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**DECLARATION OF CONDOMINIUM OF
THE PRESERVE ON ANASTASIA ISLAND CONDOMINIUM**

The Preserve on Anastasia Island, LLLP, a Florida limited partnership (the "Developer"), does hereby declare as follows:

1. **Introduction and Submission:**

1.1 **The Land.** The Developer owns the fee simple title to that certain land located in St. Johns County, Florida, as more particularly described in Exhibit "A" hereto (the "Land").

1.2 **Submission Statement.** The Developer hereby submits the Land and, except as otherwise provided herein, all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, less and except all public utility installations, and other personal property or equipment, if any, not owned by the Developer to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date hereof.

1.3 **Name.** The name by which this condominium is to be identified is: The Preserve on Anastasia Island Condominium (herein called the "Condominium").

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

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

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

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

2.4 "Association" means The Preserve on Anastasia Island Condominium Association, Inc., a Florida corporation not for profit, the 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 benefit of its members.

2.6 "Board" or "Board of Directors" means the board of directors or other representative body which is responsible for administration of the association.

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

- 2.8 "Bylaws" means the Bylaws of the Association.
- 2.9 "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 take action on behalf of the Board.
- 2.10 "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within the Units;
 - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements;
 - (c) An easement of support in every portion of the Unit which contributes to the support of a Building;
 - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements;
 - (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration;
 - (f) Common Elements includes Limited Common Elements unless the context otherwise requires.
- 2.11 "Common Expenses" means the expenses of administration, maintenance, operation, repair, replacement, or protection of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expense, whether or not included in the foregoing designated as common expense by the Condominium Act, or this Declaration, the Articles or the Bylaws.
- 2.12 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Condominium, (including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements) over the Common Expenses.
- 2.13 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to the Unit.
- 2.14 "Condominium Property" means the Land and the personal property that are subjected hereunder to condominium ownership, whether or not contiguous, and all improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.
- 2.15 "County" shall mean St. Johns County, Florida.
- 2.16 "Declaration" or "Declaration of Condominium" means this instrument or instruments by which the Condominium will be created, as they are from time to time amended.
- 2.17 "Developer" means The Preserve on Anastasia Island, LLLP, 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 only a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Condominium. In the event of such partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment

may be made on a non-exclusive basis. Notwithstanding any assignment of Developer's rights hereunder (whether partially or in full), the assignee shall not be deemed to have assumed any of the obligations of Developer unless, and only to the extent that, it expressly agrees to do so in writing. The rights of Developer under this Declaration are independent of 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.

- 2.18 "Dispute", for purposes of Section 19.1, 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 Bylaws to (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit or the appurtenances thereto; or (ii) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles of Bylaws 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.
- 2.19 "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.
- 2.20 "First Mortgagee" or "Mortgagee" means the owner or holder of a first mortgage encumbering a Condominium Parcel.
- 2.23 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) on the Condominium Property, including but not limited to, a Building or Buildings.
- 2.24 "Institutional First Mortgage" or "Mortgagee" means the Developer or a generally recognized and duly authorized institutional lender such as a bank, savings and loan association, insurance company, mortgage company, real estate or mortgage investment trust, which owns or holds a first mortgage encumbering a Condominium Parcel. "Mortgagee" also includes the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and Federal Housing Administration or any other lender, or its loan correspondent or agency of the United States Government holding, guaranteeing or insuring a first mortgage on a Condominium Parcel.
- 2.25 "Limited Common Elements" mean those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units, as specified in this Declaration.
- 2.26 "Primary Institutional First Mortgage" means the Institutional First Mortgage which owns at any time first mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgage.
- 2.27 "Special Assessment" means any assessment levied against Unit Owners other than the Assessment required by a budget adopted annually.
- 2.28 "Unit" means a part of the Condominium Property which is subject to exclusive ownership. Reference in this Declaration to "Units" shall mean all of the Units contained in the Condominium, unless the context is to the contrary or it is otherwise provided to the contrary.

- 2.29 "Unit Owner", or "Owner of a Unit" means a record owner of legal title to a Condominium Parcel as shown by the real estate records in the office of the Clerk of St. Johns County, Florida, whether such Owner be the Developer, one or more persons, firms, associations, corporations or other legal entities. "Owner" shall not mean or refer to the holder of a mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.
- 2.30 "Utility services" shall include, but not be limited to, electric power, water, air conditioning, MATV and CATV systems and garbage and sewage disposal.
- 2.31 "Voting Certificate" means a document which designates one of the record title owners, or the corporate partnership, or entity representative, who is authorized to vote on behalf of a Unit that is owned by more than one owner or by any entity.
- 2.32 "Voting Interests" means the voting rights distributed to the Association members pursuant to the Act and Section 5 of this Declaration. The voting interests of the Association are the voting rights distributed to the Unit Owners in all condominiums operated by the Association. On matters related to a specific condominium, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

3. Description of Development Plans and Condominium.

Development Plans. This Condominium is being developed in phases pursuant to Section 718.403 of the Act. The Condominium will consist of the land and improvements described and depicted in Exhibit A attached hereto. As described in Section 25 of this Declaration, additional phases may be added to the Condominium. Exhibit B to this Declaration contains a plot plan showing the approximate general location of the buildings and improvements contained in each phase, and a legal description of each phase. Notwithstanding the provisions in Section 25 of this Declaration, the Developer hereby elects to submit all three phases to the Condominium form of ownership upon the recording of this Declaration in the public records of the County.

- 3.1 Identification of Units. The Land has constructed thereon 22 Buildings containing a total of 328 Units. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each such Unit is set forth on Exhibit "B" annexed hereto. Exhibit "B" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Buildings in which the Units are located and a plot plan thereof. Said Exhibit "B" together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. There shall pass with a Unit, as appurtenances thereto, (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association designated in this Declaration with the full voting rights appertaining thereto and (e) other appurtenances as may be provided in this Declaration. Time-share estates will not be created with respect to any Unit in the Condominium.
- 3.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

- (a) Upper and lower boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:
 - (i) Upper boundaries. The horizontal plane(s) of the interior undecorated finished lower surface of the ceiling.
 - (ii) Lower boundaries. The horizontal plane of the interior undecorated finished upper surface of the floor.
- (b) Perimetrical boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the interior undecorated finished surface of the walls bounding the Unit extended to intersections with each other and with the upper and lower boundaries.
- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, conversation pits and skylights, such boundaries shall be extended to include the interior undecorated finished surfaces of such apertures, including all frameworks thereof. Exterior surfaces made of glass or other transparent material, and all framing and casings therefor, shall be included in the boundaries of the 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 "B" hereto shall control in determining the boundaries of a Unit.

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

- (a) Balconies. Balconies abutting a Unit shall be for the exclusive use of the Unit Owner owning such abutting Unit. The Unit Owner shall be responsible for maintenance and care of the balcony, including, without limitation, all wiring, electric outlets, lighting fixtures and screening. A Unit Owner shall not enclose the exterior balconies, without the prior written approval of the Board of Directors and the Architectural Control and Maintenance Standards Committee. The Architectural Control and Maintenance Standards Committee shall be responsible for approving the design, structural integrity, aesthetic appeal and construction details, or otherwise, which approval may be unreasonably withheld. The Board of Directors shall determine whether or not the enclosure, if approved by the Committee aforescribed, will be installed.
- (b) Air Conditioner Condensing Unit. Each Unit Owner shall be responsible for the maintenance and care of the air conditioner condensing unit.
- (c) Parking Spaces. Parking is restricted to the parking spaces located on the parking areas, or spaces noted on the survey attached as Exhibit A hereto. Each space identified therein, is assigned an alpha-numerical designation. The Developer, for so long as it owns any Unit for sale, reserves the exclusive right to assign to any Unit the exclusive use of one uncovered parking space. The Developer shall be entitled to keep any fee it charges a Unit Owner for the exclusive use of an uncovered parking space(s) assigned to his Unit pursuant to this subsection. At such time that the Developer no longer has the right to assign any uncovered parking spaces, any remaining uncovered parking spaces, may be assigned by the Association. One uncovered parking space shall be assigned to each Unit as of the date of closing of title to each

Unit for the exclusive use of the Unit Owner. All assignments of uncovered parking spaces shall be by separate written assignment which will indicate that it is made under this subsection, but it may not be recorded among the Public Records. So long as each Unit shall have one uncovered parking space appurtenant thereto at all times, a Unit Owner who has acquired additional uncovered parking spaces from the Developer or Association, shall have the right to sell, transfer or assign the exclusive use to such additional uncovered parking spaces to another Unit Owner.

- (d) Garage Spaces. Garage parking spaces are restricted to the garage parking spaces located in the parking areas, noted on the survey attached as Exhibit B hereto. Each space identified therein, is assigned a numerical designation. The Developer, for so long as it owns any Unit for sale, reserves the exclusive right to assign to any Unit the exclusive use of one or more garage parking spaces. The Developer shall be entitled to keep any fee it charges a Unit Owner for the exclusive use of a garage parking space assigned to this Unit pursuant to this subsection. At such time that the Developer no longer has the right to assign any garage parking spaces any remaining garage parking spaces may be assigned by the Association. Such assignment shall be by separate written assignment which will indicate that it is made under this subsection, but it may not be recorded among the Public Records. The form of assignment of a garage parking space will note the further free assignability thereof. Neither the Developer, nor the Association, may divest a Unit of the garage parking space assigned to it pursuant to this subsection. No more than one Unit, however, shall be entitled to have as a Limited Common Element appurtenant thereto any specific garage parking space, but one Unit may have more than one such garage parking space, as a Limited Common Element. An assignment of any garage parking space grants only the exclusive use thereof as a Limited Common Element appurtenant to the particular Unit and does not convey any title thereto. Any transfer, or subsequent assignment, as contemplated above, shall operate to transfer only the exclusive use of such garage parking space.
- (e) Other. Any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one Unit or more than one Unit (i.e. any hallway serving a single Unit or more than one Unit owned by the same Owner) shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by said Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors of the Association and shall be binding and conclusive when so made. To the extent of any area deemed a Limited Common Elements hereunder, the Owner of the Units(s) to which the Limited Common Element is appurtenant shall have the right to alter same as if the Limited Common Elements were part of the Owner's Unit, rather than as required for alteration of Common Elements. Notwithstanding the foregoing, the designation of same as a Limited Common Element hereunder shall not allow the Owner of the Unit to which the Limited Common Element is appurtenant to preclude passage through such areas as may be needed from time to time for emergency ingress and egress, and for the maintenance, repair, replacement, alteration and/or operation of the elevators, life safety systems, mechanical equipment and/or other Common Elements which are most conveniently serviced (in the sole determination of the Board) by accessing such areas (and an easement is hereby reserved for such purposes).

- 3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act).
- (a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.
- (b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other services or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, service and drainage facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided the Association has the irrevocable right of access to each Unit during reasonable hours, when necessary for maintenance, repair or replacement of any Common Elements or any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.
- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, and for each member of the Association and other neighborhood associations and the Community Association shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks and other portions of the Common Elements and/or Association Property as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. Developer hereby grants to delivery, pick-up and fire protection services, police and other authorities of the law, United States carriers, representatives of electrical, telephone and other utilities authorized by Developer to service the Condominium and representatives of cable television, and to such other persons as Developer from time-to-time may designate, the non-exclusive, perpetual right of ingress and egress over, through and across such portions of the Common Elements and/or Association Property for the purposes of performing their authorized services and investigation. Such easements shall survive any termination of this Declaration. None of the easements specified in this Subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements

(other than those on Condominium Parcels) shall automatically be subordinate to, the rights of Unit Owners with respect to such easements. In addition, there is hereby created a non-exclusive easement in favor of all of the Owners of Units, residents and their guests and invitees in The Preserve on Anastasia Island Community for ingress and egress over portions of the Common Elements, if any, designated for vehicular traffic so as to provide reasonable access to the interior roads built and to be built within the Community which roads are owned or to be owned by the Association.

- (e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its and their sole discretion, from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of maintenance, repair, or replacement of any Improvements, Common Elements or any portion of a Unit. The Association (and its designees, contractors, subcontractors, employees) shall have the right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for 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.
- (f) Sales Activity. For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use such Units and parts of the Common Elements for model apartments and sales offices, to show model apartments and the Common Elements to prospective purchasers and tenants of the Units, and to erect on the Condominium Property and Association Property signs and other promotional material to advertise Units and certain Limited Common Elements for sale or lease or to manage the Condominium Property. Developer reserves the right to use any units not closed as temporary accommodations for, but not limited to, prospective purchasers. Such temporary accommodations shall not be considered a leasing of the Unit and shall not be subject to Section 18 hereof. No charge shall be made to Developer for such use.
- (g) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for act or omission of Developer with respect to the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time and without requiring prior approval of the Association and/or any Unit Owner (provided, however, that absent an emergency situation, Developer shall provide reasonable advance notice), to enter the Condominium Property, including the Units, Common Elements and Limited Common Elements, for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. 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 24.10.
- (h) Additional Easements. The Association, on its and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as their attorney-in-fact for this purpose), each shall have the right to grant such additional electric, gas, other utility or service or other easements, or relocate any existing easements or drainage

facilities in any portion of the Condominium Property and Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property and Association Property, as the Association shall deem necessary or desirable for the proper operations and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration or otherwise, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes. The Association has the authority without the joinder of any Unit Owners, to grant, modify or move any easement, subject to the provisions of the easement, if the easement constitutes part of or crosses the Common Elements and Association Property.

4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, membership in the Association designated in this Declaration, with the full voting rights appertaining thereto, and except as provided herein, the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from and shall pass with the title to the Unit, whether or not separately described. All of these aforescribed appurtenances to a Unit cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

5. Ownership of Common Elements and Common Surplus and Share of Common Expenses.
 - 5.1 Percentage Ownership and Shares of Condominium. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses appurtenant to each Unit is set forth in Exhibit "C" annexed hereto, which percentage is based upon the total square footage of each Unit in uniform relationship to the total square footage of each Unit in the Condominium.

 - 5.2 Voting. Each Unit in the Condominium shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the Bylaws and Articles. Each Unit Owner in the Condominium shall be a member of the Association. Each Unit Owner in the Condominium will have the right to personally cast his or her own vote in all matters voted upon.

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 of the Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing in excess of 75 percent 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 not less than a majority 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 mortgages 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 Mortgage 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 Bylaws 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 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 and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical, plumbing, heating and air-conditioning equipment, fixtures and outlets, if any, within the Unit or the Limited Common Elements or belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein, and shall be in accordance with the original plans and specifications therefor or as otherwise directed by the Association and/or the Architectural Control and Maintenance Standards Committee, if applicable. Additionally, each Unit Owner shall pay all charges for utility services metered directly to his Unit.
- 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 (other than Limited Common Elements as provided above) 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 Specific Unit Owner Responsibility. The obligation to maintain and repair the following specific items shall be the responsibility of the Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units or are Limited Common Elements:
- (a) where a Limited Common Element consists of a balcony, the Unit Owner who has the right to the exclusive use of said balcony, shall be responsible for the maintenance, care and preservation of the paint and surface of the walls and/or fences, including floor and ceiling, within said area, if any, and the fixed and/or sliding glass door(s) in the entrance way(s) or other portions of said area, if any, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs, if any.
 - (b) Air conditioner condensing unit, if applicable.
- 7.4 Association's Right of Access to Units. The Association has the irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration, or for making emergency repairs which are necessary to prevent damage to the Common Elements or to another Unit or Units.
- 7.5 Hurricane Shutter Specifications. The Board shall adopt hurricane shutter specifications for the Buildings, which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code. Notwithstanding any provision to the contrary in this Declaration, if approval is required hereunder, the Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board. The Board may, subject to (a) the provisions of the Act that deal with contracts for the purchase, lease or rental of materials or equipment to be used by, or for contracts for services to be provided to the Association, and (b) the approval of a majority of voting interests of the Condominium, install hurricane shutters and may maintain, repair, or replace such approved hurricane shutters,

whether on or within the Common Elements, Limited Common Elements, Units, or Association Property. However, where laminated glass or window film architecturally designed to function as hurricane protection which complies with the applicable building code has been installed, the Board may not install hurricane shutters. The Board may operate shutters installed pursuant to this Section 7.5 without permission of the Unit Owners only where such operation is necessary to preserve and protect the Condominium Property and Association Property. The installation, replacement, operation, repair and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed a material alteration to the Common Elements or Association Property.

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

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

- 8.1 Additions, Alterations or Improvements by the Association. Whenever, in the judgment of the Board of Directors, the Common Elements or any part thereof shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of 15 percent of the then existing estimated operating budget for the Condominium in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the voting interests of the Association represented at a meeting of the Association at which a quorum is attained of the Unit Owners of the Condominium. Any such additions, alterations, or improvements to such Common Elements or any part thereof costing in the aggregate of 15 percent or less of the then existing estimated operating budget for the Condominium in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses.

- 8.2 Additions, Alterations or Improvements by Developer. The Developer, provided Developer is the owner of all of the Units in a Building (or Buildings, as the case may be) in the Condominium, shall have the right, without the vote or consent of the Association or Unit Owners, to change all or any part of the front, rear or side elevations of the Building (or Buildings, as the case may be); and, provided further that in connection with any changes, Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction. Until the Developer turns over control of the Board of Directors to Unit Owners other than the Developer, the Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners to provide additional and/or expand the recreational facilities.

**RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED
WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION.**

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

- 9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in, or to, the Common Elements, his Unit or any Limited Common Elements without the prior written consent of the Board of Directors and the Architectural Control and Maintenance Standards Committee. The Board shall have the obligation to answer any written request by a Unit

Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within 30 days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent.

The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and with any conditions imposed by the Association and the Architectural Control and Maintenance Standards Committee, with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise.

A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such owner and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, all other unit owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance from and after that date of installation or construction thereof as may be required by the Association.

9.2 Additions, Alterations or Improvements by Developer. The foregoing restrictions of this Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and nonstructural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements). Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.2 shall be adopted in accordance with Section 6 and Section 10 of this Declaration.

10. Changes in Developer-owned Units. The Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or nonstructural, interior or exterior, ordinary or extraordinary (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the improvements) and (ii) change the layout or number of rooms in any Developer owned Units. The Developer shall have the further right, without the consent or approval of the Board of Directors or other Unit Owners, to make such alterations in, to or upon any Developer owned Units in order to comply with design and construction guidelines adopted under applicable federal, state and local laws, ordinances, rules and regulations with respect to accessibility for handicapped persons. In making the above alterations, additions and improvements to the Units, the Developer may relocate or alter Common Elements adjacent to such Units, provided that such relocation or alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Section 6.4, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 6.2 above. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

11. Operation of the Condominium by the Association; Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Articles and Bylaws of the Association (respectively, Exhibits "D" and "E" annexed hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to any other Unit or Units.
- (b) The power to make and collect Assessments and Special Assessments and other charges and surcharges against Unit Owners and to lease, maintain, repair and replace the Common Elements.
- (c) The power to charge and collect a use fee from a Unit Owner for the exclusive or nonexclusive use of all or a portion of the Common Elements or Association Property.
- (d) 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.
- (e) To contract for the management and maintenance of the Condominium Property and to authorize a management agent (which may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments and Special Assessments, preparation of records, enforcement of rules and maintenance, repairs and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association shall, however, retain at all times the powers and duties granted by the Condominium Documents and the Act, including but not limited to the making of Assessments, Special Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (f) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security mortgages and security interests in property the Association, provided that such actions are by a majority of the entire membership of the Directors and a majority of the voting interests of Owners represented at a meeting at which a quorum attained, or by such greater percentage of the Board or voting interests of the Unit Owners as may be specified in the Bylaws with respect to certain borrowing.
- (g) Subsequent to the recording of this Declaration, the Association, when authorized by a majority of the voting interests of the Units represented at a meeting at which a quorum has been attained, shall have the power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the use or benefit of the Unit Owners (whether or not on an exclusive basis). The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- (h) The power to adopt and amend the rules and regulations covering the details of the operation and use of the Condominium Property.
- (i) The power to levy reasonable fines against a Unit for failure of the Owner or its occupant, licensee or invitee to comply with any provision of this Declaration, the Bylaws or the rules and regulations.
- (j) All of the powers which a corporation not for profit in the State of Florida may exercise.