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This instrument prepared by, or under the supervision of (and after recording, return to):

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(Reserved for Clerk of Court)

**DECLARATION
OF
G.B. RESORT CONDOMINIUM HOTEL**

G.B. HOTEL PARTNERS, LTD., a Florida limited partnership, hereby declares:

1. Introduction and Submission.
 - 1.1 The Realty. The Developer owns fee title to an interest in certain real property located in Dade County, Florida, as more particularly described in Exhibit "1" annexed hereto (the "Realty").
 - 1.2 Submission Statement. The Developer hereby submits the Realty and all improvements erected or to be erected thereon and all other property, real, personal or mixed, now or hereafter situated on or within the Realty - but excluding (i) all public or private (e.g. cable television) utility installations therein or thereon and (ii) the Shared Essential Components (as defined in the Homeowners' Covenants, as hereinafter defined) - to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Realty, and no portion of the Shared Essential Components, shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided. In furtherance of the foregoing, it is recognized and agreed that the Realty consists only of air rights, and that no portion of the Realty other than that described in Exhibit "1" attached hereto shall be deemed part of the Condominium.
 - 1.3 Name. The name by which this condominium is to be identified is **G.B. RESORT CONDOMINIUM HOTEL** (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 it may be hereafter renumbered.
 - 2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.
 - 2.3 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.
 - 2.4 "Association" or "Condominium Association" means G.B. RESORT CONDOMINIUM HOTEL ASSOCIATION, INC., a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.
 - 2.5 "Association Property" means that 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.
 - 2.7 "Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.
 - 2.8 "By-Laws" mean the By-Laws of the Association, as amended from time to time.
 - 2.9 "Commercial Unit" means and refers to Unit CU-1 as identified on Exhibit "2" attached hereto, which consists generally of the hallways of the Condominium, and is designed and intended to be

used for any purpose permitted by applicable zoning ordinances. References herein to "Units" or "Parcels" shall include the Commercial Unit unless the context would prohibit or it is otherwise expressly provided.

2.10 "Committee" means a group of Board Members, Unit Owners or Board Members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the Association budget or to take action on behalf of the Board.

2.11 "Common Elements" mean and include:

- (a) The portions of the Condominium Property which are not included within the Units.
- (b) An easement of support in every portion of a Unit which contributes to the support of the Building.
- (c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements, if any (it being the intent that all such property and installations shall be deemed Shared Essential Components which are not included in the Condominium).
- (d) Any other parts of the Condominium Property designated as Common Elements in this Declaration.

The Condominium has been established in such a manner to minimize the Common Elements. Most components which are typical "common elements" of a condominium have instead been designated herein either as part of the Commercial Unit or the Shared Essential Components.

2.12 "Common Expenses" mean all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include, without limitation: (a) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (b) the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract; (c) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house and/or interactive communications and surveillance systems; (d) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property and/or rental or other expenses owed in connection with any Units leased by the Association; (e) the costs and expenses of maintaining, repairing and/or replacing as necessary any landscaping located along or upon the medians adjacent to (even if beyond the legal boundaries of) the Condominium Property; (f) all expenses of installation, repair, and maintenance of hurricane shutters by the Board (provided, however, that a Unit Owner who has already installed hurricane shutters (or other acceptable hurricane protection) shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each Unit, but shall not be excused from any portion of expenses related to maintenance, repair, replacement or operation of same), (g) any assessments, charges and/or sums payable to the Homeowners' Association, the NCL Owner (as defined in the Homeowners' Covenants), the Master Association and/or the Hotel Owner pursuant to, and in accordance with the Homeowners' Covenants and the Master Covenants, and (h) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure. 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 Realty, Improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.

2.16 "County" means the County of Miami-Dade, State of Florida.

2.17 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as same may be amended from time to time.

2.18 "Developer" means G.B. HOTEL PARTNERS, LTD., a Florida limited partnership, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. 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. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer as are

specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of 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 "Dispute", for purposes of Section 18.1, means any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit; or (ii) alter or add to a Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; or the levy of a fee or Assessment or the collection of an Assessment levied against a party.
- 2.20 "Division" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.21 "Homeowners' Association" means GRAND BAY RESORT HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not for profit, being the entity responsible for the administration of the Homeowners' Covenants.
- 2.22 "Homeowners' Covenants" mean the Declaration of Covenants, Restrictions and Easements for Grand Bay Resort, recorded or to be recorded in the Public Records of the County, and when the context permits, shall also mean the Articles of Incorporation and By-Laws of the Homeowners' Association, all as now or hereafter amended, modified or supplemented.
- 2.23 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property including, but not limited to, the Building.
- 2.24 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.25 "Master Association" means GRAND BAY RESORT AND RESIDENCES MASTER ASSOCIATION, INC., a Florida corporation not for profit, being the entity responsible for the administration of the Master Covenants.
- 2.26 "Master Covenants" mean the Master Covenants for Grand Bay Resort and Residences recorded July 3, 1995, under Clerk's File No. 95R261318 in Official Records Book 16837, Page 0054, as amended by Amendment to Master Covenants for Grand Bay Resort and Residences recorded July 21, 1995, under Clerk's File No. 95R291002 in Official Records Book 16858, Page 2435, all of the Public Records of Dade County, Florida, and when the context permits, shall also mean the Articles of Incorporation and By-Laws of the Master Association, all as now or hereafter amended, modified or supplemented.
- 2.27 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.28 "Residential Unit" means and refers to a Unit which is designed and used or initially intended to be used for residential purposes, whether transient or otherwise. All Units other than the Commercial Unit shall be deemed Residential Units. References herein to "Units" or "Parcels" shall include Residential Units unless the context prohibits or it is otherwise expressly provided.
- 2.29 "Unit" means a part of the Condominium Property which is subject to exclusive ownership, and except where specifically excluded, or the context otherwise requires, shall be deemed to include the Residential Units and the Commercial Unit.
- 2.30 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.

Unless the context otherwise requires, any capitalized term not defined but used herein which is defined in the Homeowners' Covenants or Master Covenants shall have the meaning given to such word or words in such documents.

3. Description of Condominium.

3.1 Identification of Units. The Realty consists of the Building containing a total of one hundred eighty nine (189) Units, consisting of one hundred eighty eight (188) Residential Units and one (1) Commercial Unit. Each such Unit is identified by a separate alpha-numerical designation. The designation of each of such Units is set forth on Exhibit "2" attached hereto. Exhibit "2" consists of a survey of the Realty, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit "2", 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 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.

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

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the upper story if the Unit is a multi-story Unit, provided that in multi-story Units where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling).

(ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first story if the Unit is a multi-story Unit, provided that in multi-story Units where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor).

(iii) Interior Divisions. Except as provided in subsections (i) and (ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, in all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Unit.

(b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries. Notwithstanding the foregoing, as to walls shared by a Residential Unit and the Commercial Unit, the perimetrical boundary of the Commercial Unit at such shared wall shall be coextensive to the perimetrical boundary of the adjoining Residential Unit (so that the shared wall (and all installations therein to the extent not part of the Shared Essential Components) shall be part of the Commercial Unit rather than the Common Elements and therefore the perimetrical boundary of the Commercial Unit shall extend to the unfinished interior surface of any walls bounding a Residential Unit.

(c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials; provided, however, that the exteriors of doors facing the Commercial Unit shall not be included in the boundaries of the Unit. Notwithstanding anything herein contained to the contrary, all floor, wall and ceiling covering affixed to any Commercial Unit shall be deemed part of the Commercial Unit.

(d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "2" hereto shall control in determining the boundaries of a Unit, except that the provisions of Section (c) above shall control unless specifically depicted and labeled otherwise on such survey.

3.3 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 and any structure and/or improvement now or hereafter constructed within The Properties (as defined in the Homeowners' Covenants) 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, the Common Elements and such other improvements constructed upon The Properties (as defined in the Homeowners' Covenants).
- (b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and monitoring systems, and other services and drainage in order to serve the Condominium and/or members of the Association and/or the Lots (as defined in the Homeowners' Covenants). A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Association shall have a right of access to each Unit to maintain, repair or replace any Common Element or Shared Essential Component pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, hot water heaters, service and drainage facilities, and Common Elements and/or Shared Essential Components contained in the Unit or elsewhere in or around the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).
- (c) Encroachments. If (i) any portion of the Common Elements and/or Shared Essential Components encroaches upon any Unit; (ii) any Unit encroaches upon any other Unit or upon any portion of the Common Elements and/or Shared Essential Components; (iii) any Improvements encroach upon any improvements constructed on The Properties (as defined in the Homeowners' Covenants), (iv) any "improvements" of or upon The Properties (as defined in the Homeowners' Covenants) encroach upon the Condominium Property; or (v) any encroachment shall hereafter occur as a result of (1) construction of the Improvements and/or any "improvements" of or upon The Properties (as defined in the Homeowners' Covenants); (2) settling or shifting of the Improvements; (3) any alteration or repair to the Common Elements (or the Shared Essential Components) made by or with the consent of the Association or Developer or the NCL Owner, as appropriate; or (4) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements or the Shared Essential Components, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements or the relevant "improvements upon The Properties, shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, for each member of the Association (and its and their guests, tenants and invitees) shall exist for pedestrian traffic over, through and across such portions of the Commercial Unit as are intended to provide direct pedestrian access from the Shared Essential Components to the applicable Residential Unit. **Notwithstanding the foregoing, the aforesaid easement over the Commercial Unit is limited and solely for use of the named beneficiaries' obtaining access to and from their Residential Unit and shall not be used for the provision of any services, including, without limitation, any hotel related services including, but not limited to, solicitation and/or provision of housekeeping, personal services (i.e., massage, personal training, dry cleaning, etc.) and/or food and beverage service, it being understood and agreed by all Unit Owners that any such services may only be provided by the Owner(s) of the Commercial Unit.** The provisions of this section 3.3(d) may not be amended without an affirmative vote of not less than 4/5ths of all voting interests of all Unit Owners.
- (e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) and the NCL Owner 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 of any and all improvements upon any portion of The Properties (as defined in the Homeowners' Covenants), or any part thereof, or any Improvements or Units located or to be located on the Condominium Property, and for repair, replacement and maintenance or warranty purposes or where the Developer and/or NCL Owner, in its or their sole discretion, determines that it is required or desires to do so.
- (f) Sales Activity. For as long as there are any Units owned by the Developer and/or the Developer has any ownership interest in the Non-Condominium Lot (as defined in the Homeowners' Covenants), 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 for guest accommodations, model apartments and sales, leasing and construction offices relating to the Condominium or the Non-Condominium Lot, to show model Units

and the Common Elements to prospective purchasers and tenants of Units, and to erect on the Condominium Property and Association Property signs and other promotional material to advertise or otherwise market the Units, and/or any facilities built or to be constructed upon any portion of the Condominium Lot and/or Non-Condominium Lot, for sale, lease or occupancy.

- (g) Homeowners' Association and NCL Owner's Easements. The Homeowners' Association, the NCL Owner and its and their agents, employees, contractors and assigns shall have an easement to enter onto the Condominium Property for the purpose of performing such functions as are permitted or required to be performed by such Association and/or the NCL Owner by the Homeowners' Covenants, including, but not limited to, safety and maintenance activities, enforcement of architectural control restrictions and regulation of parking. Notwithstanding anything herein contained to the contrary, in order to provide for the orderly distribution and regulation of parking facilities within The Properties governed by the Homeowners' Covenants, to the extent that any portion of the Condominium Property is necessary or desirable (in the sole determination of the NCL Owner) for maximizing and easing traffic flow through the parking areas adjacent to the Condominium Property, then, all such portions shall be maintained and operated by the NCL Owner as Shared Essential Components of and under the Homeowners' Declaration, and the maintenance, operation and regulation of same shall be vested in the NCL Owner. An easement for such purposes is hereby granted and reserved to the NCL Owner and the Homeowners' Association and its members (and their guests, tenants and invitees), and each Owner, by acceptance of a deed or other conveyance of a Unit, shall be deemed to have agreed to the grant and reservation of easements herein described and the rights herein vested in the NCL Owner and the Homeowners' Association.
- (h) Master Easements. The Master Association, the Hotel Owner, and its and their agents, employees, contractors and assigns shall have an easement to enter onto the Condominium Property for the purpose of performing such functions as are permitted or required to be performed by the Master Association and/or Hotel Owner by the Master Covenants, including, but not limited to, safety and maintenance activities, enforcement of architectural control restrictions and regulation of parking. An easement for such purposes is hereby granted and reserved to the Master Association and Hotel Owner, and each Owner, by acceptance of a deed or other conveyance of a Unit, shall be deemed to have agreed to the grant and reservation of easement herein described and the rights herein vested in the Master Association and Hotel Owner.
- (i) Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Buildings and/or any improvements constructed upon The Properties (as defined in the Homeowners' Covenants), then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjoining structures which are necessarily or conveniently located within the Condominium Property, the Association Property and/or The Properties. All easements and rights provided for in the Homeowners' Covenants in favor of the Homeowners' Association, its respective members and/or the NCL Owner and/or the Declarant thereunder, or in the Master Covenants in favor of the Master Association and its respective members, the Hotel Owner and/or the Declarant thereunder, are hereby granted to said Associations and their respective members, the NCL Owner, the Hotel Owner and the respective Declarants, and its and their assignees, designees and nominees.
- (j) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time, to enter the Common Elements for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for the Developer to fulfill any of its warranty obligations. Failure of the Association or any Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. **Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in Section 24 below.**
- (k) Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board 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 and/or members of the Association, 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.

4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.
5. Ownership of Common Elements and Common Surplus and Share of Common Expenses: Voting Rights
 - 5.1 Percentage Ownership and Shares. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit, is as set forth on Exhibit "3" attached hereto.
 - 5.2 Voting. Each Unit shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association.
6. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:
 - 6.1 By The Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing in excess of 75% of the voting interests of all Unit Owners. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting.
 - 6.2 Material Amendments. 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, permit timeshare estates, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by in excess of 75% of the voting interests of Unit Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.
 - 6.3 Mortgagee's Consent. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of said mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.
 - 6.4 By The Developer. Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment: (i) to permit time-share estates (which must be approved, if at all, in the manner provided in Section 6.2 above); or (ii) to effect a "Material Amendment", which must be approved, if at all, in the manner set forth in Section 6.2 above. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance.
 - 6.5 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 which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. 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 underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

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 windows, window coverings, interior nonstructural walls, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.
- 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 and Association Property shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners.
- 7.3 Commercial Unit. The Commercial Unit Owner(s), from time to time, shall be responsible for the repair, replacement, improvement, maintenance, management, operation, and insurance of the Commercial Unit, which shall be performed in a commercially reasonable manner in the determination of the Owner(s) of the Commercial Unit (which determination shall be binding). In consideration of the reservation and grant of easement over the Commercial Unit, as provided in Section 3.3(d) above, each Residential Unit Owner shall be obligated for payment of the expenses incurred by the Commercial Unit Owner(s) in connection with such maintenance, repair, replacement, improvement, , management, operation, and insurance, all as more particularly provided in Section 12 below.
- 7.4 Specific Unit Owner Responsibility. The obligation to maintain and repair any air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Unit or Units shall, to the extent not part of the Shared Essential Components and otherwise part of the Condominium, be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units.

8. Additions, Alterations or Improvements by Unit Owner.

- 8.1 Consent of the Board of Directors. No Residential Unit Owner (other than the Developer) shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, or his Residential Unit without the prior written consent of the Board of Directors. The Board shall have the obligation to answer, in writing, any written request by a Residential Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work. 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. Further, no alteration, addition or modification may in any manner affect the Commercial Unit or any portion of the Shared Essential Components, without the prior written consent of the Commercial Unit Owner or the NCL Owner, as applicable (which consent may be withheld in its or their sole discretion). Once approved by the Board of directors, such approval may not be revoked. A Residential Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, the NCL Owner and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property, Association Property, the Commercial Unit and/or the Shared essential Components and expenses

arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association, the Commercial Unit Owner, the NCL Owner nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer, the Association, the Commercial Unit Owner and/or the NCL Owner arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association, Commercial Unit Owner and NCL Owner shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Developer, the Association, the Commercial Unit Owner and the NCL Owner 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 hereunder. The foregoing provisions shall not be applicable to the Commercial Unit and/or to any Unit owned by the Developer. The provisions of this Section 8.1 shall not be amended without an affirmative vote of 4/5ths of the total voting interests in the Condominium.

In addition to the foregoing, all additions, alterations and improvements proposed to be made by any Owner shall be subject to, and restricted by, the terms and conditions of the Master Covenants and may also require the prior approval of the Master Association, the Club and/or the Hotel Owner.

8.2 Improvements, Additions or Alterations by Developer or to the Commercial Unit. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 8 shall not apply to Developer-owned Units, nor to the Commercial Unit. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, but without obligation, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), and (b) expand, alter or add to all or any part of the recreational facilities. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 8.2 shall be adopted in accordance with Section 6, provided, however, that the exercise of any right by Developer pursuant to clause (b) above shall not be deemed a Material Amendment.

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 By-Laws and Articles of Incorporation of the Association (which By-Laws and Articles are attached hereto as Exhibits "4" and "5", respectively) as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to close hurricane shutters in the event of the issuance of a storm watch or storm warning.
- (b) 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.
- (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- (d) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including,

but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing.
- (f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium and Association Property.
- (g) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, unless the cost thereof exceeds \$25,000.00 in which event the acquisition shall require an affirmative vote of not less than 2/3rds of the voting interests. Real property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors alone and an affirmative vote of not less than 2/3rds of the voting interests; provided, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- (h) The power to act as the collection agent on behalf, and at the request, of the Homeowners' Association and/or Master Association and/or the Hotel Owner and/or the NCL Owner for assessments due same from Unit Owners.
- (i) 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.
- (j) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the Bylaws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.

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

- 9.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 8.1 hereof. The Association also 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. Nothing herein shall be deemed to relieve the Association of its duty to exercise ordinary care in the carrying out of its responsibilities nor to deprive the Unit Owners of their right to sue the Association if it negligently or willfully causes damage to the Unit Owners' property during the performance of the Association's duties.

- 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 his 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, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.
- 9.6 Effect on Developer. If the Developer holds a 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;
 - (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 and the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.
11. Collection of Assessments.
- 11.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the grantee Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
- 11.2 Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:
- (a) "Special Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.
 - (b) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property.

- (c) Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed \$125,000.00 or cause the total Assessments levied to exceed 115% of Assessments for the preceding calendar year, the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum is attained.
- 11.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at fifteen percent (15%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel to secure the payment of Assessments. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County. To be valid, the claim of lien must state the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates, and the claim of lien must be executed and acknowledged by an officer or authorized officer of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner or any other person claiming an interest in the Unit. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.
- Additionally, each Owner of any Unit by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have assigned all rents, issues and profits (the "Collateral Assignment of Rents") on each such Unit to the Association, which Collateral Assignment of Rents shall become absolute upon default of such Unit Owner hereunder.
- As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the Assessment installments for the remainder of the budget year to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the remainder of the budget year, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.
- 11.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 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 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 such receiver shall be paid by the party which does not prevail in the foreclosure action.
- 11.6 Institutional First Mortgagee. The liability of an Institutional First Mortgagee, or its successor or assignees, who acquire 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.

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 the mortgagee.

An Institutional First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

- 11.7 Developer's Liability for Assessments. During the period from the date of the recording of this Declaration until the earlier of the following dates (the "Guarantee Expiration Date"): (i) the last day of the twelfth (12th) complete calendar month after the applicable recording date, or (ii) the date that control of the Association is transferred to Unit Owners other than the Developer as provided in the By-Laws and the Act, the Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to the Units owned by the Developer, provided: (i) that the regular Assessments for Common Expenses imposed on each Unit Owner other than the Developer prior to the Guarantee Expiration Date shall not increase during such period over the amount set forth in Exhibit "6" attached hereto, and (ii) that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed levels receivable from other Unit Owners and/or from income of the Association. After the Guarantee Expiration Date, the Developer shall have the option of extending the guarantee for four (4) additional six (6) month periods, or paying the share of Common Expenses and Assessments attributable to Units it then owns.
- 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 all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 11.9 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, assessments will be collected monthly.
- 11.10 Application of Payments. Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

12. Obligation for Expenses Relating to Commercial Unit.

- 12.1 Maintenance. As provided in Sections 3.3(d) and 7.3 above, the Commercial Unit Owners have granted easements over the Commercial Unit and agreed to repair, replace, improve, maintain, manage, operate, and insure the Commercial Unit, all to be done as determined and ordered by the Commercial Unit Owners, or otherwise as provided in Section 7.3. In consideration of the foregoing, each Residential Unit Owner, by acceptance of a deed or other conveyance of a Residential Unit, and whether or not expressly stated, shall be deemed to agree that the costs incurred by the Commercial Unit Owners in (or reasonably allocated to) the repair, replacement, improvement, maintenance, management, operation, and insurance of the Commercial Unit (including reasonable reserves if established by the Commercial Unit Owner and any assessments payable by the Commercial Unit Owner to the Association, the Homeowners' Association, the Master Association and for use of the Shared Essential Components and Shared Facilities, collectively, the "Commercial Unit Costs") shall be paid for in part through charges (either general or special) imposed against the Residential Units in accordance with the terms hereof. No Owner may waive or otherwise escape liability for charges for the Commercial Unit Costs by non-use (whether voluntary or involuntary) of the Commercial Unit or abandonment of the right to use same. Notwithstanding anything herein contained to the contrary, the Commercial Unit Owners shall be excused and relieved from any and all maintenance, repair and/or replacement obligations with respect to the Commercial Unit to the extent that the funds necessary to perform same, to the extent the obligation of the Residential Unit Owners, are not available through the charges imposed and actually collected. The Commercial Unit Owners shall have no obligation to fund and/or advance any deficit or shortfall in funds which were the obligation of the Residential Unit

Owners in order to properly perform the maintenance, repair and/or replacement obligations described herein.

- 12.2 Easement. An easement is hereby reserved and created in favor of the Commercial Unit Owners, and its or their applicable designees over the Condominium Property for the purpose of entering onto the Condominium Property in the performance of the maintenance, repair and replacement obligations herein described.
- 12.3 Charge to Commercial Unit Owners; Lien. Developer, for all Units now or hereafter located within the Condominium Property, hereby covenants and agrees, and each Owner of any Residential Unit by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Commercial Unit Owners annual charges for the operation and insurance of, and for payment of one hundred percent (100.00%) of the Commercial Unit Costs (the "Residential Units Allocated Share"), the establishment of reasonable reserves for the replacement of the Commercial Unit and the furnishings and finishings thereof, capital improvement charges, special charges and all other charges hereinafter referred to or lawfully imposed by the Commercial Unit Owners in connection with the repair, replacement, improvement, maintenance, management, operation, and insurance of the Commercial Unit, all such charges to be fixed, established and collected from time to time as herein provided. The annual charge, capital improvement charge and special charge, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Residential Units and shall be a continuing lien upon the Residential Unit against which each such charge is made and upon all improvements thereon, from time to time existing. Each such charge, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Residential Unit at the time when the charge fell due and all subsequent Owners until paid, except as provided in Section 12.5 below. Reference herein to charges shall be understood to include reference to any and all of said charges whether or not specifically mentioned. Each Residential Unit shall be assessed a "proportionate share" of the Residential Units Allocated Share. The proportionate share for each Residential Unit shall be a fraction, the numerator of which is the percentage share allocated to the Residential Unit as set forth on Exhibit "3" to this Declaration, and the denominator of which is the aggregate of all percentage shares allocated to all Residential Units as set forth on Exhibit "3" to this Declaration. The Commercial Unit Owners shall budget and adopt charges for the Commercial Unit Costs based, in part, upon the Commercial Unit Owners reasonable projections of the intensity of use of the Commercial Unit for the period subject to the budget. In addition to the regular and capital improvement charges which are or may be levied hereunder, the Commercial Unit Owners shall have the right to collect reasonable reserves for the replacement of the Commercial Unit and the furnishings and finishings thereof and to levy special charges against an Owner(s) to the exclusion of other Owners for the repair or replacement of damage to any portion of the Commercial Unit (including, without limitation, improvements, furnishings and finishings therein) caused by the misuse, negligence or other action or inaction of an Owner or his guests, tenants or invitees. Any such special charge shall be subject to all of the applicable provisions of this Section including, without limitation, lien filing and foreclosure procedures and late charges and interest. Any special charge levied hereunder shall be due within the time specified by the Commercial Unit Owners in the action imposing such charge. The annual regular charges provided for in this Section shall commence on the first day of the month next following the recordation of this Declaration and shall be applicable through December 31 of such year. Each subsequent annual charge shall be imposed for the year beginning January 1 and ending December 31. The annual charges shall be payable in advance in monthly installments, or in annual, semi- or quarter-annual installments if so determined by the Commercial Unit Owners (absent which determination they shall be payable monthly). The charge amount (and applicable installments) may be changed at any time by the Commercial Unit Owners from that originally stipulated or from any other charge that is in the future adopted by the Commercial Unit Owners. The original charge for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, at any appropriate time during the year), but the amount of any revised charge to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year. The Commercial Unit Owners shall fix the date of commencement and the amount of the charge against the Residential Units for each charge period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Residential Units and charges applicable thereto which shall be kept in the office of the Commercial Unit Owners and shall be open to inspection by any Owner. Written notice of the charge shall thereupon be sent to every Residential Unit Owner subject thereto twenty (20) days prior to payment of the first installment thereof, except as to special charges. In the event no such notice of the charges for a new charge period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.
- 12.4 Effect of Non-Payment of Charge; the Personal Obligation; the Lien; Remedies of the Commercial Unit Owners. If the charges (or installments) provided for herein are not paid on the date(s) when due (being the date(s) specified herein or pursuant hereto), then such charges (or installments) shall become delinquent and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Residential Unit and all improvements thereon which shall bind such Residential Unit in the hands of the then Owner, his heirs, personal representatives, successors and assigns. Except as provided in Section 12.5 to the

contrary, the personal obligation of an Owner to pay such charge shall pass to his successors in title and recourse may be had against either or both. If any installment of a charge is not paid within fifteen (15) days after the due date, at the option of the Commercial Unit Owners, a late charge not greater than the amount of such unpaid installment may be imposed (provided that only one late charge may be imposed on any one unpaid installment and if such installment is not paid thereafter, it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges; provided further, however, that each other installment thereafter coming due shall be subject to one late charge each as aforesaid) and the Commercial Unit Owners may bring an action at law against the Owner(s) personally obligated to pay the same, may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Residential Unit on which the charges and late charges are unpaid and all improvements thereon, may foreclose the lien against the applicable Residential Unit and all improvements thereon on which the charges and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint, if any, and prosecuting same, in such action shall be added to the amount of such charges, late charges and interest secured by the lien, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and attorneys' fees actually incurred together with the costs of the action, through all applicable appellate levels. Failure of the Commercial Unit Owners (or any collecting entity) to send or deliver bills or notices of charges shall not relieve Owners from their obligations hereunder. The Commercial Unit Owners shall have such other remedies for collection and enforcement of charges as may be permitted by applicable law. All remedies are intended to be, and shall be, cumulative.

- 12.5 Subordination of the Commercial Unit Owners' Lien. The lien of the charges provided for in this Article shall be subordinate to real property tax liens and the lien of any first mortgage; provided, however, that any such mortgage lender when in possession, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any charge coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid charge which cannot be collected as a lien against any Residential Unit by reason of the provisions of this Section shall be deemed to be a charge divided equally among, payable by and a lien against all Residential Units, including the Residential Units as to which the foreclosure (or conveyance in lieu of foreclosure) took place.
- 12.6 Curative Right. In the event (and only in the event) that the Commercial Unit Owners fails to maintain the Commercial Unit as required under this Declaration, the Association shall have the right to perform such duties; provided, however, that same may only occur after thirty (30) days' prior written notice to the Commercial Unit Owners and provided that the Commercial Unit Owners have not effected curative action within said thirty (30) day period (or if the curative action cannot reasonably be completed within said thirty (30) day period, provided only that the Commercial Unit Owners have not commenced curative actions within said thirty (30) day period and thereafter diligently pursued same to completion). To the extent that the Association must undertake maintenance responsibilities as a result of the Commercial Unit Owners' failure to perform same, then in such event, but only for such remedial actions as may be necessary, the Association shall be deemed vested with the Charge rights of the Commercial Unit Owners hereunder for the limited purpose of obtaining reimbursement from the Commercial Unit Owners for the costs of performing such remedial work.
- 12.7 Financial Records. The Commercial Unit Owners shall maintain financial books and records showing its actual receipts and expenditures with respect to the maintenance, operation, repair, replacement, alteration and insurance of the Commercial Unit, including the then current budget and any then proposed budget (the "Commercial Unit Records"). The Commercial Unit Records need not be audited or reviewed by a Certified Public Accountant. The Commercial Unit Records shall at all times, during reasonable business hours, be subject to the inspection of any Member of the Association.
- 12.8 Commercial Unit Owners Consent; Conflict. The provisions of this Section 12 shall not be amended, modified or in any manner impaired and/or diminished, directly or indirectly, without the prior written consent of 4/5th of the Residential Unit Owners and 4/5ths of the Commercial Unit Owners. In the event of any conflict between the provisions of this Section 12, and the provisions of any other Section of this Declaration, the provisions of this Section 12 shall prevail and govern.
13. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 13.1 Purchase, Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium and Association Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.

- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

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

- (a) Casualty. The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policies) and all Improvements located on the Common Elements and the Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property (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. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude, all furniture, furnishings, Unit floor coverings, wall coverings and ceiling coverings, other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and all electrical fixtures, appliances, air conditioner and heating equipment, water heaters and built-in cabinets, to the extent that any of same are required to be repaired or replaced by the Unit Owners. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.
- (c) Workmen's Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance covering the Common Elements, Association Property and Units if required by the Primary Institutional First Mortgagee or FNMA/FHLMC, or if the Association so elects.
- (e) Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.

- (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 as the Board of Directors of the Association shall determine from time to time to be desirable.

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

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

- 13.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may (or if required by FNMA/FHLMC, 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.
- 13.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 13.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors as provided in Section 13.10 below, and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:
 - (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.
 - (b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
 - (c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.
- 13.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

- (a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.
 - (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
 - (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 13.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
 - (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.
- 13.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 13.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.
- 13.9 Benefit of Mortgagees. Certain provisions in this Section 13 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 13.10 Appointment of Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 13.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
14. Reconstruction or Repair After Fire or Other Casualty.
- 14.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.
- If 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 a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

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

- 14.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and, if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.
- 14.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.
- (a) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
 - (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
 - (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property; and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
 - (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated;

except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

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

14.4 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, and on account of damage to the Optional Property, the Association shall charge the Owner (but shall not levy an Assessment) in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

14.5 Benefit of Mortgagees. Certain provisions in this Section 14 are for the benefit of mortgagees of Units and may be enforced by any of them.

15. Condemnation.

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

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

15.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special 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 15 specifically provided.

15.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and paid by the Owner of the Unit.
- (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
- (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the

denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

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

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

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

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First 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 (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 (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 Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Units Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

15.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner

elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

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

16. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

16.1 Occupancy. Each Residential Unit shall be used as a residence only, whether for permanent, temporary or transient use, except as otherwise herein expressly provided, all in accordance with all applicable county and state codes, ordinances and regulations. The Commercial Unit may be used for any lawful purpose, and may be used by the Owner(s) thereof and its/their guests, tenants and invitees. The provisions of this subsection 16.1 shall not be applicable to Units used by the Developer for model apartments, sales or resales offices or management or administrative services.

The rights of Residential Unit Owners to use the Commercial Unit shall be limited to the extent granted in, and subject to the restrictions of, Section 3.3(d), and the obligation for payment of the assessments as set forth in Section 12. It is contemplated (but without creating an obligation whatsoever) that in addition to use as a typical hallway for pedestrian passage, the Commercial Unit will be utilized by the Commercial unit Owner in such a manner as to provide hotel features for the Condominium, which may include (again without obligation, and without limitation) housekeeping, transient rental services and reservation services, room service, personal services, etc.

The provisions of this subsection 16.1 shall not be amended without the affirmative vote of not less than four-fifths (4/5ths) of the total voting interests of all Unit Owners.

16.2 Children. Children shall be permitted to be occupants of Units.

16.3 Pet Restrictions. Neither tenants nor guests of Owners are permitted to maintain pets. A Residential Unit Owner may maintain not more than one (1) domesticated pet, provided that any pet permitted shall only be allowed to remain in the Unit if such pet is (i) not greater than thirty inches (30") in height measured from the ground to the top of the pet's shoulders, (ii) permitted to be so kept by applicable laws and regulations, (iii) not left unattended on balconies or in lanai areas, and (iv) generally, not a nuisance to residents of other Units or of neighboring buildings. Pets shall not be permitted outside of their owner's Unit unless attended by an adult and on a leash not more than six (6) feet long. Pets shall only be walked or taken upon those portions of The Properties (governed by the Homeowners' Covenants and Master Covenants) designated by the applicable association or entity governing same from time to time for such purposes. Unit Owners shall pick up all solid wastes from their pets and dispose of same appropriately. In addition to all other rights of regulation granted to the Commercial Unit Owner regarding use of the Commercial Unit, the Commercial Unit Owner shall have the right to limit the portions of the Commercial Unit which may be used by pets, and to require a security deposit from any Owner desiring to maintain a pet in his/her Unit. Each Owner shall be responsible for all damage caused by his/her pet, and if the damage is to the Commercial unit, the Commercial Unit Owner shall have the right to require repayment for remedying any damage caused by such pet, and the amount required to be paid shall be secured by the lien granted to the Commercial Unit Owner. Without limiting the generality of Section 18 hereof, a violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in the By-Laws and any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property.

16.4 Hotel Related Service. The Owner from time to time of the Commercial Unit shall have the exclusive right (but not the obligation) to provide hotel and/or transient rental services, including, but not limited to, solicitation and/or provision of housekeeping, personal services (i.e., massage, personal training, dry cleaning, etc.) and/or food and beverage service, to the Condominium and the Unit Owners. No amendment to this Declaration or rule of the Association shall be adopted to impair or abridge the rights herein granted without an affirmative vote of not less than 75% of the voting interests of the Residential Unit Owners and 100% of the voting interests of the Commercial Unit Owner.

16.5 Alterations. Without limiting the generality of Section 8.1 hereof, but subject to Section 9 hereof, no Residential Unit Owner shall cause or allow improvements or changes to any Residential Unit, Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, machinery, or air-

conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of said Unit, without obtaining the prior written consent of the Association (in the manner specified in section 8.1 hereof). Curtains or drapes (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.

- 16.6 Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. In that regard, each Unit Owner, by acceptance of a deed for a Unit, thereby covenants and agrees that it is the intention of the Developer that the stairwells of the Building are intended for ingress and egress in the event of emergency only, and as such are constructed and left unfinished solely as to be functional for said purpose, without regard to the aesthetic appearance of said stairwells. The foregoing is not intended to prohibit the use of the stairwells for any other proper purpose.
- 16.7 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium and/or Association Property by its residents, occupants or members. No activity specifically permitted by this Declaration, including, without limitation, activities or businesses conducted from the Commercial Unit, shall be deemed a nuisance.
- 16.8 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium 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 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 Section 16.8. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.
- 16.9 Leases. It is intended that the Units may be used for transient and/or hotel rentals. As such, leasing of Units or portions thereof shall not be subject to the approval of the Association and/or any other limitations, other than as expressly provided herein. Each tenant or occupant shall comply with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto), the Homeowners' Covenants, the Master Covenants and with any and all rules and regulations adopted by the Association and/or the Homeowners' Association and/or the Master Association from time to time. The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association, the Commercial Unit Owner and/or the NCL Owner to repair any damage to the Common Elements, the Commercial Unit and/or the Shared Essential Components 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 and special charges may be levied against the Unit therefor. All tenancies are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease. Notwithstanding the foregoing, there shall be no minimum lease term for the rental of Units, nor shall there be a maximum number of times that a Unit may be leased. By this provision, it is expressly understood and agreed that transient rental of Units is expressly authorized and permitted. There shall be no amendment to this Section 16.9, or to any other provision of this Declaration which shall impair the rights established in this Section 16.9, without the prior approval of seventy five percent (75%) of the entire voting interests of the Residential Unit Owners and one hundred percent (100%) of the entire voting interests of the Commercial Unit Owner.
- 16.10 Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will be permitted only in foyers and bathrooms or as otherwise installed by the Developer or prior to the recordation of this Declaration. Installation of hard surfaced floor coverings (other than by the Developer) in any other areas are to receive sound absorbent, less dense floor coverings, such as carpeting. Use of a hard and/or heavy surface floor covering in any other location must be first submitted to and approved by the Board of Directors and also meet applicable structural requirements and any sound insulation standards adopted by the Board. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the building. The Board 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 used on balconies. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Owners will be held strictly liable for violations 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. Each Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a high-rise building such as the

Condominium 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.

- 16.11 Exterior Improvements. Without limiting the generality of Sections 8.1 or 16.5 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, storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Association. Notwithstanding the foregoing, any Unit Owner may display one portable removable United States flag in a respectful way.
- 16.12 Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in Section 9.1 hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys (or access card or code, as may be applicable) to their respective Units to the Association to use in the performance of its functions. No Owner shall change the locks to his Unit without so notifying the Association and delivering to the Association a new set of keys (or access card or code, as may be applicable) to such Unit.
- 16.13 Hurricane Shutters. The Board of Directors shall, from time to time, establish hurricane shutter specifications which comply with the applicable building code, and establish permitted colors, styles and materials for hurricane shutters. Subject to the provisions of Section 8.1 above, the Association shall approve the installation or replacement of hurricane shutters conforming with the Board's specifications. The Board may, with the approval of a majority of voting interests in the Condominium, install hurricane shutters, and may (without requiring approval of the membership) maintain, repair or replace such approved shutters, whether on or within Common Elements, Units or Association Property; provided, however, that if laminated glass or window film, in accordance with all applicable building codes and standards, architecturally designed to serve as hurricane protection, is installed, the Board may not install hurricane shutters in accordance with this provision. All shutters shall remain open unless and until a storm watch or storm warning is announced by the National Weather Center or other recognized weather forecaster. A Unit Owner or occupant who plans to be absent during all or any portion of the hurricane season must prepare his Unit prior to his departure by designating a responsible firm or individual to care for his Unit should a hurricane threaten the Unit or should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of the Association.
- 16.14 Storage on Balconies/Terraces. No equipment, materials or other items shall be kept or stored on any balcony or terrace area of the Condominium, including but not limited to towels, clothing, bicycles. The foregoing shall not prevent, however, placing and using patio-type furniture, planters and other items in such areas if same are normally and customarily used for a residential balcony or terrace area. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the NCL Owner shall be final and dispositive.
- 16.15 Cumulative with Restrictions of Homeowners' and Master Covenants. The foregoing restrictions shall be in addition to, cumulative with, and not in derogation of those set forth in the Homeowners' Covenants and the Master Covenants.
- 16.16 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 16 for good cause shown.
- 16.17 Effect on Developer. Subject to the following exceptions, the restrictions and limitations set forth in this Section 16 shall not apply to the Developer nor to Units owned by the Developer. The Developer shall not be exempt from the restrictions, if any, relating to requirements that leases or lessees by approved by the Association, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to the Developer's construction, maintenance and marketing activities.
17. Selling, Leasing and Mortgaging of Units. Subject to the provisions of this Declaration, each Unit Owner shall have the right to sell, lease or mortgage his Unit without restriction. When a Unit is leased, a tenant shall have all use rights in Association Property and those Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall also have such rights, except as set forth below. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a Unit Owner and a tenant of Association Property and Common Elements otherwise readily available for use generally by Owners during certain blackout dates [not to exceed ten (10) days in any year] determined by the Association.
18. Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner shall be governed by and shall comply with the terms of this Declaration and all exhibits

annexed hereto, the Homeowners Covenants, the Master Covenants 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 of 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:

- 18.1 Mandatory Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, 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. 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 the filing of a complaint for a 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.
- 18.2 Negligence and Compliance. 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 negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association. 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, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines, to sue at law for damages, and to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, provided, however, that nothing contained in this Section 19.2 shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.
19. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the applicable interests in the Common Elements and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of the partition 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 any Unit.
20. Additional Rights of Mortgagees and Others.
- 20.1 Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration;

(b) the Articles; (c) the By-Laws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.

- 20.2 Amendments. Subject to the other provisions of this Declaration and except as provided elsewhere to the contrary, an amendment directly affecting any of the following shall require the approval of a Majority of Institutional First Mortgagees: (a) voting rights; (b) assessments, assessment liens or the priority of assessment liens; (c) reserves for maintenance, repair and replacement of Common Elements and/or Association Property; (d) responsibility for maintenance and repairs; (e) reallocation of interests in the Common Elements or rights to their use; (f) redefinition of Unit boundaries; (g) conversion of Units into Common Elements or Common Elements into Units; (h) expansion or contraction of the Condominium; (i) insurance or fidelity bonds; (j) leasing of units; (k) imposition of restrictions on the selling or transferring of title to Units; (l) restoration or repair of the Condominium after a casualty or partial condemnation; (m) any action to terminate the Condominium after casualty or condemnation; and (n) any provision that expressly benefits mortgage holders, insurers or guarantors as a class.
- 20.3 Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of:
- (a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;
 - (b) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;
 - (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
 - (d) any proposed action which requires the consent of a specified number of mortgage holders.
- 20.4 Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.
21. Covenant Running With the Realty. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, as well as those of the Homeowners' Covenants and Master Covenants, 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 Realty 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 Realty 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, By-Laws and applicable rules and regulations, as well as those of the Homeowners' Covenants and Master Covenants, all as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, the Homeowners' Covenants and the Master Covenants, all 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.
22. The Homeowners' Association. The Condominium is part of a Community known as Grand Bay Resort (the "Community"). The Common Properties of the Community are governed by the Homeowners' Association pursuant to the Homeowners' Covenants. The Homeowners' Covenants also contain certain rules, regulations and restrictions relating to the use of such Common Properties as well as the Condominium Property (including Units). Each Unit Owner will be a member of the Homeowners' Association and will be subject to all of the terms and conditions of the Homeowners' Covenants, as amended and supplemented from time to time. Among the powers of the Homeowners' Association are the power to assess Unit Owners (and other members of the Homeowners' Association) for a pro-rata share of the expenses of the operation and maintenance (including the management fees relating to) of such Common Properties and to impose and foreclose liens in the event such assessments are not paid when due. Except for those instances where the use is limited pursuant to the Homeowners' Covenants, the Unit Owners shall be entitled to use all of said Common Properties in accordance with and subject to the terms of the Homeowners' Covenants. The Homeowners' Association may impose certain obligations on the Association including, but not limited to, obligating the Association to collect Assessments due the Homeowners' Association despite the fact that such Assessments are not Common Expenses of the Condominium.
23. The Master Association. The Condominium is part of a community known as Grand Bay Resort and Residences (the "Master Community"). The Master Common Areas of the Master Community are governed by the Master Association and the Hotel Owner pursuant to the Master Covenants. The Master

Covenants also contain certain rules, regulations and restrictions relating to the use of such Master Common Areas as well as the Condominium Property (including Units). Each Unit Owner will be a member of the Master Association and will be subject to all of the terms and conditions of the Master Covenants, as amended and supplemented from time to time. Among the powers of the Master Association and the Hotel Owner are the power to assess Unit Owners (and other members of the Master Association) for a pro-rata share of the expenses of the operation and maintenance (including the management fees relating to) of such Master Common Areas and to impose and foreclose liens in the event such assessments are not paid when due. Except for those instances where the use is limited pursuant to the Master Covenants, the Unit Owners shall be entitled to use all of said Master Common Areas in accordance with and subject to the terms of the Master Covenants. The Master Association and Hotel Owner may impose certain obligations on the Association including, but not limited to, obligating the Association to collect Assessments due the Master Association and/or Hotel Owner.

24. Disclaimer of Warranties. Developer hereby disclaims any and all express or implied warranties as to continuance of any particular view (it being understood and agreed that construction on any adjacent properties my obstruct such view), design, construction, sound transmission, furnishing and equipping of the Condominium Property, except only those set forth in section 718.203 of the Act, to the extent applicable and to the extent that same have not expired by their terms.

Further, each Owner, by acceptance of a deed or other conveyance of a Unit shall be deemed to waive and release the applicable "Declarant" from any and all express or implied warranties as to design, construction, sound transmission, furnishing and equipping of any improvements thereon, whether part of the Common Areas or Common Properties governed by the Homeowners' or Master Covenants, or otherwise.

As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed.

All unit owners, by virtue of acceptance of title to their respective units (whether from the Developer or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages.

25. Additional Provisions.

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

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

25.3 Mortgagees. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.

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

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

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

- 25.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 25.8 Waiver. 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.
- 25.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 25.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This Power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 25.11 Gender: Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 25.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 25.13 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, By-laws, any rules or regulations of the Association or any other document governing or binding the association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:
- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;
 - (b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, County and/or any other jurisdiction or the prevention of tortious activities; and
 - (c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

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

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the 3 day of May, 2001.

Witnessed by:

G.B. HOTEL PARTNERS, LTD.

By: Key Resort, Inc., a Florida corporation, general partner

Lisa Rosario
Name: LISA ROSARIO

By: Douglas Weiser
Douglas Weiser, President

(Corporate Seal)

Address: 3250 Mary Street, Fifth Floor
Miami, Florida 33133

Jennifer Rivera
Name: JENNIFER RIVERA

By: GB (Key Biscayne) Operating Corporation, a Delaware corporation, general partner

Lisa Rosario
Name: LISA ROSARIO

By: Karim Alibhai
Karim Alibhai, President

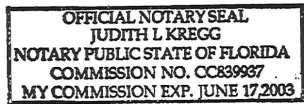
(Corporate Seal)

Address: 10777 Westheimer
Houston, TX 77042

Jennifer Rivera
Name: JENNIFER RIVERA

STATE OF FLORIDA)
COUNTY OF MIAMI DADE) ss:

The foregoing instrument was acknowledged before me this 3rd day of MAY, 2001 by Douglas Weiser, as President of Key Resort, Inc., a Florida corporation, general partner of G.B. HOTEL PARTNERS, LTD., a Florida limited partnership, on behalf of said corporation and partnership. He is personally known to me or produced _____ as identification.



Judith L. Kregg
Name: JUDITH L. KREGG

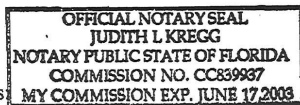
My commission expires:

Notary Public, State of Florida
Commission No. CC 839937

JUNE 17, 2003

STATE OF FLORIDA)
COUNTY OF MIAMI DADE) ss:

The foregoing instrument was acknowledged before me this 3rd day of MAY, 2001 by Karim Alibhai, as President of GB (Key Biscayne) Operating Corporation, a Delaware corporation, general partner, of G.B. HOTEL PARTNERS, LTD., a Florida limited partnership, on behalf of said corporation and partnership. He is personally known to me or produced _____ as identification.



Judith L. Kregg
Name: JUDITH L. KREGG

My commission expires:

Notary Public, State of FLORIDA
Commission No. CC 839937

JUNE 17, 2003