

This Instrument Prepared By
and Return to:

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**DECLARATION OF CONDOMINIUM
OF
BISHOP'S COURT AT WINDSOR PARKE, A CONDOMINIUM**

RI Windsor, Ltd., a Florida limited partnership (hereinafter called the "Developer"), does hereby declare as follows:

1. **Introduction and Submission.**

1.1 **The Land.** The Developer owns the fee title to that certain land located in the City of Jacksonville, Duval County, Florida, as more particularly described in **Exhibit "1"** attached hereto and made a part hereof (the "Land").

1.2 **Submission Statement.** The Developer hereby submits the Land and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, now or hereafter situated on or within the Land - but excluding all public and private (e.g., cable television) utility installations therein or thereon - to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium (hereinafter defined) or be subject to the jurisdiction of the Association (hereinafter defined), the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided.

1.3 **Name.** The name by which this condominium is to be identified is BISHOP'S COURT AT WINDSOR PARKE, 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 Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as amended from time to time.
- 2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association appended hereto as **Exhibit "2"** and made a part hereof, as amended from time to time.
- 2.3 "Assessment" or "Assessments" means a share of the funds which are required for the payment of Common Expenses which from time to time is assessed against the Unit Owners. Assessments also include any annual or supplemental assessments or charges and any special assessments for capital improvements or major repair imposed by the Master Association pursuant to the Master Declaration and assessed against the Unit Owners.
- 2.4 "Association" or "Condominium Association" means Bishop's Court at Windsor Parke Condominium Association, Inc., a Florida corporation not-for-profit, the sole entity responsible for the operation of the Condominium, in accordance with the terms of this Declaration and the Act.
- 2.5 "Association Property" means the property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.6 "Board" or "Board of Directors" means the board of directors, from time to time, of the Association which is responsible for the administration of the Association.
- 2.7 "Building" and "Buildings" means the structure(s) located or to be located on the Condominium Property in which the Units, Common Elements and Limited Common Elements are located.
- 2.8 "By-Laws" mean the By-Laws of the Association, appended hereto as **Exhibit "3"** and made a part hereof, as amended from time to time.
- 2.9 "Club Property" means and refers to any portion of the property subject to the Master Declaration that is devoted to the use as a golf course, clubhouse, and for similar recreational uses, including buffer areas of the golf course, parking lots and the like associated with such facilities, the use of which is conditioned upon membership in, or the payment of use charges or fees, to the club entity operating such facilities.
- 2.10 "Common Areas" means and refers to any interest in real property from time to time owned by the Master Association for the common use, benefit and enjoyment of the owners of property subject to the Master Declaration, including the Condominium Association and Unit Owners, and all improvements, fixtures and personal property located thereon, and all appurtenant easements. The Common Area shall not include (i) any portion of the property subject to the Master Declaration that is devoted to the use as a golf course, clubhouse, and for similar recreational uses, including buffer areas of the golf course, parking lots

and the like associated with such facilities, the use of which is conditioned upon membership in, or the payment of use charges or fees, to the club entity operating such facilities; and (ii) any portion of the property subject to the Master Declaration which has not been platted into residential lots or upon which no residential dwelling units, commercial units or hotel units have been constructed.

2.11 "Common Elements" means and includes the portions of the Condominium Property which are not included in the Units, including, without limitation, the following items:

- (a) Easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of Utility Services and/or heating, cooling, ventilation or other services to Units or to the Common Elements, together with related property and installations;
- (b) An easement of support in every portion of a Unit which contributes to the support of a Building, other Units and/or any part of the Common Elements;
- (c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements; and
- (d) Any other parts of the Condominium Property designated as Common Elements in this Declaration or the Act.

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

2.13 "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.

- 2.14 "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.
- 2.15 "Condominium Property" means the Land, Improvements and personal property described in subsection 1.2 hereof, subject to the limitations thereof and exclusions therefrom that are subjected to condominium ownership under this Declaration, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.
- 2.16 "County" means the County of Duval, State of Florida.
- 2.17 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as the same may be amended from time to time.
- 2.18 "Developer" means RI Windsor, Ltd., a Florida limited partnership, its successors and such of its assigns as to which the rights of the Developer hereunder are specifically assigned by an instrument executed and recorded by the Developer. The Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium Property. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. The rights of the Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board, or the Association upon the transfer of control of the Association.
- 2.19 "Division" means the State of Florida Division of Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation.
- 2.20 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located or are to be constructed on the Land, including, but not limited to, the Buildings.
- 2.21 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, agency of the United States Government, mortgage banker, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any other lender generally recognized as an institutional-type 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 by which greater than one-half (1/2) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are encumbered.

- 2.22 “Limited Common Elements” means those Common Elements of which the uses are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.23 “Master Association” means the Windsor Parke Property Owners Association, Inc., a Florida not-for-profit corporation.
- 2.24 “Master Declaration” means the Declaration of Covenants and Restrictions for Windsor Parke recorded in Official Records Book 7479, Page 1141, as amended by the First Amendment of the Declaration of Covenants and Restrictions for Windsor Parke as recorded in Official Records Book 9533, Page 1151, all in the Public Records of Duval County, Florida, as the same may be further amended from time to time.
- 2.25 “Master Developer” means JTB Land Development, Inc., a Florida corporation.
- 2.26 “Master Plan” means and refers to the conceptual plan for the future development of Windsor Parke and adjacent properties maintained by the Master Developer from time to time, including the plan of development described in the PUD. All references to the Master Plan shall be references to the latest revisions thereof.
- 2.27 “Primary Institutional First Mortgagee” means the Institutional First Mortgagee which owns, at any time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee. Notwithstanding the foregoing, ARCS Commercial Mortgage Co., L.P., a California limited partnership (“ARCS”) is hereby designated the Primary Institutional First Mortgagee until such time as the recorded Mortgage in favor of ARCS is satisfied of record in the Public Records of Duval County, Florida.
- 2.28 “PUD” means and refers to the Planned Unit Development Ordinance Number 86-749-660 and 86-1220-409 enacted by the City Council for the City of Jacksonville, Duval County, Florida, as the same may be amended from time to time.
- 2.29 “Residential Limited Common Elements” shall mean all recreational facilities and amenities designated for the exclusive use of Residential Unit Owners, including without limitation, the clubhouse, swimming pools, spas, pool decks, cabana and kiosk. “Common Elements” shall include Residential Limited Common Elements unless specified otherwise or context does not so permit.
- 2.30 “Residential Limited Common Expense” shall mean all expenses incurred by the Association for the operation, maintenance, repair or replacement of Residential Limited Common Elements, reserves required by the Association (to the extent not properly waived) or as established by the Association with respect to Residential Limited Common Elements.

- 2.31 "Special Assessment" means any assessment levied against Unit Owners other than the Assessment required by a budget adopted annually.
- 2.32 "Unit" means a part of the Condominium Property which is subject to exclusive ownership and is used or intended to be used for residential purposes.
- 2.33 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.
- 2.34 "Utility Service" means and is intended to include, but is not limited to, electric power, gas, telephone, hot and cold water, heating, air conditioning ventilation systems, garbage and sewage disposal.
- 2.35 "Windsor Parke" means and refers to the multi-use commercial, residential and recreational development contemplated by the Master Developer from time to time of the real property described in the PUD and the Master Plan and subject to the Master Declaration.

3. **Description of Condominium.**

- 3.1 **Identification of Units.** The Land has constructed thereon residential structures consisting of thirty-five (35) buildings ("Buildings"), having a total of three hundred twenty-four (324) residential units ("Units") and a total of five hundred fifty-seven (557) outside parking spaces ("Parking Spaces") and seventy-three (73) single car garages ("Parking Garages"). Each Unit is identified by a separate numerical designation. The designation of each Unit is set forth on **Exhibit "4"** attached hereto and made a part hereof. **Exhibit "4"** consists of a survey of the Land, 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 "4"**, 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 right to use such portion of the Common Elements as may be provided for in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration. The construction of the Buildings which constitute the Condominium has been substantially completed as of the time of the filing of this Declaration.
- 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 structural ceiling.
 - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior 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 and doors, the Unit's boundaries shall be extended to include the doors, windows and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent material, and all framing and casings therefore; provided, however, that the exterior surface of doors facing Common Elements shall not be included in the boundaries of the Unit and shall therefore be Common Elements.
- (d) Exceptions. In cases not specifically covered above, or in any case of a conflict or ambiguity, the survey of the Units set forth as **Exhibit "4"** hereto shall control in determining the boundaries of a Unit, except that the provisions of subsection 3.2(c) above shall control, unless specifically depicted and labeled otherwise on such survey.

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

- (a) Miscellaneous Areas, Equipment. Any area upon which is located equipment or fixtures (including air conditioning compressors) which are for the exclusive use of any particular Unit or Units and the equipment or fixtures themselves shall be Limited Common Elements of such Unit(s).
- (b) Patios, Balconies, Terraces, and Lanais appurtenant to Units. Any patio, balcony, terrace and/or lanai (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a 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 a part of the Common Expenses. Each Owner shall, however, be responsible 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 patio, balcony terrace and/or lanai. Notwithstanding anything contained herein to the contrary, in order to assure a uniform appearance within the Recreation facilities, the Association shall be responsible for the repair and maintenance of the lanais within the Recreation facilities, including, without limitation, any floor coverings thereon, with the costs thereof being Residential Limited Common Expenses. A Unit Owner using a patio, balcony, terrace and/or lanai or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom.

- (c) Parking Spaces. The Developer, in its sole discretion, reserves the right to designate and assign, with or without consideration, all automobile parking spaces situated on the Condominium Property, as shown on **Exhibit "4"** hereof, as Limited Common Elements for the exclusive use by Unit Owners of specified Units as long as it holds any Unit for sale in the ordinary course of business. Thereafter, any remaining parking spaces not delegated or assigned by Developer shall be deemed to be Common Elements under the control of the Association. After assignment to a Unit, each parking space shall pass as Limited Common Elements of the Unit to which it is assigned. No Unit Owner shall have or acquire any fee simple title to the assigned parking space at any time. To the extent available, the Developer may assign or sublease additional parking spaces to Unit Owners. Upon payment by the Unit Owners of such price as Developer deems appropriate, in its absolute discretion, the Developer shall assign or sublease an additional space or spaces to a Unit and once so assigned or subleased, said space or spaces shall become a Limited Common Element appurtenant to such Unit. All such assignments of parking spaces shall be made by a non-recordable instrument in writing ("Parking Space Designation"). The Developer will cause the Association to record each such Parking Space Designation in the records of the Association and the Unit Owner to which such use has been delegated shall have the exclusive right to the use thereof. Any Unit Owner acquiring an additional parking space shall be required to pay a monthly fee for use of the additional parking spaces. Parking Space Designations shall be executed by Developer alone, the President of the Association alone, or by any two (2) officers of the Association. There shall be no recordation in the County of the transfer of a parking space. No assignment or transfer of title in any manner whatsoever to use a parking space constituting Limited Common Elements may be made or accomplished separately from the passing of title to the Unit to which it is appurtenant, except that the same may be separately assigned by the Developer to the Condominium Association

and thereafter maintained as part of the Common Elements or reassigned by the Condominium Association, in its sole discretion, to another Unit Owner as a Limited Common Element. The Association shall assess all Unit Owners for the maintenance of any parking spaces maintained as part of Common Elements for Unit Owners, their tenants and guests, based on each Unit Owner's percentage share of Common Expenses pursuant to the budget. For good cause, or when compelled by state statute or city or county ordinance or pursuant to the Declaration, the Association shall have the right and authority to reassign parking spaces from time to time upon written notice to the affected Unit Owners. Notwithstanding the foregoing, a Unit Owner who has acquired additional parking spaces from the Developer or Association shall have the right, at any time after the Developer has assigned all additional automobile parking spaces to Unit Owners, to transfer, assign or sublease any of its parking spaces to another Unit Owner; provided, however, that each Unit shall have a minimum of one (1) parking space appurtenant thereto at all times. Upon a reassignment of a parking space by an Owner, such Owner shall promptly provide written evidence of same to the Association.

- (d) Parking Garages. The Developer, in its sole discretion, reserves the right to assign, with or without consideration, all automobile parking garages situated on the Condominium Property, as shown on **Exhibit "4"** hereof, as Limited Common Elements for the exclusive use by Unit Owners of specified Units as long as it holds any Unit for sale in the ordinary course of business. Thereafter, any remaining parking garages not so designated and assigned by Developer, shall be deemed to be Common Elements under the control of the Association. After assignment to a Unit, each parking garage shall pass as a Limited Common Element of the Unit. No Unit Owner shall have or acquire any fee simple title to the parking garage at any time except as part of the Unit Owner's undivided share in the Common Elements. Upon payment by the Unit Owners of such price as Developer may deem appropriate, in its absolute discretion, the Developer shall assign such parking garage or garages to a Unit and once so assigned, said garage or garages shall become a Limited Common Element appurtenant to such Unit. All such assignments of parking garages shall be made by a non-recordable instrument in writing ("Parking Garage Assignment"). The Association shall maintain a book (the "Association Book") for purposes of recording the current assignee of each parking garage. The Developer will cause the Association to record each such Parking Garage Assignment in the Association Book and the Unit Owner to which such use is assigned shall have the exclusive right to the use thereof. All fees collected by Developer for assigning parking garages, if any, shall be retained by Developer and shall not constitute income or revenue of the Association. Parking Garage Assignments shall be executed by Developer alone, the President of the Association alone, or by any two officers of the Association. There shall be no recordation in the County of the transfer of a parking garage. No assignment or transfer of

title in any manner whatsoever to use a parking garage constituting Limited Common Elements may be made or accomplished separate from the passing of title to the Unit to which it is appurtenant, except that garages may be separately assigned by the Developer to the Condominium Association and thereafter maintained as part of the Common Elements or reassigned by the Condominium Association, in its sole discretion, to another Unit Owner as a Limited Common Element. Notwithstanding the foregoing, a Unit Owner who has acquired a parking garage from the Developer or Association shall have the right, at any time after Developer has assigned all additional automobile parking garages situated on the Condominium Property to Unit Owners, to transfer or assign its parking garage to another Unit Owner. The assigning Unit Owner shall have the right to retain all consideration paid by the Unit Owner for the assignment of the parking garage. Upon a reassignment of a parking garage by an Owner, such Owner shall promptly provide written evidence of same to the Association. The maintenance of the interior of any garage so assigned, as well as the insurance of its contents and any mechanical or automatic garage door opener, shall be the sole responsibility of the Unit Owner to which it is assigned. Any required structural or exterior repairs, including the garage door, required thereto shall be the responsibility of the Association and the cost thereof shall be deemed a Common Expense.

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

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

- (a) Support. Each Unit, Building and the Improvements 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. Non-exclusive easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, and other services and drainage in order to serve the Condominium and each Unit. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Association shall have an irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any of the pipes, wires, ducts, vents, cables, conduits and other utility, cable television,

communications and security systems, service and drainage facilities which are Common Elements and any other Common Elements contained in the Unit or elsewhere in the Condominium Property, or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day's notice, which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted.

- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit (or Limited Common Element appurtenant thereto); (b) any Unit (or Limited Common Element appurtenant thereto) 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 the 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 same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement for ingress and egress in favor of each Unit Owner and resident, and his or her guests, lessees and invitees, and mortgagees, shall exist for pedestrian traffic on, over, through and across, sidewalks, accessways, streets, paths, walks, hallways, and other portions of the Common Elements (not including Limited Common Elements) and Association Property as from time to time may be intended and designated for such purpose and use and as may be necessary to provide reasonable access to the public ways; and for vehicular traffic on, over, through and across, and parking on, such portions of the Common Elements as from time to time may be paved and intended for such purpose and use and as may be necessary to provide reasonable access to the public ways. 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 affiliates, and its or their designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any addition or renovation thereto, or any Improvements or Units located or to be located thereon, and to repair, replace and maintain, without any obligation, the Condominium Property or any part thereof when the Association fails to do so.
- (f) Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors and employees) to perform roof repairs and/or replacements, repairs, maintenance, and/or alterations of rooftop mechanical equipment, to perform window washing and/or other exterior maintenance and/or painting of the Building.
- (g) Sales and Leasing Activity. For as long as the Developer offers 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 or Association Property as model Units and sales and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units, to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease, to be exempt from any restrictions on the type of vehicle allowed to park on Condominium Property if the vehicle is engaged in any activity relating to construction, maintenance, or marketing of Units, and to take any and all actions which, in the Developer's opinion, may be helpful for selling or leasing Units or for promoting the Condominium and its operations generally.
- (h) Additional Easements. The Developer, for so long as it holds 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 modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the 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 of 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. In addition, the Board of Directors has the authority, without the joinder of any Unit Owner, to grant, modify, or move any easement if the easement constitutes part of or crosses the Common Elements or Association Property.

- (i) Easement For Services. The Association and its agents, contractors, designees, employees, successors and assigns shall have (i) a non-exclusive easement for access and use of all the Common Elements, including, but not limited to, those customarily used for pedestrian and vehicular traffic and also including driveways, parking ramps, walkways, halls and corridors, balconies, terraces, janitorial closets, mechanical/electrical rooms, trash rooms, and storage rooms for the purpose of cleaning, repairing, maintaining and improving the Building; and (ii) an 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 Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units. In addition, the Association (and its agents, contractors, designees, successors and assigns) shall have an irrevocable right of access to each Unit for the purpose of obtaining hurricane shutters stored therein and for the purpose of installing such hurricane shutters in accordance with the provisions of Section 7.4 hereof, if applicable.

- (j) Access by Master Association. The Master Association has a right of entry on to the Condominium Property (but not in any residential Unit located thereon) to the extent reasonably necessary to exercise any right granted, or to discharge any duty imposed by the Master Declaration, or for any other purpose reasonably related to the Master Association's performance of any duty imposed, or exercise of any right granted to the Master Association.

- (k) Golf Easements. Pursuant to Article VIII of the Master Declaration, Windsor Parke Golf Limited Partnership, a Florida limited partnership, its designees, successors and assigns and the Windsor Parke Golf Club and its members, guests and invitees shall have an easement over the Condominium Property for the purpose of doing any and every act or thing necessary and proper in connection with the playing of the game of golf on the Club Property and maintaining the Club Property. These easements include, without limitation, the unintentional hitting of golf balls over and on the Condominium Property, the recovery of golf balls from the Condominium Property, including any parcel therein, the use of necessary and usual equipment upon such golf course, and the noise level associated therewith, together with all normal and usual activities

associated with playing golf and maintaining and operating a golf course and club.

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

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

5.1 **Fractional Ownership and Shares.** The undivided fractional ownership interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses appurtenant to each Unit are set forth in **Exhibit "5"** attached hereto and made a part hereof, which shall be based upon the total square footage of each Unit in uniform relationship to the total square footage of all other Units in the Condominium.

5.2 **Voting.** Each Unit Owner shall be a member of the Association and shall be entitled to one (1) vote in the Association as to matters on which a vote by Owners is required as provided for in the Condominium documents and the Act. If a Unit Owner owns more than one Unit, Unit Owner shall be entitled to one (1) vote for each Unit owned.

5.3 **Voting by an Entity or Multiple Owners.** If a Unit is owned by an entity or more than one individual, the properly designated officers, principals, or partners of the entity or the multiple owners shall designate a voting representative by providing written notice of the name of the individual designated to vote to the Secretary of the Association.

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

6.1 **By the Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the Unit Owners of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is

delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, approvals must be by an affirmative vote of (a) Unit Owners of not less than 66-2/3% of the Units in the Condominium and by not less than 66-2/3% of the Board of Directors of the Association; or (b) Unit Owners of not less than 75% of the Units in the Condominium.

6.2 Amendments Prior to Turnover. During the period of Developer control, the Declaration, Articles of Incorporation or the By-Laws of the Association may be amended to correct an omission or error, or to effect any other amendment by obtaining approval of a majority of the voting interests of the Board of Directors of the Association except that this procedure for amendment may not be used if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless all of the affected Unit Owners consent in writing.

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, executed either by the President of the Association or a majority of the members of the Board of Directors of the Association, which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County. 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 and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision ... for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

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 proportion or percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) of the Unit(s) so affected, and all record owners of liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by not less than 66-2/3% of the voting interests of Unit Owners in the Condominium. No amendment may be adopted which would terminate, limit, eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the

Developer or mortgagees of Units without the prior written consent of said Developer and mortgagees in each instance; nor shall an amendment make any change in the Sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless 66-2/3% of the Institutional First Mortgagees shall join in the amendment. Whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld or delayed. The provisions of subsections 3.4(h), 3.4(i), 6.4, 8.2(b), 8.4, 15.16, 21 and 22.13 of this Declaration may not be amended in any manner without the prior written consent of Developer, whose consent may be withheld in Developer's sole discretion.

7. **Maintenance and Repairs.**

- 7.1 **Units.** All maintenance, repairs and replacements of, in or to any Unit, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance, repair and replacement of hurricane screens and shutters, windows, window coverings, interior nonstructural walls, 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 otherwise expressly provided to the contrary herein. Such maintenance and repair obligation shall include, but not be limited to, the immediate repair of any leaks affecting the Unit and any further action which is necessary to stop the growth of mold and/or mildew which might affect the Unit.
- 7.2 **Common Elements and Association Property.** 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 by specific Unit Owners, in which case such cost shall be paid solely by such Unit Owners. Such maintenance and repair obligation shall include, but not be limited to, the immediate repair of any leaks affecting the Common Elements and any further action which is necessary to stop the growth of mold and/or mildew which might affect the Common Elements.
- 7.3 **Specific Unit Owner Responsibility.** The obligation to maintain and repair any equipment and fixtures or other items of personal property which are contained within a particular Unit or Units (and Limited Common Elements appurtenant thereto) 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 Unit. To the extent any Limited Common Element affects

more than one unit, responsibility therefore shall be shared equally by the Owner's of the affected Units.

- 7.4 Hurricane Shutters. The Association shall establish specifications pertaining to hurricane shutters, from time-to-time, to comply with applicable building codes. The Association shall also establish criteria regarding permitted color, styles and material of shutters. Any changes to the hurricane shutters shall be approved, in writing, by the Association before any installation thereof. If hurricane shutters which do not conform with the specifications of the Association are installed, the offending Unit Owner shall remove and replace those hurricane shutters with conforming hurricane shutters at the Unit Owner's sole expense. If hurricane shutters are installed, such shutters shall become part of a Unit and shall not constitute a Common Element, Limited Common Element or Association Property. No hurricane shutters shall be installed unless and until a storm watch or storm warning is announced by the National Weather Center or other recognized weather forecaster. The Association shall notify Unit Owners by posting a notice on the Condominium Property when it is permissible to install hurricane shutters. The Association shall have the right but no obligation to enter into an agreement for services to install hurricane shutters on the Units and all such expenses shall be deemed part of the Common Expenses. Any Unit Owner who plans to be absent during all or any portion of the hurricane season must prepare his or her Unit for severe weather by removing all furniture, potted plants, or other movable objects, if any, from exterior surfaces of the Unit and Limited Common Elements appurtenant thereto. Any Unit Owners absent during all or any portion of the hurricane season shall also make his or her Unit accessible to the Association for the purpose of the Association obtaining the hurricane shutters from storage and for the purpose of the Association installing the hurricane shutters on the Unit, if the Association so elects. The Unit Owner shall also prepare his or her Unit prior to departure by designating a responsible firm or individual to care for his or her Unit should a hurricane or other major weather event threaten the Unit or should the Unit suffer hurricane damage. Any such firm or individual designated to care for a Unit shall be subject to the approval of the Association. The Association may require that the contact information for such firm or individual be provided to the Association prior to the Unit Owner's departure.

8. Additions, Alterations or Improvements.

- 8.1 By the Association. Whenever in the judgment of the Board of Directors, the Common Elements or the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of 10% of the then annual budget of the Association, 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 the Association Property, or any part of either, costing

in the aggregate no more than 10% of the then annual budget of the Association may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses or by Special Assessment.

8.2 By the Unit Owner.

- (a) Consents and Permits. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, or any Limited Common Element, without the prior written consent of the Board of Directors. The Board of Directors shall have the obligation to answer, in writing, any written request by such a Unit Owner for approval of such an addition, alteration or improvement within sixty (60) 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 of Director's consent. The Board of Directors may condition the approval in any manner, including without limitation, retaining approval rights of the contractor to perform the work. No Unit Owner shall make any addition, alteration or improvement in or to the interior of the Unit without obtaining all appropriate governmental permits which are necessary for such work and provided that such alteration, addition or improvement will not adversely affect the structural integrity of the Buildings or cause any damage to or adversely affect the Common Elements, Limited Common Elements or other Units and/or the Condominium Property. 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. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance, or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting

plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer and/or the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each such Owner (including the successors and assigns) having plans reviewed hereunder agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels) arising out of any review of plans by the Association hereunder.

- (b) Weight and Sound Restrictions. Unless installed by the Developer or otherwise first approved by the Board of Directors, hard and/or heavy surface floor coverings, such as tile, marble, wood and the like must be submitted to and approved, in writing, by the Board of Directors, which approval may be conditioned upon the use of appropriate soundproofing materials under such floor coverings, and must meet applicable structural requirements. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board of Directors, and be compatible with the overall structural design of the Buildings. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. The Board will have the right to specify the exact material to be installed on balconies and the Board reserves the right to restrict any or all floor coverings on balconies of Units. These use guidelines are consistent with good design practices for waterproofing and structural design. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. APPLICABLE WARRANTIES OF THE DEVELOPER, IF ANY, SHALL BE VOIDED BY VIOLATIONS OF THESE RESTRICTIONS AND REQUIREMENTS. FURTHER, EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF THEIR UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND TRANSMISSION IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY UNITS AND/OR MECHANICAL EQUIPMENT CAN OFTEN BE HEARD IN ANOTHER UNIT. THE DEVELOPER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND TRANSMISSION BETWEEN AND AMONG UNITS AND THE OTHER PORTIONS OF THE CONDOMINIUM PROPERTY, AND EACH UNIT OWNER

HEREBY WAIVES AND EXPRESSLY RELEASES ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND TRANSMISSION.

- (c) Construction by Unit Owner. Any Unit Owner making additions, alterations or improvements as provided in this Section 8.2 shall commence any such additions, alterations or improvements within three (3) months after approval by the Board of Directors and shall diligently proceed to complete such work no later than three (3) months after commencement, unless such time period is extended by the Board of Directors. In the event that the Unit Owner proceeds with any alterations, additions or improvements without the approval of the Board of Directors, then upon written notice from the Association, the Unit Owner shall remove any non-conforming improvements promptly upon receipt of such notice, at the sole cost and expense of the Unit Owner. In the event that the Unit Owner fails to remove such non-conforming alterations in accordance with the notice received from the Association, the Association shall have the right to enter the Unit and remove such non-conforming alterations and all costs and expenses so incurred by the Association shall be promptly paid by the Unit Owner who has undertaken such non-conforming alterations, or if such expenses have been paid by the Association, the Unit Owner shall reimburse the Association within ten (10) days after receipt of an invoice for such work. Any unpaid expenses due the Association shall be added to any Assessments due from the non-conforming Unit Owner.

- 8.3 By the Developer. The foregoing restrictions of this Section 8 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, (i) to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements); (ii) expand, alter or add to all or any part of the recreational facilities; (iii) change the layout or number of rooms in any Developer-owned Units; (iv) add to or modify recreational facilities; and (v) change the size and/or number of Developer-owned Units by combining separate Developer-owned Units into one (1) or more Units, or otherwise (the foregoing combining may be either horizontal or vertical combining of units); provided, however, there shall be no change to the configuration or size of any Unit in any material fashion, material alteration or modification of the appurtenances to any Unit or change to the percentage interest in the Common Elements and share of Common Surplus and Common Expenses of any Unit unless the record owner of the affected Unit(s) and all record owners of mortgages or other liens on the affected Unit(s) shall join in the execution of the amendment and unless a majority of the record owners of all other Units approve the amendment. If the Developer shall make any changes in Units, as provided in this subsection, such changes shall be

reflected by an amendment to this Declaration with a survey attached reflecting such authorized alteration of Units, and said amendment need only be executed and acknowledged by the Developer and any holders of institutional mortgages encumbering the said altered Units unless otherwise required by the preceding sentence or by Section 718.110(4), Florida Statutes. The survey shall be certified in the manner required by the Act.

9. **Operation of the Condominium by the Association; Powers and Duties.**

9.1 **Powers and Duties.** The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and By-Laws of the Association (respectively, **Exhibits "2" and "3"** annexed hereto and made a part hereof), as amended from time to time. In addition, the Association shall have (i) all the common law and statutory powers of a corporation not for profit and for profit under the laws of Florida that are not in conflict with the provisions of the Articles, the Declaration, the By-Laws or the Act; (ii) the powers and duties set forth in the Act, and (iii) all powers and duties granted to or imposed upon it by this Declaration, including without limitation:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours 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 this Declaration or at any time as necessary to prevent damage to the Common Elements or to a Unit or Units.
- (b) The power to acquire title to property or to otherwise hold, convey, lease and mortgage Association Property for the use and benefit of its members upon a vote of 75% of all the voting interests of the Units. The Association shall have the right to grant, modify or move easements which are a part of or cross Association Property as long as the easement created in subsection 3.4(h) is not modified.
- (c) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property.
- (d) The duty to maintain accounting records according to good accounting practices, which shall be open for inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- (e) The power to contract for the management and maintenance of the Condominium Property and to authorize a 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, and the

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 Articles, the By-Laws, and this Declaration and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (f) 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, provided further that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.
- (g) The power to adopt and amend Rules and Regulations concerning the details of the operation and use of the Units and the Condominium Property.
- (h) The power to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit Owner by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.

9.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association is not responsible for and is not the insurer or guarantor of the health, safety or welfare of Unit Owners, their families, guests, agents or contractors. Further, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property to be maintained and repaired by the Association, or caused by the elements, other Unit Owners or third parties. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners. The Association shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried

insurance with any particular deductible amount) for any particular matter where (i) such insurance is not required hereby or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

- 9.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit.
- 9.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 9.5 Acts of the Association. Unless the approval or action of Unit Owners and/or a certain specific percentage of the Board of Directors of the Association is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, 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.
- 9.6 Effect on Developer. If the Developer holds any Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer:
- (a) Assessment of the Developer as a Unit Owner for capital improvements until the date of expiration of the Guarantee Period (hereinafter defined); and
 - (b) Any action by the Association that would be detrimental to the sales of Units by the Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.
10. **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 and Residential Limited Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the

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 attorneys' fees or costs. The notice must be given by personal delivery of the notice to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given and the court shall proceed with the foreclosure action and may award attorneys' 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.

11.5 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court, in its discretion, may require the Unit Owner to pay a reasonable rental amount for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

11.6 Institutional First Mortgagee. An Institutional First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. The liability of an Institutional First Mortgagee, or its successor or assignees, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's acquisition of title is limited to the lesser of:

- (a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
- (b) One percent (1%) of the original mortgage debt.

If any unpaid share of Common Expenses or Assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are Common Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns. An Institutional First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure or deed in lieu of foreclosure may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. As to a

Unit acquired by foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the Institutional First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by that Institutional First Mortgagee.

- 11.7 Guarantee of Assessments by Developer. Developer guarantees to each Unit Owner that for the period commencing on the date of recording of the Declaration until one (1) month following the date on which the closing on the purchase and sale of the first Unit in the Condominium occurs (the "Guarantee Period"), the monthly Assessment for Common Expenses for a Unit will not exceed the monthly Assessment amount for that particular Unit as expressly stated in the prospectus for the Condominium for Units sold by the Developer. During the Guarantee Period, the Developer shall be excused from the payment of the Developer's share of the Common Expenses for Units owned by the Developer; provided, however, if, at any time during the Guarantee Period, the funds collected from Unit Owner Assessments at the guaranteed level are not sufficient to provide payment, on a timely basis, of all Common Expenses, including the full funding of the reserves, unless the funding of reserves has been properly waived, the Developer shall advance money to the Association at the time such payments are due so as to eliminate any deficit in the funds. For purposes of this subsection, income to the Association other than Assessments (as defined herein and in the Act) shall not be taken into account when determining the deficits to be funded by the Developer. The Developer shall have the option of extending the Guarantee Period by twenty-four (24) or more extensions of one (1) month each, in Developer's sole discretion, on the same terms, or paying the share of Common Expenses and Assessments attributable to the Units it is then offering for sale. No funds receivable from Unit purchasers or Unit Owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for Common Expenses as provided in this Declaration and disclosed in the Estimated Operating Budget of the Association, shall be used for the payment of Common Expenses during any period in which the Developer is excused from payment of Assessments. This restriction shall apply to funds including, but not limited to, capital contributions or start-up funds collected from Unit purchasers at closing.

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

- 11.8 Certificate of Unpaid Assessments. Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments and other moneys owed to the Association by the Unit Owner with respect to his or her Unit have been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 11.9 Installments. Regular Assessments may be collected monthly or quarterly, in advance, at the option of the Association from time to time. Initially, Assessments will be collected monthly.
- 11.10 Assessments Payable to the Master Association. Pursuant to Section 2.11 of this Declaration, the Common Expenses shall include any assessments payable to the Master Association. The Association shall collect from each Unit Owner their pro-rata share of assessments payable to the Master Association and shall remit same to the Master Association. The Association is responsible for payment to the Master Association of the total amount of assessments due to the Master Association when such assessments are due regardless of whether the Association has collected the applicable pro-rata share of such assessments from each Unit Owner. However, the failure of a Unit Owner to make payment(s) of the applicable pro-rata share of the assessment(s) when due to the Association shall not divest the Master Association of any lien rights against such Unit Owner's Unit. The assessments levied by the Master Association shall be collected in advance on an annual or quarterly basis in accordance with Article V of the Master Declaration.
12. **Insurance.** Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 12.1 Purchase, Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property and Association Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) Mortgagees. No policy or insurance coverage shall impair the security of the Primary Institutional First Mortgagee without its consent.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee, hereinafter defined in Section 12.11, (if appointed), and all

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

- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their respective Units (or within any Limited Common Elements appurtenant thereto), including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

12.2 Coverage. The Association shall use its best efforts to maintain insurance covering the following:

- (a) Casualty. The Building (including the Limited Common Elements and the Common Elements) and all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), but excluding all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and also excluding hurricane shutters, Unit floor coverings, wall coverings, or ceiling coverings and the following equipment if it is located within a Unit (or Limited Common Elements appurtenant thereto) and such equipment as the Unit Owner is required to repair or replace; electrical fixtures, appliances, air conditioner or heating equipment, water heaters, built-in cabinets, personal property, fixture, appliance or equipment permitted to be excluded from the Condominium's insurance policy pursuant to the Act, as same may be amended or renumbered from time to time and all Improvements located on the Common Elements from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or owned by the Association (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:

- (i) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and
 - (ii) Such Other Risk as from time to time are customarily covered with respect to Building and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$100,000 property damage for each accident or occurrence, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.
 - (c) Workers' Compensation. The Association shall obtain workers' compensation and other mandatory insurance, when applicable.
 - (d) Flood Insurance. The Association shall obtain flood insurance if required by the Primary Institutional First Mortgagee or if the Association so elects.
 - (e) Fidelity Insurance. The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association, including but not limited to the President, Secretary and Treasurer of the Association, in an amount not less than the minimum sum required by the Act.
 - (f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
 - (g) Such Other Insurance. The Board of Directors of the Association shall obtain such other policies of insurance as the Board may determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the

Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

- 12.3 Additional Provisions. All policies of insurance shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 12.4 Premiums. Premiums (or allocable shares thereof) upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 12.5 Unit Owner Coverage. Each Unit Owner shall obtain and maintain at all times, individual casualty and general liability policies insuring the property lying within the boundaries of their Unit and for their personal liability arising in the use of their own Unit and other areas of the Common Elements for which they have exclusive use. Each Unit Owners' insurance policy shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property, without the rights of subrogation against the Association. Each Unit Owner shall, upon the written request of the Association, provide the Association with a copy of a binder, a policy or other proof satisfactory to the Association of said insurance coverage.
- 12.6 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association or to the Insurance Trustee (if one exists) which may, but need not, be designated by the Board of Directors. References herein to the Insurance Trustee shall be deemed to apply to the Board of Directors if it elects to serve such functions pursuant to subsection 12.11 hereof. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but such shares need not be set forth on the records of the Insurance Trustee:

- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units and/or Limited Common Elements appurtenant thereto, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.
- (b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property, all as determined by the Association in its sole discretion (collectively, the "Optional Property"), if any are collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
- (c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

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

- (a) Expenses of the Trustee. All expenses of the Insurance Trustee shall be first paid or provision for such payment shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in subsection 12.6 above, and distributed first to all Institutional First Mortgagees in an

amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

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

- 12.8 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 12.9 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit (or Limited Common Elements appurtenant thereto), nor casualty or theft loss to the contents of an Owner's Unit or Limited Common Elements appurtenant thereto. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all risks not covered by insurance carried by the Association.
- 12.10 Benefit of Mortgagees. Certain provisions in this Section 12 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 12.11 Insurance Trustee Optional. The Board of Directors of the Association shall have the option in its discretion of appointing an insurance trustee ("Insurance Trustee") hereunder. If the Association fails or elects not to appoint such Insurance Trustee, the Association will perform directly all obligations imposed upon such Insurance Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

13. **Reconstruction or Repair After Fire or Other Casualty.**

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

If 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially

damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and at least 51% of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work, subject to the issuance of necessary permits for such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

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

13.3 Special Responsibilities.

(a) Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be

effected promptly and in accordance with guidelines' established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

- (b) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
 - (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above; but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
 - (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided,

however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and shall promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee (if appointed) shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee (if appointed), nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee (if appointed) may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

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

of repairing the damage suffered by each Owner thereof, as determined by the Association.

- 13.5 Benefit of Mortgagees. Certain provisions in this Section 13 are for the benefit of mortgagees of Units and may be enforced by any of them.

14. Condemnation.

- 14.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee (if appointed). Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee (if appointed); and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special 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, or the Board shall have the right to proceed in a court of equity to require performance and/or sue at law for damages.

- 14.2 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.

- 14.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 14 specifically provided.

- 14.4 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 and discretion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

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

shall be charged against the Owner of the Unit. The Association shall have the right to collect and enforce such costs and charges as elsewhere provided in accordance with this Declaration, pursuant to subsection 17.2 below and applicable law.

- (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
- (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall be restated as follows:
 - (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
 - (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

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

14.5 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 and discretion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit

Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
- (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 14.4(c) hereof (the "Percentage Balance"); and
 - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 14.4(c) hereof, by the Percentage Balance.

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

- (d) Assessments. If the balance of the award (after payments to the Unit Owners 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 to be Owners after the taking, in proportion to the applicable percentage shares of such Owners as they

exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

- 14.6 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 are 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.
- 14.7 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.
15. Occupancy and Use Restrictions. In order to provide for congenial occupancy and use 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:
- 15.1 Occupancy. Each Unit shall be used as a residence only, except as otherwise herein provided, and the maximum permanent occupants and overnight guests shall be no more than legally permitted, all in accordance with applicable municipal, county and state codes, ordinances and regulations. No trade, business, profession or any other type of commercial activity shall be carried on in the Units; provided, however, an Owner may use a room within a Unit as an office for conducting personal business if such personal business does not require contact at the Unit with customers or clientele of the Owner, nor be of such a pervasive nature as to dominate the residential character of the occupancy of such Unit. Any such personal office use shall not be deemed a commercial activity in violation of this Paragraph 15.1. Such personal business use must, nonetheless, comply with any applicable governmental regulation.
- 15.2 Children. Children shall be permitted to be occupants of Units, but are restricted in certain activities. See the Rules and Regulations attached to the By-Laws as Schedule "RR" thereto.
- 15.3 Pets. Not more than two (2) domestic pets (limited to either dogs, cats or other common household pets) may be kept in a Unit, provided said pets: (i) are not kept, bred, or maintained for any commercial purpose; (ii) are not a nuisance or

annoyance to neighbors; and (iii) are not left unattended on balconies or outside the Units. All pets must be registered and approved by the Board, which approval may be given or withheld in the sole discretion of the Board. No pit bulls or other breeds of pets considered to be dangerous by the Board shall be permitted. Unit Owners must pick up all solid wastes of their pets and dispose of such waste appropriately. All pets, including cats, must be leashed at all times when outside the Unit. Pets may not be kept in or on a Limited Common Element, nor be walked through or kept in any pool area or any other recreational facilities of the Condominium Property. Neither the Developer, Board of Directors, nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of this subsection, and any occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Developer, the Board of Directors, the Association, and each Unit Owner in such regard. Without limiting the generality of Section 17 hereof, a violation of the provisions of this subsection shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in the By-Laws and Rules and Regulations) and/or to require, through order of the Board, any pet to be permanently removed from the Condominium Property.

- 15.4 Alterations. Without limiting the generality of Section 8 hereof and except as otherwise provided in this Declaration, no Unit Owner shall cause or allow improvements or changes to any Limited Common Elements or Common Elements, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, machinery, pools, whirlpools or saunas or air-conditioning units or in any manner changing the appearance or impairing the structural soundness of any portion of the Building without obtaining the prior written consent of the Association. Curtains, drapes or other window coverings (or linings thereof) which face the exterior windows or glass doors of Units shall be white or off-white in color, and shall be subject to disapproval by the Association, in which case they shall be removed and replaced with acceptable items.
- 15.5 Use of Common Elements, Limited Common Elements and Association Property. The Common Elements, Limited 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. All Residential Limited Common Elements shall be for the exclusive use of residential Units and shall only be used for services and facilities for which they are reasonably suited and for their intended use. All posted rules and regulations on common Elements, Limited Common Elements and Association Property shall be strictly followed by all Owners, and the Owner's guests, tenants and invitees.
- 15.6 Use of Parking Spaces. Parking spaces, whether on the Association Property or Common Elements or on the Master Association or Developer owned property, or any adjoining property owner's property pursuant to a cross-easement agreement, shall be utilized solely for the parking of motor vehicles. No parking space shall

be permitted to be used at any time for any purpose which does not permit the parking of a motor vehicle therein.

- 15.7 Use of Parking Garages. Parking garages shall be utilized solely for the parking of motor vehicles and for miscellaneous storage but no parking garage shall be used or converted for use for a business or other activity. No parking garage shall be permitted to be used at any time for any purpose which does not permit the parking of a motor vehicle therein. Parking garage doors shall be kept closed when not being used for the purposes of ingress and egress.
- 15.8 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property or Association Property, nor shall any use or practice be allowed which is a source of annoyance to Owners or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property and/or Association Property by its Owners, members, or occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance. In the event a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.
- 15.9 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or Association Property, or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this subsection 15.7.
- 15.10 Leases. No portion of a Unit (other than an entire Unit) may be leased. All leases of Units shall be in writing and shall be deemed to provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and the By-Laws of the Association, Rules and Regulations, or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. Further, leases shall provide that the Association shall have the right to collect all rental or lease payments due to the Owner and apply same against unpaid Assessments, if, and to the extent that, the Unit Owner is in default in the payment of Assessments. Every lease of a Unit shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all exhibits

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

- 15.11 Exterior Improvements. Without limiting the generality of section 8 or subsection 15.14 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, balconies or windows of the Building (including, but not limited to, awnings, signs, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Association; except any Unit Owner may display one portable, removable United States flag in a respectful way.
- 15.12 Signs. An Owner (with the exception of the Developer, until the Developer no longer holds Units for sale) shall show no sign, advertisement or notice of any type on the Common Elements, other portions of the Condominium Property, in or upon his or her Unit or in or upon his or her automobile so as to be visible from the Common Elements, or any public way, except as may be previously and specifically approved in writing by the Board. Developer specifically reserves the right to place and maintain identifying or informational signs on any building located on the Condominium Property as well as any signs in connection with its sales activities, until Developer no longer holds Units for sale. The Developer or subsequently the Board may elect to adopt a uniform signage criteria to apply to all Units.

- 15.13 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-permeance paints. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the temperature in the Unit, whether or not occupied, at not more than 78°F, to minimize humidity in the Unit. While the foregoing requirement is intended to minimize the potential development of mold, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of mold, fungi, mildew or other mycotoxins. The Developer does not make any representations or warranties regarding the existence or development of mold, fungi, mildew or other mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. In furtherance of the rights of the Association as set forth in the Declaration, in the event that the Association reasonably believes that these provisions are not being complied with, then, the Association shall have the right (but no the obligation) to enter the Unit (without requiring the consent of the Unit Owner or any other party) to turn on the air conditioning system in an effort to cause the temperature of the Unit to be maintained as required (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Unit 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 Unit Owner to the Association, with all such costs to be deemed a Special Assessment).

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

- 15.14 Removal of Sod and Shrubbery; Alteration of Drainage; Wetlands. Except for the Developer's acts and activities with regard to the development of the

Condominium, no sod, top soil, mulch, trees or shrubbery shall be removed from the Condominium Property and no change in the condition of the soil or the level of land of the Condominium Property shall be made which would result in any permanent change in the flow or drainage of surface water within the Condominium without prior written consent of the Board of Directors.

- 15.15 Vehicles. Tractors, motor homes, trailers (with or without wheels), recreational vehicles, boats and other watercraft, boat trailers, campers, camper trailers, and vans and trucks used for commercial purposes shall not be permitted to be on the Condominium Property, except for trucks furnishing goods and services during the daylight hours and except as the Association may designate for such use by appropriate Rules and Regulations. The Association shall have the right to authorize the towing away of any vehicles which violate this Declaration or the Rules and Regulations of the Association, with the costs to be borne by the Owner or violator. In addition, the Board of Directors may adopt Rules and Regulations from time to time regulating and limiting the size, weight, type and place and manner of operation of vehicles on the Condominium Property.
- 15.16 Additional Rules and Regulations. The Association may promulgate such other Rules and Regulations as it determines to be in the best interests of the Unit Owners, and such additional Rules and Regulations shall, as long as they remain in force, be deemed additional covenants and restrictions as to the ownership, use, and occupation of the Condominium Property.
- 15.17 Relief by Association. The Association shall have the right (but not the obligation) to grant relief in particular circumstances from the provisions of the specific restrictions contained in this Section 15 for good cause shown.
- 15.18 Effects on Developer. The restrictions and limitations set forth in this Section 15 shall not apply to the Developer, its designees, successors and assigns, or to Units owned by or leased to the Developer, except for those specific restrictions and limitations contained herein that pertain to Association approval of leases, presence of pets, the occupancy of Units, and on the type of vehicles allowed to park on Condominium Property or Association Property; provided, however, the Developer and its designees shall have the right to be exempt from any such parking restriction if the vehicle is engaged in any activity relating to construction, maintenance, or marketing of Units.
16. Selling, Transferring and Mortgaging of Units. The following shall apply to all sales, transfer and mortgaging of Units:
- 16.1 Right of First Refusal. In the event a Unit Owner sells his or her Unit during the Repurchase Period, as hereinafter defined, Developer reserves the right to repurchase the Unit from the Unit Owner. The Repurchase Period shall mean a period of time to expire upon the earlier to occur of (i) a period of eighteen (18) months following the date of the Unit Owner's closing on the Unit, or (ii) for so

long as the Developer continues to offer Units in the Condominium for sale in the ordinary course of business (the "Repurchase Period").

- 16.2 Sales. Upon expiration of the Right of First Refusal described herein, there shall be no restriction on the right of any Unit Owner to sell, convey, or transfer his Unit. However, every new Unit Owner must notify the Association of his purchase or acquisition of the Unit by providing the Association with a copy of the deed whereby the Unit Owner acquired title to his Unit within thirty (30) days of the transfer of ownership. Any deed or conveyance to a new Unit Owner shall automatically be deemed to provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, the Rules and Regulations, and all other agreements, documents or instruments affecting the Condominium Property, as the same may be amended from time to time.
- 16.3 No Severance of Ownership. Subject to the right to transfer parking spaces as described in Section 3.3 hereof, and subject to the other provisions of this Declaration, 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.
- 16.4 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 16.
- 16.5 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.
17. Compliance and Default. The Association, each Unit Owner, occupant or tenant of a Unit, and other invitees of a Unit Owner, shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the Rules and Regulations adopted pursuant to those documents, as the same may be amended from time to time, and the provisions of all such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 17.1 Negligence. A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his or her negligence or by that of any member of his or her family or his or her 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.

- 17.2 Compliance. In the event a Unit Owner, tenant 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 of Incorporation of the Association, the Rules and Regulations, the Master Declaration, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to proceed in court to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, to make a special charge against the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, and to hire an attorney to make a charge against the Unit Owner and Unit for the costs of such reasonable attorneys' fees incurred in requiring performance and/or compliance of the Unit Owner. In addition, the Association has 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 Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.
- 17.3 Fines. In the event a Unit Owner, tenant, invitee, licensee, guest, contractor or occupant fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, 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 impose a fine against the Unit Owner and the Unit. The amount of any fine shall be determined by the Board of Directors of the Association, but in any event shall not exceed any maximum amount permitted by the Act, as such Act may be amended from time to time. Any fine shall be imposed by written notice to the Unit Owner or tenant, signed by an officer of the Association, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the Unit Owner or tenant has the right to contest the fine by delivering written notice to the Association within fourteen (14) days after receipt of the notice imposing the fine. If the Unit Owner or tenant timely and properly objects to the fine, a committee of other Unit Owners ("Unit Owner Committee") appointed by the Board of Directors of the Association for the purpose of conducting these types of hearings shall conduct a hearing within thirty (30) days after receipt of the Unit Owner's or tenant's objection, and shall give the Unit Owner or tenant not less than fourteen (14) days written notice of the hearing date. Such notice shall include:
- (i) A statement of the date, time and place of the hearing;
 - (ii) A statement of the provisions of the Declaration, Association By-Laws, or Association Rules and Regulations which have allegedly been violated; and
 - (iii) A short and plain statement of the matters asserted by the Association.

At the hearing, the Unit Owner Committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred and that the fine imposed is appropriate. The Unit Owner or tenant shall have the right to attend the hearing and to respond to any material considered by the Association and to produce evidence on his behalf and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. If the Unit Owner or tenant fails to attend the hearing, then the hearing will be deemed waived and the Unit Owner Committee may ratify the fine without further proceedings. At the hearing, the Unit Owner Committee shall ratify the fine or if the Unit Owner Committee does not agree with the fine, it may reduce or eliminate the fine and shall give the Unit Owner or tenant written notice of its decision. Any fine shall be due and payable within fourteen (14) days after written notice of the imposition of the fine, or if a hearing is timely requested within fourteen (14) days after written notice of the Unit Owner Committee's decision at the hearing. If any fine is levied against a tenant and is not paid within fourteen (14) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

- 17.4 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner, tenant, occupant, invitee, licensee, guest, or contractor 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 reasonable attorneys' fees (including appellate attorneys' fees).
- 17.5 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.
18. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning all of the applicable interests in the Common Elements and by all of the holders of recorded mortgage liens affecting the Condominium Parcels. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements; provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and

said certificate shall be recorded among the Public Records of the County. This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns at least one (1) Unit.

19. **Additional Rights of Mortgagees and Others.**

19.1 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 audited financial statement for the immediately preceding fiscal year, which audited financial statement must be available within one hundred twenty (120) days of the Association's fiscal year end, (iii) receive notices of and attend Association meetings, (iv) receive notice of any alleged default in any obligations hereunder by any Unit Owner, on whose Unit such Institutional First 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.

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

21. **Disclaimer of Warranties.** Notwithstanding that this Condominium is a conversion of previously occupied premises, the Developer has elected to warrant the improvements solely to the extent provided in Section 718.618, Florida Statutes. Except only for those warranties provided in Section 718.618, Florida Statutes (and only to the extent applicable and not yet expired), to the maximum extent lawful, the 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 mold, mildew, toxins or fungi, furnishing and equipping of the Condominium Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute (other than those imposed by Section 718.618, Florida Statutes, and then only to the extent applicable and not yet expired) and all other express and implied warranties of any kind or character. The Developer has not given and the Unit Owner has not relied on or bargained for any such warranties. Each Unit Owner recognizes and agrees that the Unit and Condominium are not new construction. Each Unit Owner by accepting a deed to a Unit, shall be deemed to represent and warrant to the Developer that in deciding to purchase the Unit, the Unit Owner relied solely on the Unit Owner's independent inspection of the Unit and the Condominium as well as the conversion inspection reports included in the Prospectus. The Unit Owner has not received nor relied on any warranties and/or representations from the Developer of any kind, other than as expressly provided herein.

As to any implied warranty which cannot be disclaimed entirely, all secondary, incidental and consequential damages are specifically excluded and disclaimed (claims for such secondary, incidental and consequential damages being clearly unavailable in the case of implied warranties which are disclaimed entirely above).

Further, given the climate and humid conditions in Florida, mold, mildew, toxins and fungus may exist and/or develop within the Unit and/or Condominium Property. Each Unit Owner is hereby advised that certain mold may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By accepting a deed to a Unit, each Unit Owner shall be deemed to have assumed the risks associated with mold, mildew, toxins and/or fungi and to have released the Developer and the fee simple owner of the Condominium Property (if other than the Developer) from any and all liability resulting from same.

In addition, each Owner, by acceptance of a deed to a Unit, agrees and acknowledges that there are different means and methods of calculating the square footage of a particular Unit and that depending on the method, the quoted square footage of the Unit may vary by more than a nominal amount if the Owner applies a method other than the survey method of calculating square footage. Additionally, as a result of in-the-field construction and other permitted changes, together with the settling and shifting of Improvements, actual square footage may also be affected. By accepting title to such Unit, each Owner shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of the

Developer's promotional materials or otherwise. Without limiting the generality of this section 21, the Developer does not make any representation or warranty as to the actual size, dimensions or square footage of any Unit, and each Owner shall be deemed to have fully waived and released any such warranty and claims for loss or damage resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage of the Unit.

22. **Master Declaration Provisions.**

- 22.1 **Maintenance Obligations of the Master Association.** The Master Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Areas and the paving, street lighting fixtures and appurtenances, landscaping, irrigation wells and sprinkler systems, pumps, improvements and other structures (except utilities owned and maintained by entities providing water, sewer, electrical, cable television or telephone or similar utilities to the Condominium Property or any portion of Windsor Parke) situated on the Common Areas, if any, in accordance with the Master Declaration.
- 22.2 **Stormwater and Surface Water Management.** Except as otherwise provided in the Master Declaration or in the permits described herein or in the Master Declaration, the Master Association shall maintain all lakes, drainage easements, and control structures comprising the stormwater discharge and surface water management systems constructed by the Master Developer and shall preserve and protect littoral zones below the ordinary high water line and all designated conservation areas within Windsor Parke (notwithstanding that all or a portion of such surface water management system and conservation areas may be located on lands owned by the Master Developer or other owners) in accordance with all permit requirements and conditions contained in dredge and fill and stormwater permits issued for Windsor Parke by the United States Army Corps of Engineers ("ACOE"), Florida Department of Environmental Protection ("FDEP") and St. Johns River Water Management District ("SJRWMD"), and in compliance with all statutes, rules, regulations and requirements pertaining to stormwater management, drainage and water quality promulgated by the SJRWMD, the FDEP, and all other local, state and federal authorities having jurisdiction. The provisions of this Section 22.2 and Article III, Section 3(b) of the Master Declaration shall not supersede the obligations of the Condominium Association to maintain the lake shoreline and littoral areas landward of the ordinary high water line, as set forth in Article VI of the Master Declaration.

THE PROPERTY HAS BEEN OR WILL BE DEVELOPED IN ACCORDANCE WITH THE REQUIREMENTS OF PERMITS ISSUED BY ACOE., FDEP AND/OR THE SJRWMD (COLLECTIVELY, THE "PERMITS"). THE PERMITS ARE OR WILL BE OWNED BY THE MASTER ASSOCIATION AND THE MASTER ASSOCIATION HAS THE OBLIGATION TO ASSURE THAT ALL TERMS AND CONDITIONS THEREOF ARE ENFORCED. THE MASTER ASSOCIATION AND THE SJRWMD SHALL HAVE THE

RIGHT TO BRING AN ACTION, AT LAW OR IN EQUITY, AGAINST ANY OWNER VIOLATING ANY PROVISION OF THE PERMITS.

FURTHER, ANY OWNER OF ANY PORTION OF THE CONDOMINIUM PROPERTY WHICH CONTAINS OR IS ADJACENT TO JURISDICTIONAL WETLANDS OR CONSERVATION AREAS AS ESTABLISHED BY THE ACOE, FDEP OR SJRWMD OR BY ANY APPLICABLE CONSERVATION EASEMENT SHALL BY ACCEPTANCE OF TITLE TO THE PROPERTY, BE DEEMED TO HAVE ASSUMED THE OBLIGATION TO COMPLY WITH THE REQUIREMENTS OF THE PERMITS AS THE SAME RELATE TO SUCH OWNER'S PROPERTY AND SHALL AGREE TO MAINTAIN SUCH JURISDICTIONAL WETLANDS AND CONSERVATION AREAS IN THE CONDITION REQUIRED UNDER THE PERMITS. IN THE EVENT THAT AN OWNER VIOLATES THE TERMS AND CONDITIONS OF THE PERMITS AND FOR ANY REASON THE MASTER DEVELOPER OR THE MASTER ASSOCIATION IS CITED THEREFORE, THE OWNER AGREES TO INDEMNIFY AND HOLD THE DEVELOPER, MASTER DEVELOPER AND MASTER ASSOCIATION HARMLESS FROM ALL COSTS ARISING IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION ALL COURT COSTS AND ATTORNEYS' FEES, AS WELL AS ALL COSTS OF CURING SUCH VIOLATION. NO PERSON SHALL ALTER THE DRAINAGE FLOW OF THE STORMWATER MANAGEMENT SYSTEM OR ANY PORTION OF THE JURISDICTIONAL WETLANDS OR CONSERVATION AREAS, INCLUDING WITHOUT LIMITATION, ANY BUFFER AREAS, SWALES, TREATMENT BERMS OR SWALES, WITHOUT THE PRIOR WRITTEN APPROVAL OF THE SJRWMD OR ACOE, AS APPLICABLE.

- 22.3 Landscaping and Signage. The Master Association shall maintain the landscaping, sprinkler systems, pumps and other related improvements installed by the Master Developer or designated by the Master Developer for maintenance by the Master Association located in the public rights-of-way, at entranceways to subdivisions within Windsor Parke, on or adjacent to lift station sites or other utility parcels within Windsor Parke, and any landscaped buffer zones designated on the Master Plan, except portions to be maintained by the Condominium Association as provided in the Master Declaration and this Declaration.
- 22.4 Voting Members. The Condominium Association shall be a member of the Master Association. In accordance with the Master Declaration, and subject to the By-Laws of the Condominium Association, the Condominium Association shall designate one (1) representative to represent the interests of the Condominium Association. In accordance with the Master Declaration, the Condominium Association is entitled to one (1) vote for each condominium unit. No fractional votes shall be permitted
- 22.5 Assessments of Master Association. Each Unit Owner, by acceptance of a deed, whether or not it shall be so expressed in any such deed or other conveyance, including any purchaser at a judicial sale, shall pay to the Master Association (i) any annual or supplemental assessments or charges, and (ii) any special assessments for capital improvements or major repair. Assessments shall be

fixed, established and collected from time to time as provided in the Master Declaration, which may be amended from time to time.

22.6 Creation of the Lien and Personal Obligation for Assessments. All Assessments imposed by the Master Association, together with interest thereon from due date at the highest lawful rate and costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the land and shall be a lien upon that portion of the Condominium Property against which each such assessment is made and shall be the personal obligation of the Unit Owner, the Association or the owner of that portion of the property at the time the assessment was levied. No Unit Owner may waive or otherwise escape liability for the assessments provided for in the Master Declaration by non-use of the Common Area or common services, or abandonment.

22.7 Use Restrictions.

- (a) Wetlands. Subject to the right of governmental authorities, only the Master Developer and the owner of the Club Property shall have the right to withdraw, pump or otherwise remove any water from any lake within Windsor Parke or adjacent or near thereto for the purpose of irrigation or any other use. The Master Association's license to receive water as described in Article III of the Master Declaration is subordinate to the right of the Master Developer and the Owner of the Club Property.
- (b) Boats. In accordance with Article VI of the Master Declaration, except for boats used in connection with maintenance or repair activities or operation of the Club Property, no boat, canoe or watercraft of any kind shall be permitted to be operated on any lake. No swimming, fishing or any other activity (except as permitted in connection with the operation of the Club Property) shall be permitted on the lakes. No docks, bulkheads or other structures shall be constructed on such embankments unless and until same shall have been approved by the Master Developer.
- (c) Lake Parcels. In accordance with Article VI of the Master Declaration, to the extent that any portion of the Condominium Property is now, or may hereafter be, adjacent to, or include a portion of, a lake, such lake shall be maintained by the Condominium Association so that such grass, planting or other lateral support prevents erosion of the embankment adjacent to the lake and the height, grade and contour of the embankment shall not be changed without the prior written consent of the Master Association. Notwithstanding other provisions to the contrary in the Master Declaration, the control of nuisance shoreline vegetation and maintenance of permitted littoral areas landward of the ordinary high water line shall be the responsibility of the Condominium Association, to the extent that the Condominium Property is adjacent to, or includes a portion of, a lake. The ordinary high water line shall be deemed to be the water line designed to be maintained by the surface water management system. The

Condominium Association shall consult with the Master Association, however, prior to removing or otherwise disturbing shoreline vegetation to determine whether applicable environmental permits allow such disturbance.

23. Additional Provisions.

23.1 Water Bodies Disclaimers.

NEITHER THE DEVELOPER, MASTER DEVELOPER, MASTER ASSOCIATION NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER BODY WITHIN OR ADJACENT TO WINDSOR PARKE AND THE CONDOMINIUM PROPERTY, EXCEPT AS SUCH RESPONSIBILITY, IF ANY, MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF WINDSOR PARKE OR THE CONDOMINIUM PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS, POISONOUS SNAKES, AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES AND NATURAL AREAS WITHIN WINDSOR PARKE AND/OR THE CONDOMINIUM PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF WINDSOR PARKE AND THE CONDOMINIUM PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT OR OTHER PORTION OF PROPERTY WITHIN WINDSOR PARKE OR WITHIN THE CONDOMINIUM PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES OR LAKE BOTTOMS LOCATED THEREIN.

23.2 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (postage pre-paid 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 the Unit Owner from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

- 23.3 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 23.4 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.
- 23.5 Exhibits. All Exhibits to this Declaration and all materials contained therein are hereby incorporated in this Declaration.
- 23.6 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.
- 23.7 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 the applicable Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 23.8 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 the 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.

- 23.9 Waiver. No provisions contained in this Declaration, the Exhibits annexed hereto or the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, 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.
- 23.10 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each tenant and occupant of a Unit, by reason of his or her occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable Rules and Regulations, are fair and reasonable in all material respects.
- 23.11 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 Land 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 subsection may not be amended without the prior written consent of the Developer.
- 23.12 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.
- 23.13 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 23.14 Access of Developer to Building and Units. For as long as the Developer remains liable to the Condominium Association under any warranty, whether statutory, express or implied, for any act or omission of the Developer in the development, construction, sale and marketing of the Condominium, then the Developer and its designees and agents shall have the right, in the Developer's sole discretion, and from time to time, to enter the Condominium Property for the purpose of inspecting, testing and surveying same, to determine the need for repairs, improvements or replacements, so as to permit the Developer to fulfill its obligations under such warranties. Failure of the Condominium Association or of a Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect.

23.15 Mandatory Non-Binding Arbitration of Disputes.

- (a) Prior to the institution of court litigation, the parties to a dispute, as further defined herein, shall petition the Division for non-binding arbitration. Arbitration shall be conducted according to rules promulgated by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitations. For purposes of this subsection 22.14, a "dispute" shall be as defined pursuant to Section 718.1255, Florida Statutes, as amended from time to time.
- (b) At the request of any party to the arbitration, such arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may in the discretion of the arbitrator be permitted in the manner provided by the Florida Rules of Civil Procedure.
- (c) The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a complaint for a trial *de novo* is not filed within 30 days in a court of competent jurisdiction in which the Condominium is located following the date of issuance of the arbitration decision. The right to file for a trial *de novo* entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding may be awarded reasonable attorneys' fees, the costs of the arbitration, or both, in an amount determined in the discretion of the arbitrator.
- (d) The party who files a complaint for a trial *de novo* shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorneys' fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial *de novo* is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial *de novo* shall be awarded reasonable court costs and attorneys' fees.
- (e) The decision of an arbitrator shall be final; however, such a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial *de novo*. If such judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial *de novo*.
- (f) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for

appeal by filing of a complaint for trial *de novo* has expired. If a complaint for a trial *de novo* has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

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

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

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officer this 5th day of JANUARY, 2006.

WITNESSES:

RI Windsor, Ltd., a Florida limited partnership

By: Mountain View National, Inc., a Nevada corporation, its General Partner

Madeline Natal
Name: Madeline Natal

By: [Signature]
Name: Charles D. Rubenstein
Title: Executive Vice President

Brenda Jacobson
Name: Brenda I. Jacobson

New York
STATE OF ~~FLORIDA~~
COUNTY OF New York

The foregoing instrument was acknowledged before me this 5th day of JANUARY, 2006, by Charles D. Rubenstein, as EVP of Mountain View National, Inc., a Nevada corporation as the General Partner of RI Windsor, Ltd., a Florida limited partnership. He/~~She~~ personally known to me or has produced his/her Florida driver's license as identification.

(Notary Seal)

[Signature]
Notary Public
Name: Lydia Coplin
Commission Expires: 3/7/09

LYDIA COPLIN
Notary Public, State of New York
No. 01CO6123279
Qualified In New York County
Commission Expires March 7, 2009

EXHIBITS
TO
DECLARATION OF CONDOMINIUM
OF
BISHOP'S COURT AT WINDSOR PARKE, A CONDOMINIUM

- EXHIBIT "1" - LEGAL DESCRIPTION OF REAL PROPERTY BEING SUBMITTED TO CONDOMINIUM OWNERSHIP
- EXHIBIT "2" - ARTICLES OF INCORPORATION OF BISHOP'S COURT AT WINDSOR PARKE CONDOMINIUM ASSOCIATION, INC.
- EXHIBIT "3"- BY-LAWS OF BISHOP'S COURT AT WINDSOR PARKE CONDOMINIUM ASSOCIATION, INC.
- EXHIBIT "4" - PLOT PLAN, SURVEY AND GRAPHIC DESCRIPTION OF IMPROVEMENTS
- EXHIBIT "5" - PERCENTAGE OWNERSHIP AND SHARES IN COMMON ELEMENTS

EXHIBIT "1"

LEGAL DESCRIPTION OF REAL PROPERTY BEING SUBMITTED
TO CONDOMINIUM OWNERSHIP

A PART OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 28 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING, COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH, (AN 80 FOOT RIGHT-OF-WAY), AS PLATTED BY WINDSOR PARKE UNIT TWO-A, AS RECORDED IN PLAT BOOK 46, PAGES 57 AND 57A OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, WITH THE EASTERLY RIGHT-OF-WAY LINE OF HODGES BOULEVARD, (COUNTY ROAD NO. 3888, A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED); THENCE NORTH 16°47'54" EAST ALONG THE AFORESAID EASTERLY RIGHT-OF-WAY LINE OF HODGES BOULEVARD, A DISTANCE OF 960 FEET, MORE OR LESS, (936.60 FEET TO A MEANDER CORNER) TO THE THREAD OF OPEN CREEK; THENCE SOUTHEASTERLY ALONG THE THREAD OF SAID OPEN CREEK AS IT MEANDERS, A DISTANCE OF 1,040 FEET, MORE OR LESS, SAID OPEN CREEK MEANDERED BY THE FOLLOWING TEN MEANDER COURSES: 1) SOUTH 70°44'42" EAST, A DISTANCE OF 67.09 FEET; 2) SOUTH 39°15'40" EAST, A DISTANCE OF 91.36 FEET; 3) SOUTH 48°37'11" EAST, A DISTANCE OF 106.18 FEET; 4) SOUTH 70°08'55" EAST, A DISTANCE OF 120.80 FEET; 5) SOUTH 47°58'08" EAST, A DISTANCE OF 151.59 FEET; 6) NORTH 84°04'43" EAST, A DISTANCE OF 40.78 FEET; 7) SOUTH 25°45'34" EAST, A DISTANCE OF 169.21 FEET; 8) SOUTH 40°51'14" EAST, A DISTANCE OF 104.10 FEET; 9) SOUTH 38°49'10" EAST, A DISTANCE OF 127.61 FEET; 10) SOUTH 25°00'35" EAST, A DISTANCE OF 25.07 FEET, THE LAST DESCRIBED TEN COURSES BEING THE SOUTHWESTERLY BOUNDARY OF THE CONSERVATION EASEMENT DESCRIBED IN OFFICIAL RECORDS VOLUME 6727, PAGES 1814 THROUGH 1819 OF THE CURRENT PUBLIC RECORDS OF THE AFORESAID DUVAL COUNTY; THENCE SOUTH 42°14'07" WEST, A DISTANCE OF 714 FEET, MORE OR LESS (663.52 FEET FROM THE LAST DESCRIBED MEANDER CORNER) TO AN INTERSECTION WITH THE AFORESAID NORTHEASTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE COURSES: 1) NORTHWESTERLY 284.13 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS 640.00 FEET, A CHORD BEARING NORTH 60°29'00" WEST AND A CHORD DISTANCE OF 281.81 FEET TO THE POINT OF TANGENCY OF SAID CURVE; 2) NORTH 73°12'06" WEST, A DISTANCE OF 274.28 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 25.00 FEET; 3) NORTHWESTERLY 39.27 FEET ALONG THE ARC OF SAID CURVE, A CHORD BEARING NORTH 28°12'06" WEST AND A CHORD DISTANCE OF 35.36 FEET TO THE POINT OF BEGINNING.

CONTAINING 15.9 ACRES, MORE OR LESS.

PARCEL 17 TOGETHER WITH A PART OF GOLF COURSE, PARCEL G-4:

A PART OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 28 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF BEGINNING, COMMENCE AT THE INTERSECTION OF THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH, (AN 80 FOOT PUBLIC RIGHT-OF-WAY), AS PLATTED BY WINDSOR PARKE UNIT TWO A, AS RECORDED IN PLAT BOOK 46, PAGES 57 AND 57A OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, WITH THE EASTERLY RIGHT-OF-WAY LINE OF HODGES BOULEVARD (COUNTY ROAD NO. 3888, A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED); THENCE NORTHEASTERLY, EASTERLY, AND SOUTHEASTERLY ALONG THE AFORESAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH THE FOLLOWING FIVE COURSES: 1) NORTHEASTERLY 39.27 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET, A CHORD BEARING NORTH 61°47'54" EAST AND A CHORD DISTANCE OF 35.36 FEET TO THE POINT OF TANGENCY OF SAID CURVE; 2) SOUTH 73°12'06" EAST, A DISTANCE OF 274.28 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 560.00 FEET; 3) SOUTHEASTERLY 390.95 FEET ALONG THE ARC OF SAID CURVE, A CHORD BEARING SOUTH 53°12'06" EAST AND A CHORD DISTANCE OF 383.06 FEET TO THE POINT OF TANGENCY OF SAID CURVE; 4) SOUTH 33°12'06" EAST, A DISTANCE OF 177.14 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 640.00 FEET; 5) SOUTHEASTERLY 148.82 FEET ALONG THE ARC OF SAID CURVE A CHORD BEARING SOUTH 39°51'48" EAST AND CHORD DISTANCE OF 148.49 FEET TO A POINT ON SAID CURVE; THENCE DEPARTING THE AFORESAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH, SOUTH 73°47'28" WEST, A DISTANCE OF 136.37 FEET; THENCE SOUTH 54°31'25" WEST, A DISTANCE OF 57.49 FEET; THENCE SOUTH 89°20'07" WEST, A DISTANCE OF 122.44 FEET; THENCE NORTH 74°47'20" WEST, A DISTANCE OF 75.34 FEET; THENCE NORTH 77°09'22" WEST, A DISTANCE OF 127.52 FEET; THENCE SOUTH 79°55'32" WEST, A DISTANCE OF 101.77 FEET; THENCE NORTH 70°23'58" WEST, A DISTANCE OF 359.78 FEET TO AN INTERSECTION WITH THE AFORESAID EASTERLY RIGHT-OF-WAY LINE OF HODGES BOULEVARD; THENCE NORTH 16°47'54" EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 497.27 FEET TO THE POINT OF BEGINNING.

CONTAINING 8.5 ACRES, MORE OR LESS.

Less and except the following described parcel:

A PART OF SECTION 2, TOWNSHIP 9 SOUTH, RANGE 28 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH (AN 80 FOOT PUBLIC RIGHT-OF-WAY), AS PLATTED BY WINDSOR PARKE UNIT TWO A, AS RECORDED IN PLAT BOOK 46, PAGES 57 AND 57A OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, WITH THE EASTERLY RIGHT-OF-WAY LINE OF HODGES BOULEVARD (COUNTY ROAD NO. 3888, A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED), THENCE NORTHEASTERLY, EASTERLY, AND SOUTHEASTERLY ALONG THE AFORESAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH THE FOLLOWING FOUR COURSES: 1) NORTHEASTERLY 89.27 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET, A CHORD BEARING $N61^{\circ}47'54"E$ AND A CHORD DISTANCE OF 35.36 FEET TO THE POINT OF TANGENCY OF SAID CURVE; 2) $S73^{\circ}12'06"E$, A DISTANCE OF 274.28 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 560 FEET; 3) SOUTHEASTERLY 390.95 FEET ALONG THE ARC OF SAID CURVE, A CHORD BEARING $S53^{\circ}12'06"E$ AND A CHORD DISTANCE OF 383.06 FEET TO THE POINT OF TANGENCY OF SAID CURVE; 4) $S33^{\circ}12'06"E$, A DISTANCE OF 177.14 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 640.00 FEET, THE POINT OF BEGINNING, THENCE CONTINUING SOUTHEASTERLY ALONG THE AFORESAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH, 148.82 FEET ALONG THE ARC OF SAID CURVE, A CHORD BEARING $S39^{\circ}51'48"E$ AND CHORD DISTANCE OF 148.49 FEET TO A POINT ON SAID CURVE, THENCE DEPARTING THE SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH, $S73^{\circ}47'28"W$, A DISTANCE OF 136.37 FEET; THENCE $S54^{\circ}31'25"W$, A DISTANCE OF 57.49 FEET; THENCE $S89^{\circ}20'07"W$, A DISTANCE OF 70.78 FEET; THENCE $N39^{\circ}28'25"E$, A DISTANCE OF 241.25 FEET TO AN INTERSECTION WITH THE AFORESAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF RICHMOND PARK DRIVE NORTH AND THE POINT OF BEGINNING, CONTAINING 0.4 ACRES, MORE OR LESS