as a result of foreclosure of its mortgage, or as a result of a deed given in lieu of foreclosure or in satisfaction of debt, such Institutional First Mortgagee, its successors and assigns, shall be liable for the share of Common Expenses or Regular Periodic Assessments or other charges imposed by the Association pertaining to such Unit for a period not exceeding twelve (12) months, but in no event does the first mortgagee's liability exceed one percent (1%) of the original mortgage debt, pursuant to the provisions of 718.116(1)(b). Any unpaid share of Common Expenses or Assessments or other charges shall be deemed to be Common Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.

12.7 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all assessments and



other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association or its agent may charge a reasonable fee for the preparation of such certificate.

12.8 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, as determined from time to time by the Board of Directors. Initially, Assessments will be collected monthly.

12.9 Developer's Liability for Assessments. During the period from the date of the recording of this Declaration until the earlier of the following dates (the "Guarantee Expiration Date"): (a) the last day of the calendar year in which of this Declaration is recorded, or (b) the date that control of the Association is transferred to Unit Owners other than the Developer as provided in the ByLaws and the Act, the Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to the Units owned by it, provided: (i) that the regular Assessments for Common Expenses imposed on each Unit Owner other than the Developer prior to the Guarantee Expiration Date shall not increase during such period over the amounts set forth on Exhibit "5" attached hereto; and (ii) 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 levels receivable from other Unit Owners. Provided control of the Association has not been transferred to Unit Owners, the Developer shall have the option, in its sole discretion, of extending the guarantee for four (4) additional six (6) month periods, or paying the share of Common Expenses and Assessments attributable to Units it then owns. Notwithstanding the above and as provided in Section 718.116(9)(a)2 of the Act, in the event of an Extraordinary Financial Event (as hereinafter defined), the costs necessary to effect restoration shall be assessed against all Unit Owners owning units on the date of such Extraordinary Financial Event, and their successors and assigns, including the Developer (with respect to Units owned by the Developer). As used in this Subsection, an "Extraordinary Financial Event" shall mean Common Expenses incurred prior to the Guarantee Expiration Date (as same may be extended) resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a) of the Act.

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

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

13.1 Purchase of Insurance. The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association Property, the Common Elements and Condominium Property. Such Insurance shall include insurance against those risks, with such coverage and limits, as provided in Section 13.2 below, together with such other insurance as the Association deems necessary. The premiums for all such Insurance and other expenses in connection with said insurance shall be assessed as part of the Common Expenses. The named insured shall be the Association, individually and as agent for the Owners and their mortgagees, as their interests may appear, without naming them. For purposes of this and the following Article, all buildings constituting the Condominium as described on the Plat shall collectively be deemed one "Building and shall include any additional building as a part thereof which may hereafter become a part of this Condominium."

13.2 Coverage

(a) Fire and Other Peril. The Association shall obtain, maintain and pay the premiums upon a policy or policies of hazard insurance providing primary coverage for all portions of the Condominium Property for which the Association is required to maintain insurance in accordance with the Condominium Act.

(1) The policy or policies shall be in an amount equal to one hundred (100%) percent of current replacement cost of the Building, exclusive of land, foundation, excavation, and other items normally excluded from coverage, if available, and any deductibles established pursuant to Section 13.2(h), unless a lower percentage is expressly approved by the Board. In all events, the amount of coverage shall comply



with the amounts required by the Condominium Act.

(2) The policies may also be issued in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor trustee, as insured, for the use and benefit of the individual Owners and their mortgagees, as their interests may appear. Loss payable shall be in favor of the Association or insurance trustee, for each Unit Owner and each such Owner's mortgagee(s). The Association or insurance trustee, if any, shall hold any proceeds of insurance in trust for Unit Owners and their mortgage holders, as their interests may appear. Each Unit Owner and each Unit Owner's mortgagee(s), if any, shall be beneficiaries of the policy in the fraction of ownership of the Common Elements set forth in this Declaration. Certificates of insurance shall be issued to each Unit Owner and mortgagee upon request. Such policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the Pinellas County area and shall name any holder of mortgages on Units within the Condominium. Such policies shall provide that they may not be canceled or substantially modified, without at least ten (10) days' prior written notice to the Association and to each holder of a mortgage listed as a scheduled holder of a mortgage in the policies.

(3) Policies are unacceptable where: (i) under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against borrowers, FEDERAL HOME LOAN MORTGAGE CORPORATION ("FHLMC"), FEDERAL NATIONAL MORTGAGE ASSOCIATION, ("FNMA"), or the designee of FHLMC or FNMA; or (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members, or (iii) the policy included any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

(4) The policies shall also provide for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Unit Owners individually; that the insurance is not prejudiced by any act or neglect of individual Unit Owners that are not under the control of the Association or the Owners collectively; and that the policy is primary in the event the Unit Owner has other insurance covering the same loss.

(5) The insurance policy shall afford, as a minimum, protection against the following:

(i) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(ii) In the event the Condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accident in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent based on the nature of the property); and

(iii) All other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by standard "all risk" endorsement.

In addition, such policies shall include an "agreed amount endorsement" and, if available, an "inflation guard endorsement."

(6) The Association shall provide, on an individual case basis, if required by any Institutional Mortgagee, construction code endorsements (such as a demolition cost endorsement, a contingent liability from operation of building laws endorsement and an increased cost of construction endorsement) if the Condominium is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of the Condominium by an insured hazard.

(7) Such policies shall provide that they may not be canceled or substantially



modified, by any party, without at least ten (10) days' prior written notice to the Association and to each Institutional Mortgagee which is listed as a scheduled holder of a first mortgage in the insurance policy.

(b) **Liability Insurance.** The Association shall maintain general public liability insurance coverage. Coverage limits shall be in such amounts as the Board shall determine from time to time. The Association shall provide, if so determined by the Board, and if required by any Institutional Mortgagee insurance protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and use, including but not limited to, host liquor liability, employer's liability insurance, contractual and all written contract insurance, and comprehensive automobile liability insurance.

(c) **Flood Insurance.** If the Condominium is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the Association shall obtain and pay the premiums upon, as a Common Expense, a policy or policies of flood insurance on the buildings and any other property covered by the required form of policy (the "Insurable Property"), in an amount deemed appropriate by the Association, as follows: The lesser of: (1) the maximum coverage available under the NFIP for all buildings and other Insurable Property within an area having special flood hazards; or (2) one hundred (100%) percent of current "replacement cost" of all buildings and other Insurable Property within such area.

Such policy shall be in a form which meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator.

(d) **Fidelity Bonds.** Blanket fidelity bonds shall be maintained by the Association in the amount required by Section 718.111(11) (h), of the Condominium Act, as it may be amended or renumbered from time to time.

(e) **Workers Compensation.** Workers Compensation Insurance meeting all of the requirements of the State of Florida.

(f) **Directors and Officers Liability Insurance.** Directors' and officers' liability insurance shall be obtained and maintained. Such insurance if available may include if the Board so determines, coverage for committee members of the Association.

(g) **Additional Coverage.** Such other insurance as the Board shall determine from time to time to be desirable and in the best interest of the Association and the Owners.

(h) **Deductibles.** The Board, in the exercise of its reasonable business judgment, may obtain policies of casualty and liability insurance having reasonable deductibles. In the event of a loss, the deductible amount, if any, with respect to any such policy shall be treated as a Common Expense payable from Regular Assessments, Special Assessments, or, if appropriate, from an applicable reserve. If, however, the claim or damage arises from the negligence of a particular Owner or Owners, the Association may recover payment of any such amount due from the Owner responsible therefor.

13.3 **Individual Policies/Owner Obligation.** Every insurance policy issued to an individual Owner shall provide that the coverage afforded by such policy is in excess over the amount recoverable under any other policy which shall cover 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. The foregoing shall also apply to the cabanas, if any, which are Limited Common Elements. Each Owner shall have the obligation to purchase public liability insurance to protect himself against due to accidents within his unit, and casualty insurance on the contents within said Unit, the ceiling, floor and wall coverings, and electrical fixtures, appliances, water heater, and built-in cabinets, to the extent that these items are located within the Unit, air conditioning and heating equipment (whether located within or without the Unit), and any improvements made within the Unit which are not covered by the Association policy. Each Owner shall further be responsible to insure any portion of the Condominium Property which may be removed from Association insurance responsibilities as a result of amendments to Section 718.111(11), of the Condominium Act, as it may be amended or renumbered from time to time. Each Owner is expected to carry homeowner's insurance, with coverage for additions and alterations, loss assessment protection or to recognize and accept that such Owner bears financial responsibility for any



damage to his property or liability to others that would otherwise be covered by such insurance. In addition, each Owner should review the coverage of the Association to determine any additional insurance that may be advisable for him or her to purchase. Each Unit Owner shall comply with the requirements of Section 718.111(11)(g)2, of the Condominium Act, as it may be amended or renumbered from time to time, regarding providing the Association with the evidence of currently effective policies of insurance as required in this paragraph.

13.4 Annual Determination. The Board shall determine, not less often than annually, the insurance coverage and amounts provided for in this Article 11. Policies may contain reasonable deductible provisions as determined by the Board from time to time.

13.5 Insurance Trustee; Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear, and all policies and endorsements thereto shall be held by the Association. All proceeds covering property losses shall be paid to an insurance trustee who shall be designated, from time to time, by the Board (the "Insurance Trustee") (if appointed). The Board of Directors shall have the option in its discretion to appoint an Insurance Trustee who if appointed shall be a bank or trust company in Florida with trust powers, with its principal place of business in Florida or one or more of the Directors or officers of the Association. If the Association fails or elects not to appoint an Insurance Trustee, the Association will perform directly all obligations imposed upon such Insurance Trustee by the Declaration. The Insurance Trustee shall not be liable for payment of premiums, the renewal or the sufficiency of policies or the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein and for the benefit of the Owners in the following shares, which shares need not be set forth on the records of the Insurance Trustee:

- (a) Common Elements. Proceeds on account of damage to Common Elements: an undivided share for each Owner, such share being the same as the undivided share in the Common Element appurtenant to his Unit.
- (b) Units. Proceeds on account of damage to Units shall be held in the following undivided shares:
  - (1) When the Condominium Building(s) is to be restored, for the Owners so damaged in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association. In the event of a reasonable dispute or reasonable act of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
  - (2) When the Condominium Building is not to be restored, an undivided share for each Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

13.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:

- (a) Expenses of the Trustee. All expenses of the Insurance Trustee shall be paid first or provision made therefore, as a Common Expense.
- (b) Advancements. If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest it required.
- (c) Construction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost of repairing the damage. Any proceeds remaining after defraying such costs shall be distributed to the Owners and their Mortgagees, jointly, in the amount of their respective undivided shares.
- (d) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Owners and their Mortgagees, jointly, in their respective undivided shares.



(e) Certificate. In making distributions to Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association, executed by its President or Vice President and Secretary or Assistant Secretary, as to the names of the Owners and their Mortgagees and their respective shares of the distribution

13.7 Association as Agent. The Association is hereby irrevocably appointed agent and Attorney in Fact for each Owner and for each holder of a mortgage or other lien upon a Unit, and for each owner of any other interests in the Condominium Property, with power 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 Mortgagees. No mortgagees 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 Owner and the mortgagee pursuant to this Declaration. The requirement of joint remittance to Owners and the mortgagees, whether in this Article 13 or elsewhere in the Declaration, is a covenant for the benefit of any mortgagee of a Unit, and may be enforced by such mortgagee.

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

14.1 Determination to Reconstruct or Repair. If any part of the Condominium Property is damaged by casualty, whether it shall be reconstructed or repaired shall be determined in the following manner:

(a) Common Elements. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(b) Condominium Building:

(1) Lesser Damage. If the damaged improvement is the Condominium Building, and if Units to which fifty percent (50%) or more of the Common Elements are appurtenant are found by the Board of Directors to be tenable, the damaged property shall be reconstructed or repaired unless, within sixty (60) days after the casualty, it is determined by agreement in the manner elsewhere that the Condominium shall be terminated.

(2) Major Damage. If the damaged improvement is the Condominium Building, and if Units to which more than fifty percent (50%) of the Common Elements are appurtenant are found by the Board of Directors to be untenable, the damaged property shall neither be reconstructed nor repaired and the Condominium shall be terminated without agreement as elsewhere provided unless, within sixty (60) days after the casualty, the majority of Owners of the Common Elements agree in writing to such reconstruction or repair.

(c) Certificate. The Insurance Trustee may rely upon a certificate of the Association executed by its President or Vice President and Secretary or Assistant Secretary in determining whether the damaged property is to be reconstructed or repaired.

14.2 Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Condominium Property or, if not, then in accordance with plans and specifications approved by the Board of Directors and, if the damaged property is the Condominium Building, by the Owners of not less than seventy-five percent (75%) of the Common Elements, including the Owners of all damaged Units, whose approval shall not be unreasonably withheld. If reconstruction in accordance with the original plans and specifications cannot be effected because of governmental regulations intervening between the time of original construction and the time of reconstruction, then the Board shall have the authority to make such modifications to the construction plans as maybe necessary to comply with such changes and regulations, as determined by the Board only, without necessity of Owner approval; provided, however, that if such governmental restrictions will prevent the reconstruction of all Units in the Condominium, then the Condominium shall be terminated.

14.3 Responsibility. If the damage is only to those portions of a Unit or Units for which



the responsibility of maintenance and repair is that of the Owner(s), then the Owner(s) shall be responsible for reconstruction and repair of casualty. In all other instances, it shall be the Association's responsibility to reconstruct and repair after casualty.

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 for reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

14.5 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction or repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs.

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

(a) Association. If the total Assessments made by the Association in order to provide funds for the payment of costs of reconstruction and repair which is the responsibility of the Association exceed \$50,000.00, the sums paid upon such Assessments shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such Assessments and disburse the same in payment of the costs of reconstruction and repairs.

(b) Insurance Trustee. The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the Association from collections of Assessments against 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:

- (1) Association-Under Threshold Amount. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than the Threshold Amount (hereinafter defined), then the construction fund shall be disbursed in payment of such costs upon the order of the Association.
- (2) Association-Threshold Amount or Over. If the amount of estimated costs of reconstruction and repair which is the responsibility of the Association is the Threshold Amount, or more, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.
- (3) Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an Owner shall be paid by the Insurance Trustee to the Owner.
- (4) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be disbursed to the beneficial owners of the fund in the manner elsewhere stated; provided, however, to the extent a distribution to an Owner is not in excess of Assessments paid by such Owner into the construction fund, such distribution shall not be made payable jointly to any mortgagee.
- (5) Threshold Amount. "Threshold Amount" means, for the purposes of this Article, \$100,000.00 as increased by three (3%) percent on January 1 of each year, beginning January 1, 2020. The 3% increase each year shall be calculated with reference to the Threshold Amount for the immediately preceding year.
- (6) Certificate. Notwithstanding the provisions herein, the Insurance Trustee



shall not be required to determine whether or not sums paid by Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, whether the disbursements from the construction fund are to be upon the order of the Association or upon the approval of an architect or otherwise, whether a disbursement is to be made from the construction fund, or whether surplus funds to be distributed are less than the Assessments paid by Owners; instead, the Insurance Trustee may rely upon a certificate of the Association, executed by its President or Vice President and Secretary or Assistant Secretary, as to any or all of such matters stating that the sums to be paid are due and properly payable in the name of the designated payee and the amount to be paid.

14.7 Failure to Reconstruct. In the event of "major damage, as defined in Section 14.1 (b) (2)," to or destruction of all or a substantial part of the Condominium Property and if the property is not repaired, reconstructed or rebuilt within a reasonable period of time, any Owner shall have the right to petition a court of competent jurisdiction for equitable relief which may, but need not, include termination of the Condominium and partition.

15. Condemnation.

15.1 Deposit of Awards. The taking of portions of the Condominium or Association 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 Association. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association or Insurance Trustee is 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 also shall 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 Assessment shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds after a casualty, or as elsewhere herein 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 to and paid by the Owner of the unit.
- (b) Distribution of Surplus. The balance of the award in respect of the Unit, 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.

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 Mortgagees in amount sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the



Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.

- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all 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 affected by restating the shares of continuing Unit Owners to be one over the total number of remaining units.
- (d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all 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 effected pursuant hereto by reason of 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 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

16. 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. In no event shall occupancy of a Unit (except for temporary occupancy by visiting guests) exceed the greater of six (6) persons in the entire Unit or 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 subsection 16.1 shall not be applicable to Units used by the Developer for model apartments, guest accommodations, sales or other offices or management services subject to the Code of Ordinances of the city of Clearwater, Florida.

16.2 Children. Children shall be permitted to reside in Units but shall be subject to age restrictions imposed as to recreation facilities, as provided in the rules and regulations of the Condominium Association.

16.3 Pets. Each Unit may house one (1) household pets in the Unit, to be limited to dogs or cats weighing not more than thirty (30) pounds at maturity (or other household pet defined as such and specifically permitted by the Association), provided no animal is kept, bred or maintained for any commercial purpose, does not become a nuisance or annoyance to neighbors, is properly licensed and vaccinated per local and state ordinances, and is properly registered as required by the Association. This Section shall not prohibit the keeping of fish or household-type bird(s) in a Unit provided that such birds(s) do not become a nuisance or annoyance to neighbors. No reptiles, exotic animals or wildlife shall be kept in or on the Condominium Property (including Units). Unit Owners are required to pick up and properly dispose of all solid wastes of their pets. When outside the Unit, all pets, including cats, must be under the owner's control and must be kept on a leash no more than six (6) feet in length and shall be walked only within areas, if any, designated for such purposes by the Association. No aggressive, destructive or nuisance behavior will be tolerated. Violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners and/or to require any pet to be permanently removed from the Condominium Property.

Notwithstanding the foregoing, the first purchaser from the Developer shall be allowed to house one (1) dog whose weight exceeds the weight limit stated herein, provided such animal is owned at the time of taking title to his/her Unit and provided further that upon the death or loss of such animal, it shall not be replaced by an animal with a weight in excess of the amount stated in the first sentence of this Section 16.3. Further, the Developer may waive the restrictions on the number or size of dogs or cats for the first purchaser from the Developer, provided such waiver shall not apply to any replacement animals without the prior approval of the Board of Directors.

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

If the Building was constructed using a post tension wiring system the following will apply: No Unit Owner, tenant, guest, invitee, contractor or otherwise shall cause the penetration of any floor or ceiling post tension concrete slabs. Any penetration of the concrete slab floor or ceiling may break or weaken the post tension wiring system the result of which may be structural damage to the Building and serious bodily injury including death to any persons in the vicinity of the disturbed wiring, even persons in adjacent Units through which the post tension wiring passes. The cost of repair of any damage to the post tension wiring system shall be borne by the Unit Owner causing such damage.

16.5 Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. In that regard, each Unit Owner, by acceptance of a deed for a Unit, thereby covenants and agrees that it is the intention of the Developer that the stairwells of the Condominium are intended for ingress and egress in the event of emergency only, and as such are constructed and left unfinished solely as to be functional for said purpose, without regard to aesthetic appearance of said stairwells. Similarly, the garage ground-level parking and utility pipes serving the condominium are intended solely for functional purposes, and as such will be left unfinished without regard to the aesthetic appearance of same. The foregoing is not intended to prohibit the use of the stairwells, garage and ground-level parking and utility pipes for any other purpose. Additionally, no Unit Owner shall be permitted to store any items whatsoever on balconies, patios, or terraces, including without limitation, bicycles and/or motor bikes. Further, no



grilling or cooking of any kind shall be permitted on any balcony, or terrace of a Unit.

16.6 Nuisances. No nuisances 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 activity specifically permitted by this Declaration shall be deemed 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 all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction there over shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction there over, 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. Notwithstanding the foregoing and any provisions of this Declaration, the Articles or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 16.7. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.

16.8 Exterior Improvements; Landscaping. Without limiting the generality of sections 9.1 or 16.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, terraces, balconies or windows of the Building (including, but not limited to speakers, televisions, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Association. Notwithstanding the provisions of this Declaration, the Board of Directors of the Association may, without any requirement for approval of the Unit Owners, install upon or within the common elements or Association Property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of all of the Unit Owners.

16.9 Handicapped Parking; Commercial/Recreational Vehicles and Trailers. Parking spaces designated as "handicapped parking" are first reserved for the exclusive use of the handicapped residents and guests. Any Unit Owner in possession of two not-handicapped parking spaces who is assigned a handicapped space shall assign to the Association one of the two of the Unit Owners non-handicapped spaces. Handicapped spaces may be assigned to non-handicapped Unit Owners so long as there remain sufficient handicapped spaces to serve the needs of handicapped parking space entitled Unit Owners and guests. Except as permitted below, no trucks over three (3) tons, other commercial vehicles, campers, mobile homes, recreational vehicles or boat or other trailers shall be kept on the Condominium Property, in exterior parking areas or under building parking. For purposes of the foregoing, "commercial vehicles" shall mean those not designed or used for customary personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether same is a commercial vehicle. The foregoing shall not prohibit, however (i) the parking of otherwise prohibited vehicles on the Condominium Property in the course of providing services to the Condominium Property, the occupants thereof or the Association or (ii) vans with windows which contain seating for at least four (4) persons, provided that such vans and trucks shall not bear commercial-type lettering or graphics. All vehicles kept on the Condominium Property shall be operational and in good condition. In the event of doubt or dispute as to whether a vehicle is prohibited by this Section, the good-faith determination of the Board of Directors shall be binding and conclusive.

16.10 Outdoor Grilling. Charcoal and gas grills are prohibited on balconies.

16.11 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 16 for good cause shown.

16.12 Changes in Permitted Uses. No amendments to this Section 16, any other provision of this Declaration governing the use of Units, the Common Elements, the Easement Areas or to any Rules and Regulations of the Association shall operate to prohibit the keeping of a pet, the parking of a vehicle or leasing or occupancy of a Unit where such vehicle, parking, leasing or occupancy was (i) permitted prior to the effectiveness of the amendment, (ii) being conducted in reliance on such permissibility and (iii) is continuing with the same pet, vehicle, lessee or occupant as existed prior to the effectiveness of the amendment. Likewise, no improvement made to or about any Unit (e.g., the installation of hurricane shutters) which was permitted at the time of its making shall be required to be removed by virtue of a change in the permissibility of such types of improvements.



16.13 Mitigation of Dampness and Humidity. No Unit Owner shall install, within his or her Unit, or upon the Common Elements or Association Property, non-breathable wall-coverings or low-permanence paints. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed whether or not occupying the Unit, shall (i) periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at 78°F or lower, (ii) not leave any windows or exterior doors open during period in which Unit is not occupied, (iii) keep all drains clear of stoppage and clogs, and (iv) periodically check, drain and clean drip trays in appliances and mechanical systems. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds and mycotoxins. The Developer does not make any representations or warranties regarding the existence of development of molds or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existed and/or development of same. In furtherance of the rights of the Association as set forth in Section 10.1(a) of the Declaration, in the event that the Association reasonably believes that these provisions are not being complied with, then, the Association shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Owner or any other party) to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Owner to the Association, with all such costs to be deemed Charges).

16.14 Satellite Dishes. Satellite dishes may be installed only in the areas designated by the Developer or the Association.

16.15 Basketball Hoops. No basketball hoops or basketball backboards shall be allowed in any common element or common area.

16.16 Exterior Improvements; Landscaping. Except as authorized by paragraph 11 of the Rules and Regulations attached to the ByLaws, and without limiting the generality of sections 9.1 or 16.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, terraces or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Association.

16.17 Floor Covering and Sound Insulation. Without limiting the generality of approval requirements set forth in Section 9 of this Declaration, no hard-surfaced floor coverings shall be installed in any Unit or its appurtenant Limited Common Elements unless the same is installed with an acoustical insulation or alternative sound absorbing backing meeting the requirements of the Board of Directors of the Association. A waterproofing membrane system approved by the Association must be installed under all terrace or balcony floor coverings.

17. Selling, Leasing and Mortgaging of Units. Units may be made subject to mortgages without restrictions, but sales and leases thereof shall be subject to the provisions of this Section 17.

17.1 Board Approval. There shall be no sale, lease or transfer of interest, legal or beneficial, nor transfer of possession of a Unit without the prior written approval of the Board of Directors of the Association. In the event a corporation, partnership, trust or other legal entity owns a Unit, the transfer of all or substantially all of the beneficial ownership of such entity shall be considered a transfer of interest in the Unit. In the event of leasing of Units, the Board shall have the right to require that a substantially uniform form of lease be used. No portion of a Unit (other than an entire Unit) may be rented. All leases shall provide (or be automatically deemed to provide, absent an express statement) that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association. No Unit lease shall be valid or approved for a term of less than thirty (30) days. Regardless of whether or not expressed in the applicable lease, the Unit Owner shall be jointly and severally liable to the Association for the acts and omissions of his or her tenant(s) which constitute a violation of, or non-compliance with, the provisions of this Declaration, the Articles, Bylaws and of any and all rules and regulations of the Association. The provisions of this Section 17.1 shall not apply to a transfer or purchase by Institutional First Mortgagees which acquire title as a result of their mortgage lien on the Unit, regardless of whether the title is acquired by deed



from the mortgagor or through foreclosure proceedings; nor shall this Section 17.1 require approval of a purchaser who acquires title to a Unit at a duly advertised public sale, with open bidding provided by law, including but not limited to an execution sale, a foreclosure sale, a judicial or a tax sale. No fee shall be charged by the Association in connection with the transfer or approval which is in excess of the expenditures reasonably required for such transfer, nor shall the expense exceed the fee permitted under the Act, from time to time, which at the time of recording of this Declaration is \$100.00. Any Unit Owner desiring to sell, lease or deliver possession of a Unit shall submit to the Board an application for approval, which application shall be in writing and in a form approved by the Association, and shall provide the name, address, and telephone number of the desired purchaser or tenant, the names of all intended occupants of the Unit, together with such other information as the Board may reasonably require. The Board must either approve or disapprove the request within ten (10) days after its receipt of the request or such supplemental information as it may reasonably require. If a sale is approved, a recordable Certificate of Approval shall be executed by the Association to be recorded at the expense of the purchaser. If a lease is approved, a written notice of approval will be provided by the Association. The Board's failure to give the Unit Owner the Certificate of Approval or written notice of approval, or written notice of disapproval within the ten (10) day period shall be deemed to be the Board's consent to the same. Notwithstanding the foregoing Unit 702 shall be available for daily rental in accordance with applicable zoning restrictions, the City of Clearwater Development Order and other laws, rules, regulations or approvals regulating the development of the Condominium.

17.2 Option of Association: In the event, any Unit Owner desires to sell, or lease his or her Unit, the Association shall have the option to purchase or lease any such Unit upon the same terms and conditions as are offered by the Unit Owner to any third party, subject to the following:

(a) Prior to the sale, rental, lease or transfer of any Unit to any person other than the transferor's spouse, a member of his or her immediate family, or a wholly owned corporation, the Unit Owner shall notify the Board in writing of the name and address of the person to whom the proposed sale, rental, lease or transfer is to be made, the terms and conditions of the sale or lease, and provided a copy of the purchase agreement or lease, with such other information as may be reasonably required by the Board.

(b) Within ten (10) days after its receipt of said notice and such supplemental information as it may reasonably require, the Board may exercise its right to purchase or lease, in writing, and shall promptly notify the Unit Owner of its decision.

(c) If the Board notifies the Unit Owner of its intent to exercise this option, it shall deliver to the Unit Owner the deposit required under the terms of the proposed sale or lease within the above mentioned ten (10) day period and shall then be obligated to close the sale or lease of the Residential Unit in accordance with the terms and conditions of the proposed sale or lease agreement previously furnished to it. If the Board furnishes the Unit Owner with written notice of its intent to exercise the option, but fails to deliver the required deposit within the ten (10) days period, such failure shall be deemed to be a consent to the sale or lease to the contract purchaser or tenant. Approval of the sale constitutes a waiver of the option.

i. If the Board timely notifies the Unit Owner of its exercise of this option and accompanies its notice with the required deposit, the Association's obligation to purchase the Unit as provided herein may be assigned by the Association to any member or members as shall be determined solely by the Association.

ii. Upon receipt of the deposit and the Board's notice of intent to exercise the option, the selling Unit Owner may either close the proposed sale of his or her Unit with the Association or a member or members to whom the Association's obligation to purchase the Unit has been assigned or withdraw the offer specified in its notice to the Board. If the Association or the member to whom the option has been assigned fails to close the proposed sale under the terms and conditions of said notice, the deposit previously delivered by the Association shall be retained by the Unit Owner as liquidated damages and the Unit Owner shall thereafter be free to consummate the transaction with the party who made the original bona fide offer.

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



17.4 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 17.

18. 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 the Declaration, the By-Laws, the Articles, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines or to sue in a court of law for damages.

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).

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

19. Termination of the Condominium- the Condominium may be terminated in the following manner:

19.1 Termination Because of Economic Waste or Impossibility. The condominium form of ownership may be terminated by a plan of termination approved by a majority of the voting interests of Unit Owners at a meeting duly called for such purpose when:

- (a) the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws and regulations exceeds the combined fair market value of all Units in the Condominium after completion of the repairs; or
- (b) it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

19.2 Termination upon Casualty. If the Condominium suffers "Major Damage" as defined in Section 14.1(b) (2) above, then the Condominium will be terminated unless within 60 days after the casualty, Owners representing a majority of the total voting interests of the Condominium agree in writing that the Condominium will be repaired and not terminated.

19.3 Optional Termination. Except as provided in Sections 19.1 and 19.2 above, the Condominium may be terminated at any time pursuant to a plan of termination approved in accordance with the requirements of Florida Statutes 718.117(3) as the same may be amended from time to time.

19.4 Plan of Termination/Ownership Interest upon Termination. A plan of termination adopted pursuant to this Section 19 of the Declaration shall comply with the requirements of the Condominium Act. Upon termination of the Condominium, the Condominium Property shall be owned in common by all the Unit Owners in the same undivided shares as each Owner had in the Common Elements pursuant to the provisions of this Declaration and the allocation of proceeds of the sale of the Condominium Property shall be apportioned between the Unit Owners based on the same undivided shares each Unit Owner had in the Common Elements pursuant to the provisions of this Declaration. Any lien shall be transferred to the undivided share in the Condominium Property



attributable to the Condominium Unit originally encumbered by the lien in its same priority.

19.5 Wind-up of Association Affairs. The termination of the Condominium does not, by itself, terminate the Association. The former Owners and their successors and assigns shall continue to be members of the Association, and the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles and Bylaws, for the purpose of winding up the affairs of the Association in accordance with this Section. When the affairs of the Association have been fully wound up, the Association shall be dissolved in accordance with the law.

19.6 Partition; Sale. If following a termination, at least sixty-seven percent (67%) of the Voting Interests agree to accept an offer for the sale of the property; the Board of Directors shall complete the transaction. If the Owners, have not authorized a sale of the former Condominium and Association Property within one (1) year after the recording of the Certificate of Termination, the Board of Directors may proceed to sell the property without agreement by the former Owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Board of Directors to beneficial Owners thereof, as their interests shall appear. At any time more than one (1) year following termination, the former Condominium Property and Association Property may be partitioned and sold upon the application of any Owner; provided, however, that no proceeding seeking partition may be filed if there is then pending a contract for the sale of the property, and during the pendency of any such partition proceeding, such proceeding shall be held in abeyance if a contract to sell the property is executed. If the property is sold pursuant to any such contract, then any pending partition proceeding shall be dismissed.

19.7 New Condominium. The termination of the Condominium does not bar creation of another Condominium including all or any portion of the same property.

19.8 Provisions Survive Termination. The provisions of this Section 19 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles, and shall have the power to levy Assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, as well as post-termination costs of maintaining the former Condominium Property and winding up the affairs of the Association, are Common Expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former Owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

## 20. Additional Rights of Mortgagees and Others.

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

20.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Condominium Property or the affected mortgaged Unit, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (iv) any proposed termination of the Condominium, and (v) any proposed action which requires the consent of a specified number of mortgage holders.

20.3 The approval of a majority of Institutional First Mortgagees shall be required to effect an amendment to the Declaration which materially alters, or effects the rights or interests of the mortgagees.

21. Disclaimer of Warranties. Except only for those warranties provided in Section 718.203, Florida Statutes (and then only to the extent applicable and not yet expired), to the maximum extent lawful Developer hereby disclaims any and all and each and every express or implied warranties, whether established by statutory, common, case law or otherwise, as to the design, construction, sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing an equipping of the Condominium Property, including, without limitation, any implied



warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute (other than those imposed by Section 718.203, Florida Statutes, and then only the extent applicable and not yet expired) and all other express and implied warranties of any kind or character. Developer has not given and the Unit Owner has not relied on or bargained for any such warranties. Each Unit Owner, by accepting a deed to a Unit, or other conveyance thereof, shall be deemed to represent and warrant to Developer that in deciding to acquire the Unit, the Unit Owner relied solely on such Unit Owner's independent inspection of the Unit, and the Condominium. The Unit Owner has not received nor relied on warranties and/or representations from Developer of any kind, other than expressly provided herein.

All Unit Owners, by virtue of their acceptance of title to their respective Units (whether from the Developer or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages. The foregoing shall also apply to any party claiming by, through or under a Unit Owner, including a tenant thereof.

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

Lastly, each Owner, by acceptance of a deed or other conveyance of a unit, understands and agrees that there are various methods for calculating the square footage of a Unit and that depending on a method of calculation, the quoted square footage of the Unit may vary. Additionally, as a result of in the field construction, other permitted changes to the Unit, and settling and shifting of improvements, actual square footage of a unit, its dimensions and ceiling heights may also be affected.

22. Construction Claims. In the event that there are any warranty, negligence or other claims against the Developer or any party having a right of contribution from, or being jointly and severally liable with, the Developer (the "Claims") relating to the design, construction, furnishing or equipping of the Condominium Property, same shall be instituted only upon compliance with Chapter 558, Florida Statutes, 2014.

23. Stormwater Management. "Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapter 62-330, F. A. C. (2014). "Agency" means the Southwest Florida Water Management District.

23.1 The storm water management system is owned by the Association. The Association shall be responsible for the maintenance, operation and repair of the storm water management system. Maintenance of the storm water management system shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other storm water management capabilities as permitted by the Agency. The shall be responsible for such maintenance and operation. Any repair or reconstruction of the storm water management system shall be as permitted or if modified as approved by the Agency.

23.2 Any amendment to this Declaration that alters the storm water management system, beyond maintenance in its original condition, including medication or preservation areas and the water management portions of the common areas, must have the prior approval of the Agency.



23.3 The Agency shall have the right to enforce, by any proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the storm water management system.

23.4 The Board of Directors of the Association are empowered to assess and collect any assessments for the operation and maintenance of storm water management system pursuant to the provisions of Section 12.2 hereof.

23.5 If wetland mitigation or monitoring is required by the environmental resource permit, the Association shall be responsible to carry out this obligation, successfully and meet all permit conditions associated with wetland mitigation, maintenance and monitoring.

23.6 Any proposed amendment of this Declaration affecting storm water management system (including environmental conservation areas and the water management portions of the common areas) must be submitted to the Agency for a determination of whether the amendment necessitates a modification of the environmental resource permit. If a modification is necessary, the Agency will so advise the permittee. The amendment affecting storm water management system may not be finalized until any necessary permit modification is approved by the Agency or the Association is advised that a modification is not necessary.

23.7 The stormwater management is or may be located on land that is designated common property on the plat, are located on land that is owned by the Association or are located on land that is subject to an easement in favor of the Association and their successors.

23.8 The Association shall operate, maintain and manage the storm water management system in a manner consistent with the requirements of applicable Agency permits and applicable Agency rules and shall assist in the enforcement of the restrictions and covenants contained therein. The Association shall have and collect assessments against members of the Association for the costs of maintenance and operation of the storm water management system.

23.9 The Association shall exist in perpetuity. However, if the Association ceases to exist, the Stormwater Management System will be transferred to and maintained by one of the entities identified in sections 12.3.1(a) through (f), of the South West Florida Water Management District's Applicant's Handbook Volume I, which has the powers listed in section 12.3.3(b)1 through 8, and the ability to accept responsibility for the operation and routine custodial maintenance of the stormwater management system described in section 12.3.3(d)1 or 2 prior to its dissolution.

23.10 All the Unit Owners must be members of the Association.

23.11 The Agency has the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association or Association to compel it to correct any outstanding problems with stormwater management system facilities or in mitigation or conservation areas under the responsibility or control of the Association.

23.12 The foregoing restrictions regarding Stormwater Management System shall be in effect for at least 25 years with automatic renewal periods thereafter.

#### 24. Additional Provisions

24.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws or the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed, postage prepaid, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

24.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall



be binding upon all parties unless wholly unreasonable. An opinion of legal counsel to the Association or the legal counsel having drafted this Declaration, that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

24.3 Mortgagees. Anything herein to the contrary notwithstanding 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.

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

24.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted 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.

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

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

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

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

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

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

24.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way, define or limit the scope of the particular documents 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 \_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_.

Signed in the presence of:

AVALON LAND HOLDINGS, LLC, a Florida limited liability company

By: \_\_\_\_\_  
Kalpesh Patel, Its Manager

\_\_\_\_\_  
Witness #1

\_\_\_\_\_  
Print Name #1

\_\_\_\_\_  
Witness #2

\_\_\_\_\_  
Print Name #2

STATE OF FLORIDA    )  
COUNTY OF PINELLAS)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Kalpesh Patel as Manager of AVALON LAND HOLDINGS, LLC, a Florida limited liability company, on behalf of the corporation. He is personally known to me.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

[SEAL]

TABLE OF EXHIBITS:

Exhibit "1" Legal Description and Plot Plans

Exhibit "2" Articles of Incorporation

Exhibit "3" Bylaws of Association

Exhibit "4" Percentage Ownership and Shares

Exhibit "5" Guaranteed Regular Assessments