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**DECLARATION OF CONDOMINIUM  
FOR  
TOPAZ COVE CONDOMINIUM**

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**ORIGINAL OF EXHIBIT NO. 1 CONSISTING OF THE CONDOMINIUM  
DRAWINGS IS RECORDED IN CONDOMINIUM BOOK 27, PAGE  
77-82, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.**

## **Section 1: Introduction and Submission**

1.1 **The Land.** The Developer owns the fee title to certain land located in Lee County, Florida, as more particularly described in Exhibit No. 1 hereto (the "Land").

1.2 **Submission Statement.** The Developer hereby submits that portion of the Land legally described as Phase I together with all improvements from time to time erected or to be installed thereon to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof, subject to the reservations, easements and restrictions of record.

1.3 **Property Subject to Certain Restrictions and Easements.** The Condominium Property (as defined hereinafter) is subject to the covenants, conditions, restrictions, easements and reserved rights of the Developer contained in this Declaration. The Condominium Property is also subject to: (a) the covenants, conditions, restrictions, easements and reserved rights contained in that certain Declaration of Restrictions for Punta Gorda Isles Section 22 as recorded in Official Records Book 1432, Page 249, public records of the County, as has been and may be amended from time to time ("Section 22 Declaration"); (b) the covenants, conditions, restrictions, easements and reserved rights contained in that certain Declaration of Covenants, Conditions and Restrictions for Prosperity Point as recorded in Official Records Book 2772, Page 2934, public records of the County, as may have been and may be amended from time to time ("Master Declaration"); (c) the easements declared and/or granted by that certain Declaration and Grant of Easements recorded in Official Records Book 2772, Page 2889, public records of the County, as amended by that certain Amendment to Declaration and Grant of Easements recorded in Official Records Book 3231, Page 1682, public records of the County; and (d) such other easements as shown on the Condominium Plat, as contained in any future amendments to this Declaration, or as declared by the Developer pursuant to reserved rights contained herein.

1.4 **Name.** The name by which this condominium is to be identified is TOPAZ COVE CONDOMINIUM (the "Condominium").

## **Section 2: Definitions**

For purposes of this Declaration and the exhibits attached hereto, the following terms shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning or a specific limited meaning is detailed:

2.1 **"Act" or "Condominium Act" or "Florida Condominium Act"** means the Florida Condominium Act (Chapter 718, Florida Statutes) as it exists on the date hereof.

2.2 **"Articles" or "Articles of Incorporation"** means the Articles of Incorporation of the Association, as amended from time to time. A copy of a certified copy of the original Articles of Incorporation are attached hereto as Exhibit No. 2.

2.3 **"Assessment"** means a share of the funds required for the payment of Common Expenses as provided in this Declaration and which from time to time is assessed against the Unit Owner.

2.4 **"Association" or "Condominium Association"** means TOPAZ COVE CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, the sole entity responsible for the operation of the Condominium. Where utilized herein or in the exhibits attached hereto, the term "Corporation" shall be deemed to be synonymous with the term "Association."

2.5 **"Association Property"** means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to, the Association for the use and benefit of its members.

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

2.7 "Building" means the structure containing Units.

2.8 "By-Laws" mean the By-Laws of the Association, as amended from time to time. A copy of the original By-Laws are attached hereto as Exhibit No. 3.

2.9 "Common Elements" mean and include:

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

(b) Easements over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and the Common Elements;

(c) An easement of support in every portion of a Unit which contributes to the support of all Units, the Common Elements and the Limited Common Elements;

(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) All portions of the stormwater management system for the Condominium as described more fully in the Development Order; and

(f) Any other parts of the Condominium Property designated as Common Elements pursuant to this Declaration or the Act.

2.10 "Common Expenses" mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act which shall be assessed or imposed against Units in the Condominium by the Association as authorized by the Act. If approved by the Board of Directors, "Common Expenses" shall include the cost of mangrove trimming and the cost of a master television antenna system or duly franchised cable television service obtained pursuant to a bulk contract. For all purposes of this Declaration, "Common Expenses" shall also include all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended.

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

2.12 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements and the Common Surplus which is appurtenant to said Unit.

2.13 "Condominium Plat" means the condominium drawings required by Section 718.104 of the Act and recorded in the Condominium Book and Page identified on the first (1st) page hereof constituting Exhibit No. 1 hereto. For purpose of reference, a reduced-in-size copy of the Condominium Plat is attached hereto.

2.14 "Condominium Property" means the Land and improvements which have been submitted to condominium ownership under this Declaration, subject to the limitations thereof and exclusions therefrom.

2.15 "County" means Lee County, State of Florida.

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

2.17 "Developer" means WCI Communities, Inc., a Delaware corporation, formerly known as Florida Design Communities, Inc., and its successors and such of its assigns as to which its rights hereunder are assigned by written instrument recorded in the public records of the County. Such assignment may be made on an exclusive or non-exclusive basis and may be an assignment of all or only portions of its rights of Developer hereunder; provided, however, that no such assignment shall make any assignee the "Developer" for purposes hereof unless such assignment is an assignment of all of Developer's rights hereunder and is exclusive, except as to any previously assigned rights.

2.18 "Development Order" means Lee County Development Order No. 96-04-151.00D, as may be amended from time to time, together with any other development orders as may be issued from time to time by the County for the Condominium Property.

2.19 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, credit union, 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 Mortgagee(s) of Units with regard to at least 51% of the voting interests which are appurtenant to Units subject to mortgages held by Institutional First Mortgagees.

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

2.21 "Management Agreement" means and refers to an agreement between the Association and the Management Firm, which provides for the operation and administration of the Condominium and the management of the Condominium Property. The initial Management Agreement is attached to this Declaration as Exhibit No. 4.

2.22 "Management Firm" means and refers to Florida Lifestyle Management Co., a Florida corporation, and its successors and assigns, or any person or entity contracted by the Association to perform management functions for and on behalf of the Association. The Management Firm shall be responsible for the management services as provided in the Management Agreement.

2.23 "Master Association" means and refers to the Prosperity Point Master Association, Inc., a Florida not-for-profit corporation, and its successors and assigns. The Master Association is the operational entity responsible for certain obligations and duties prescribed in the Master Declaration and the exhibits attached thereto, as well as any rules and regulations duly promulgated by the Master Association.

2.24 "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.

2.25 "Section 22 Association" means and refers to the Punta Gorda Isles Section 22 Property Owners Association, Inc., a Florida not-for-profit corporation, and its successors and assigns. The Section 22 Association is the operational entity responsible for certain obligations and duties prescribed in the Section 22 Declaration, in the articles of incorporation and by-laws of the Section 22 Association, and any rules and regulations duly promulgated by the Section 22 Association.

2.26 "Unit" or "Condominium Unit" is that portion of the Condominium Property which is subject to exclusive ownership and is referred herein to each of the separate and identified Units delineated in the Condominium Plat. The physical boundaries of each Unit are as delineated in the plat aforesaid and are as more particularly described in Section 3.2 of this Declaration. The term "Unit" is often used synonymously herein with "Condominium Parcel" when meaning the sum total of an Owner's ownership interest in the Condominium.

2.27 "Unit Owner" or "Owner of a Unit" or "Owner" means the record owner of legal title to a Condominium Parcel.

### **Section 3: Description of Condominium, Present and Future Phases**

3.1 Identification of Units; General Information. Each Unit is identified by a separate numerical designation as shown on the Condominium Plat, which exists as Exhibit No. 1 hereto, consisting of a survey of the Land including the Units, a graphic description of the improvements located thereon, and a plot plan thereof. A reduced-in-size copy of the Condominium Plat as recorded in the Condominium Book and Page identified on the first page hereof together with a copy of the legal description contained on the Condominium Plat is attached to this Declaration for convenience. The Condominium Plat, 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 each 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 the Limited Common Elements for such Unit; (c) membership in the Association with the full voting rights appurtenant thereto; and (d) other appurtenances as may be provided by this Declaration or the Act.

Phase I shall contain 20 Units. The Units will contain no more than 3,000 square feet and no less than 1,000 square feet of air-conditioned living area. Subject to unforeseen delays beyond the control of the Developer, the estimated latest date of completion of constructing, finishing and equipping Phase I is December 31, 2004. Proposed Phases II and III, if submitted to condominium ownership under this Declaration, will be constructed, finished and equipped on or before seven (7) years after the date of the recording of this Declaration. The date of completion of this Condominium or any portion thereof is an estimate only and subject to sales performance or building delays.

Time-share estates or interests will not be created with respect to any of the Units in the Condominium.

Any separation into 2 or more parts of any portion of the legal description of Phase I or of proposed Phases II or III shall not imply that one part of the Condominium Property shall be completed prior to another part or parts.

3.2 Unit Boundaries. Each unit shall include that part of a Building 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 intersections with the perimeter boundaries:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the Unit.

(ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.

(b) Perimeter Boundaries. The perimeter boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the drywall walls bounding the Unit as depicted on the

Condominium Plat extended to their intersections with each other and with the upper and lower boundaries.

(c) Interior Walls. No portion of the non-structural interior partition walls within a Unit shall be considered part of the boundary of a Unit.

Except for the telephone and cable television lines and equipment which are not part of the Common Elements, no pipes, wires, conduits or other utility lines or installations constituting a part of the overall systems designed for the service of any particular Unit, nor any of the structural members or portions of any kind, including fixtures and appliances within the Unit, which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the building, shall be deemed to be a part of any Unit. In addition, any utility lines which are located within a Unit and which provide service to more than one Unit shall be considered to be Common Elements, notwithstanding their physical location being within the Unit's boundaries. If a wall or roof surface overhangs or part of a Unit encroaches onto the Common Elements, the overhanging or encroaching specific portion of such Unit shall be a part of the Unit.

Notwithstanding the fact that no Unit may be divided or partitioned for purposes of sale or lease, a Unit may be combined with the laterally-adjacent Unit or the Unit lying directly above or beneath a particular Unit in order to permit occupancy of such areas as one residential living space. Such a combination of Units shall be for purposes of occupancy and use only and shall not be deemed an amendment to this Declaration. Further, any such combination shall not materially alter or modify the configuration or size of a Unit.

3.3 Property Which May Be Submitted to Condominium Form of Ownership. The Developer, pursuant to the provisions of Section 718.403, Florida Statutes, hereby retains the right at any time prior to 7 years after the recording date of this Declaration to submit to the condominium form of ownership, by amendment to this Declaration, the additional proposed phases depicted in Exhibit No. 1 hereto. As contemplated by the Developer as of the date hereof, proposed Phase II, if added to the Condominium, shall contain 24 Units. However, pursuant to the provisions of Section 718.403, Florida Statutes, proposed Phase II may contain a maximum of 28 Units and a minimum of 24 Units. As contemplated by the Developer as of the date hereof, proposed Phase III, if added to the Condominium, shall contain 24 Units. However, pursuant to the provisions of Section 718.403, Florida Statutes, proposed Phase III may contain a maximum of 28 Units and a minimum of 24 Units. The Condominium Plat shows the legal description and the approximate location of proposed Phases II and III and improvements proposed to be constructed thereon.

The Developer is under no obligation to add proposed Phase II and/or proposed Phase III to the Condominium. Upon the submission of proposed Phase II and/or proposed Phase III to condominium ownership, there will be no change to a Unit Owner's undivided share of the Common Elements as provided in Section 5 hereof.

3.4 Amendment of Declaration Adding Phases. Notwithstanding anything to the contrary contained herein or the provisions of Section 718.110, Florida Statutes, the Developer, pursuant to this Section 3.4 and Section 718.403(6), Florida Statutes, expressly reserves the right to amend this Declaration so as to submit to condominium ownership a proposed phase together with improvements thereon constructed or to be constructed as part and parcel of this Condominium without consent thereof by the Association, Unit Owners (other than the Developer) or their mortgagees.

In order to submit a proposed phase to condominium ownership, the Developer shall amend this Declaration as aforescribed by filing an Amendment to Declaration among the public records of the County, which amendment shall describe and submit to condominium ownership the proposed phase, and which amendment shall have attached thereto such certificates, surveys, plans and sketches as are required by the Act. Such amendment need be executed and acknowledged only by the Developer and need not be approved by the Association, Unit Owners, or lienors or mortgagees of Units whether or not

elsewhere required for amendments, save and except that so long as any recognized lending institution has any interim and permanent financing on any of the properties of the Developer which have been submitted to condominium ownership, then only in that event shall it be mandatory for the Developer to obtain a joinder from said recognized lending institution to the amendment as provided for herein.

NOTHING CONTAINED HEREIN SHALL REQUIRE THE DEVELOPER TO SUBMIT PROPOSED PHASE II OR PROPOSED PHASE III TO CONDOMINIUM OWNERSHIP.

### 3.5 Limited Common Elements.

(a) Definition of Certain Limited Common Elements. To the extent applicable and subject to the provisions of this Declaration, each Unit may have, as Limited Common Elements appurtenant thereto, such portions of the Common Elements as are defined herein and/or shown on the Condominium Plat, including, but not limited to, the following:

(i) any area(s) labeled as a Limited Common Element on the Condominium Plat and contiguous to a Unit or identified as being appurtenant to a Unit, such as, but not necessarily limited to, balconies, lanais and garage areas. For purposes of clarity, each Unit shall have appurtenant thereto one garage area which is connected to the Building containing the Unit and which is labeled on the Condominium Plat as being specifically appurtenant to the Unit;

(ii) light and electrical fixtures outside the Unit or attached to the exterior walls of the Building in which the Unit is located, which fixtures are designed to exclusively serve and benefit the Unit;

(iii) the structure(s) located on or adjacent to the exterior of the Building on which is located any air-conditioning equipment which serves the Unit;

(iv) any and all hurricane shutters which are attached to the exterior of the Unit and which are designed and constructed solely for the benefit and protection of such Unit;

(v) the mailbox which exclusively serves a Unit; and

(vi) any and all installations for security purposes contained within the Building which are designed to exclusively serve the Units contained within such Building.

(b) Maintenance of Limited Common Elements. The Limited Common Elements shall be maintained, repaired or replaced by the Association as part of the Common Expenses; provided, however, that:

(i) each respective Unit Owner may utilize the portions of the balconies and lanais which are constructed adjacent to and connected with a Unit for the exclusive use of such Unit Owner, and such Unit Owners shall be responsible for the maintenance of all items placed within such balconies and lanais by such Unit Owner;

(ii) in the event such balconies or lanais contain screening and structures associated therewith, the Unit Owner shall be solely responsible for the maintenance, repair, replacement and reconstruction of all portions of such screening and the structures associated therewith in accordance with the rules and regulations of the Association; provided, however, the screening of any balcony or lanai shall be permitted only in accordance with the applicable provisions of the By-Laws;

(iii) each Unit Owner shall maintain the interior portions of the garage area which are permanently assigned for the exclusive use of the Unit Owner in accordance with any rules and regulations of the Association and as follows:

(1) each Unit Owner shall be responsible to maintain, repair and replace all portions of such garage area bounded as follows:

a. the volumes of space enclosed by the unfinished inner surfaces of perimeter walls, and floors thereof, and the ceiling planes of such garage area, including vents, interior doors, windows and such other structural elements as are ordinarily considered to be enclosures of space;

b. all dividing walls and partitions (including the space occupied by such interior walls and partitions) located within such garage area, excepting load-bearing interior walls and partitions; and

c. the decorated inner surfaces of the perimeter and interior walls (including decorated inner surfaces of all interior load-bearing walls), ceilings and floors consisting of wallpaper, paint, plaster, carpeting, tiles, and all other finishing materials affixed or installed as part of the physical structure of the garage area;

(2) no installations (including, but not limited to, construction or installation of shelving or installation of freezer equipment) may be made by a Unit Owner without the prior written consent of the Board of Directors or an architectural control committee created by the Board of Directors pursuant to the By-Laws;

(3) the Unit Owner shall be solely responsible for the maintenance, repair and replacement of the automatic garage door opener which is designed to provide access to and from such garage area for automobiles and all equipment and appurtenances related thereto (for purposes of reference herein, the Unit Owner shall be the owner of such automatic garage door opener regardless of the fact that such opener may not be located within the physical boundaries of the Unit);

(4) the Unit Owner shall be solely responsible for the maintenance of all installations and tracks upon which the garage door will rise in order to provide ingress and egress to and from the garage area for automobiles and all equipment and appurtenances related thereto;

(5) the Unit Owner shall be solely responsible for the maintenance, repair, replacement and reconstruction of all doorways leading from any portion of the Condominium Property to the garage area, which responsibility shall include, but shall not be limited to, the maintenance of all locks contained therein; provided, however, that no Unit Owner shall be responsible for the maintenance, repair, replacement and reconstruction of the garage door through which automobiles enter the garage areas, unless such maintenance, repair, replacement, or reconstruction is the result of an action or nonaction (other than involving ordinary and normal use) by the Unit Owner or such Unit Owner's guest, licensee, invitee or tenant, and a Unit Owner shall not be responsible for the painting of the entry door leading from the garage area to the general Common Elements;

(6) the Unit Owner shall be solely responsible for the payment of all costs for providing electric service to the garage area which are permanently assigned to the Unit Owner for such Unit Owner's exclusive use, and shall be solely responsible for the maintenance, repair, replacement and reconstruction of all installations related thereto;

(iv) each Unit Owner shall be responsible for the maintenance, repair, replacement and reconstruction of any wiring or electrical outlets or, where applicable, light fixture(s) affixed to the exterior walls of a Unit, which serve a Unit;

(v) each Unit Owner shall be responsible for replacing the necessary light bulbs for said light fixture(s) by the same color and bulb wattage, as originally installed or as otherwise determined and permitted by the Board;

(vi) each Unit Owner shall be solely responsible for the maintenance, repair, and replacement of all air-conditioning equipment and all wiring and piping related thereto which serve the Unit and which are constructed on the Limited Common Elements or, as may be applicable, the Common Elements (for purposes of reference herein, the Unit Owner shall be the owner of all such air-conditioning equipment and all wiring and piping related thereto regardless of such equipment, wiring and piping being located outside of the physical boundaries of the Unit).

Should any maintenance, repair or replacement of a portion of the Limited Common Elements which is the responsibility of the Association be caused by the lessees, servants, guests, invitees or licensees of a Unit Owner, then such Unit Owner shall be responsible therefor and the Association shall have the right to levy a fine against the Owner of such Unit.

3.6 Permitted Improvements. The following improvements shall be permitted to be constructed within and upon each Unit:

(a) By Developer. The Developer shall construct within each Unit a one-story or two-story, single-family attached residential dwelling, which shall constitute a complete, integrated, architectural and structural residence.

(b) By Unit Owner. In the event any of the Units are conveyed by the Developer to Unit Owners without the aforesaid dwelling having been constructed therein, those Unit Owners or their successors may add the same at any time thereafter, provided construction of all such improvements shall be performed by reputable contractors in accordance with plans and specifications prepared by licensed architects, which shall be subject to the prior written approval of a majority of the members of the Board of Directors. The Board shall either grant such approval or deny the same based upon its decision as to whether the improvements shall be aesthetically pleasing and consistent with the design of the Units of the Condominium.

3.7 Easements. In addition to any easements previously recorded in the public records of the County, or easements created under the Act or other sections of this Declaration, the following easements are hereby created or reserved:

(a) There shall be an easement of support in every portion of a Unit which contributes to the support of any other Unit or Common Element or Limited Common Element.

(b) Easements are hereby created over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and the Common Elements, provided that such easements do not interfere with the residential use of the Units.

(c) Easements are hereby reserved unto the Developer and to the respective utility providers under, through, across and over the Condominium Property as may be required from time to time for the construction, use, maintenance and operation of all utilities (whether public or private), cable television systems, communications and security systems, and other services which may serve the Condominium, with the power to relocate any such existing easements in any portion of the Condominium Property and/or the Association Property; provided, however, that these easements shall not permanently interfere with the residential use of the Units. Such easements created under this subsection (c) are hereby granted to the Association with the power of assignment.

(d) An easement is reserved unto the Developer and granted to the County and their respective agencies and other applicable governmental agencies over and across the Common Elements for the purpose of providing drainage and for the installation, operation, use and maintenance of drainage facilities; provided, however, that the Association shall be responsible for the continuous maintenance of the easements and rights-of-way of the drainage system located on the Condominium Property. This obligation shall run with the land as do other provisions of the Declaration, and any Unit Owner may

enforce this covenant and will be entitled to costs and fees, pursuant to Section 18.3 of the Declaration, which result from such enforcement.

(e) If: (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the improvements; (ii) settling or shifting of the improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

(f) An easement in favor of each Unit Owner and resident shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this subsection (f) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

(g) The Developer shall have the right, in its sole discretion from time to time, to enter the Condominium Property and to take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so; provided, however, that the easements created under this subsection (g) shall not interfere with the residential use of the Units or the reasonable use of the Condominium Property.

(h) An easement is hereby reserved to the Developer, and is granted to the Association with the power to assign, over, under, upon and through the Condominium Property as may become necessary for the purposes of access to, constructing or maintaining improvements upon, providing utility access to or across, or providing drainage to or from the Condominium Property, any other lands which are now a part or which may become a part of the Burnt Store Marina development, or other lands adjacent to the Burnt Store Marina development; provided, however, that the easements created under this subsection shall not interfere with the residential use of the Units or the reasonable use of the Condominium Property. Neither the Unit Owners nor the Association, nor their use of the Condominium Property, shall interfere in any way with the Developer's completion and sale of Units or other lands located within the Burnt Store Marina development.

(i) Easements are hereby created over, under, across, in and through the Condominium Property as part of the Burnt Store Marina development for the purposes of the Developer, the Association and other appropriate entities to enable each respective entity to act upon and carry out its rights and duties, expressed or implied, pursuant to this Declaration and its exhibits, and to facilitate such other actions by appropriate parties as may be reasonably necessary to further the advancement of the Condominium and the Burnt Store Marina development.

(j) All dividing walls which straddle the boundary line between Units and which stand partly upon one Unit and partly upon another, and all walls which serve 2 or more Units or the permitted improvements located within said Units, shall at all times be considered party walls, and each of the Owners of Units within which such party walls shall stand, serve or benefit shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for support of the permitted improvements located within said Units, and for the support of any building, constructed to replace the same, and shall have the right to maintain in or on said wall, any

pipes, ducts or conduits originally located therein or thereon subject to the restrictions hereinafter contained:

(i) No Owner of any Unit nor any successor in interest to any such Owner shall have the right to extend said party wall in any manner, either in length, height or thickness.

(ii) In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the Owner of any Unit upon which said party wall may rest shall have the obligation to repair or build such wall and the Owner of each Unit upon which such wall shall rest, be served or benefitted by shall pay his fractional portion of the cost of such repair or rebuilding. All such repairs or rebuilding shall be done within a reasonable time, and in such workmanlike manner with materials comparable to those used in the original wall, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall.

(iii) The foregoing provisions of this subsection (j) notwithstanding, the owner of any Unit, or other interested party, shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any Unit Owner, or other interested party, to contribution from any other Unit Owner under this section, shall be appurtenant to the land and shall pass to such Unit Owner's or other person's successors in title.

(iv) The title held by each Unit Owner to the portion of each party wall within such Unit is subject to a cross easement in favor of the adjoining Unit Owner for joint use of said wall.

(k) Developer hereby reserves unto itself, with the power to assign, easements over, upon, and through the Condominium Property for vehicular and/or pedestrian traffic by the Developer, its designees, successors, assigns, licensees, lessees, invitees, and guests within the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

(l) For as long as there are any unsold Units, the Developer shall have the right to use any such Units and parts of the Common Elements for model apartments and sales, management and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units and residential Units within the overall Condominium and to erect on the Condominium Property signs and other promotional material to advertise Units (or the other aforesaid residential Units) for sale or lease.

(m) If not previously existing, any other easements described or shown on the Condominium Plat are hereby created.

(n) Until such time as the Developer (i) completes and sells all of the Units in Phase I and (ii) either (A) completes and sells all of the improvements in proposed Phases II and III, or (B) notifies the Unit Owners in Phase I of its intention not to add proposed Phases II and III to the Condominium, or (C) completes and sells all of the improvements in a proposed phase and notifies the Units Owners in Phase I and in such proposed phase as submitted to condominium ownership hereunder of Developer's intention not to add the remaining proposed phase to the Condominium, the Developer reserves the right to prohibit access to any portion of the Common Elements or uncompleted Units to any of the occupants of the Condominium, and to utilize various portions of the Common Elements or the Units in connection with such construction and development. No Unit Owner or such Owner's guests or invitees shall in any way interfere or hamper the Developer, its employees, successors or assigns, in connection with such construction. Thereafter, during such time as the Developer, its successors or assigns, own any Units and is carrying on any business in connection therewith, including the selling, renting or leasing of such Units, the Unit Owners, their guests and invitees shall in no way interfere with such activities or prevent access to such Units by the Developer, its employees or its successors or assigns.

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 services contemplated or the use of the easements created under this Section. The Association has the irrevocable right of access to each Unit during reasonable hours, when necessary, to maintain, repair or replace those items and areas, as detailed in Section 7 herein or as otherwise contemplated herein, for which the Association is responsible, and to remove any improvements interfering with or impairing such facilities or easements herein reserved, pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.

Wherever in this Section or elsewhere in this Declaration an easement is granted or reserved to any party, such easement shall also benefit such party's successors, designees, grantees, assigns, agents, employees, licensees, invitees and guests, and all easements referred to herein shall be nonexclusive easements unless otherwise stated.

### 3.8 Special Easements and Rights to Grant Easements.

(a) Developer hereby reserves unto itself and its successors and its assigns, and grants to the Association with the power to assign, non-exclusive easements over, under and through the Condominium Property for the construction, maintenance and operation of electric, gas or other utility, cable television, security systems, communications service or other easements pertaining to the construction, maintenance and operation of other equipment, conduits, pipes, lines and similar installations servicing the Condominium Property or other property with the power to relocate any such existing easements in any portion of the Condominium Property and/or Association Property, provided that such easements or the relocation of easements will not prevent or unreasonably interfere with the reasonable use of the Units for residential purposes.

(b) Developer hereby reserves unto itself and its successors and its assigns, and grants to the Association with the power to assign, non-exclusive easements over, under, upon and through the Condominium Property for the purposes of access to, constructing or maintaining improvements upon, providing utility services to or across, or providing drainage to or from the Condominium Property, any other property which may become part of the Condominium Property pursuant to this Declaration, or any other property adjacent to the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

(c) Developer hereby reserves unto itself and its successors and its assigns non-exclusive easements over, upon, and through the Condominium Property for vehicular and/or pedestrian traffic by the Developer, its designees, successors, assigns, licensees, lessees, invitees, and guests within the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

3.9 Incidental Damage. Any damage to any Unit caused by, or as a result of, the carrying out of the maintenance responsibilities of the Association or another Unit Owner, or the negligence thereof, shall be repaired promptly by the Association as a Common Expense, or the Unit Owner, as the case may be. Any damage to any part of the Common Elements caused by or the result of any intentional act of a Unit Owner, the Unit Owner's family, agents, contractors, invitees, licensees or tenants, or by such Unit Owner in carrying out his maintenance responsibilities, if any, shall be repaired promptly at the expense of such Unit Owner.

## **Section 4: Restraint Upon Separation and Partition of Common Elements**

The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from such Unit and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, cannot be conveyed or encumbered, except together with such 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.

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

5.1 Ownership Shares. The undivided share of the Common Expenses and the undivided interest in the Common Elements and Common Surplus attributable to each Condominium unit shall be computed as follows:

(a) Upon recordation of the Declaration, each Unit in Phase I shall have attributable thereto an undivided share in the Common Expenses and ownership of the Common Elements and the Common Surplus equal to 1/20th of 100%. This percentage shall be ascertained by dividing the number one (numerator) by the total number of Units in Phase I (denominator), the resulting figure being the undivided share attributable to each Unit in Phase I prior to the recordation of any amendment submitting additional Units to condominium ownership.

(b) If and when a proposed phase is submitted to condominium ownership, as set forth in Section 3 hereof, the undivided share in the Common Expenses and ownership of the Common Elements and the Common Surplus attributable to each Unit submitted to condominium ownership shall be automatically adjusted to reflect the ownership interest of all Units submitted on the following basis:

(i) The adjusted percentage of the undivided share in the Common Expenses and ownership of the Common Elements and Common Surplus attributable to each Unit shall be computed by dividing the number one by the cumulative total of all Units submitted to condominium ownership pursuant to the Declaration and all amendments thereto (denominator). For example, if and when proposed Phase II is added to the Condominium, then the undivided share in the Common Expenses and ownership of the Common Elements and Common Surplus attributable to each Unit shall be equal to 1/44th of 100%.

(ii) The adjusted percentage of the undivided share of the Common Expenses and ownership of the Common Elements and Common Surplus attributable to each Unit shall automatically take effect upon the recordation of any amendments submitting additional Units to condominium ownership pursuant to the Declaration.

(iii) The adjusted percentage of the undivided share of the Common Expenses and ownership of the Common Elements and Common Surplus attributable to each Unit shall be binding upon the owner of each and every Unit previously submitted to condominium ownership pursuant to the Declaration.

5.2 Voting. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the By-Laws and the Articles of Incorporation. The total number of votes shall at all times be equal to the number of Units submitted to the condominium form of ownership under this Declaration. Membership in the Association shall automatically terminate upon the termination of ownership of a Condominium Parcel in this Condominium, and the subsequent owner(s) taking title shall automatically become entitled to membership.

**Section 6: Amendments**

6.1 Amendment by Unit Owners. Except as otherwise provided in this Section 6 hereinbelow or elsewhere in this Declaration or the exhibits attached hereto, this Declaration (including the Condominium drawings constituting Exhibit No. 1 hereto) may be amended by affirmative vote of the Owners of 75% of all the Condominium Parcels at an Association meeting duly called for such purpose pursuant to the By-Laws; provided, however, that (1) no amendment to this Declaration shall be made

which affects any of the rights and privileges provided to the Developer as defined herein without the written consent of such Developer, and (2) no amendment may change the configuration or size of a Unit without the written consent of the affected Unit Owner(s). All amendments under this Section 6.1 shall be recorded and certified as required by the Act.

## 6.2 Amendment by Developer.

(a) Amendment to Condominium Plans and Declaration. The Developer reserves the right to make whatever changes it may deem necessary in the Condominium drawings, recorded herewith as Exhibit No. 1, and this Declaration until such time as 51% of the Units have been sold. The amendment reflecting such changes need only be executed by the Developer; provided, however, that no such amendment unilaterally approved by the Developer shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Unit Owner shares the Common Expenses and owns the Common Surplus.

(b) Special Amendment. Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends the Declaration and any provision therein (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Units; and (iii) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Unit Owner and the Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Developer to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate either on such date when Developer has sold all Units and has transferred control of the Condominium to the Association or on December 31, 2005, whichever shall occur first.

(c) This Declaration and all exhibits hereto, where applicable, may be amended unilaterally by the Developer for the purposes set forth and pursuant to Section 718.110(5), Florida Statutes, to correct scrivener's errors, and Section 718.403(1), Florida Statutes, to add proposed Phase II as provided for herein.

6.3 Amendment Pertaining to Surface Water Management System. Notwithstanding any provisions to the contrary contained in this Section 6, any amendment which will affect the stormwater management system, including the management portion of the Common Elements, serving the Condominium must have the prior written approval of the South Florida Water Management District in order to be effective and binding.

6.4 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County.

6.5 Limitation. 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 said Developer in each instance. The provisions of this paragraph may not be amended in any manner.

6.6 Procedure. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended, new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, rather, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision \_\_\_\_\_ for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

### **Section 7: Maintenance and Repairs**

Responsibility for the maintenance, repair and replacement of the Condominium Property is as follows:

7.1 Common Elements. Except as otherwise provided in this Declaration, the Association shall manage, maintain, repair and replace, as part of the Common Expenses, all of the Common Elements as defined herein, including, but not limited to, the following:

- (a) all drainage and stormwater management systems, driveways, private streets and adjacent drainage;
- (b) all water and wastewater lines and piping serving a Unit which are not contained within the physical boundaries of the Unit;
- (c) all landscaping, lawn and grass areas and sprinkler systems within the Condominium Property;
- (d) any and all gates, walls and fencing located on the Condominium Property;
- (e) any exterior parking areas and all trash receptacle areas located on the Condominium Property; and
- (f) any and all security systems and access systems which serve more than one Unit.

However, the Association shall not perform such maintenance required of a Unit Owner who utilizes portions of the Limited Common Elements surrounding such Unit, as shown on the Condominium Plat, in accordance with Section 3.5 herein or as otherwise contemplated herein. All buffer zones shall be maintained by the Association.

7.2 Units. The responsibility for maintenance, repair and replacement within the Units shall be shared by the Association and the Unit Owners as follows:

(a) By the Association. The Association shall be responsible for maintaining, repairing and replacing all load-bearing walls contained within the Unit except for the finished surfaces thereof. The cost of such maintenance shall constitute a Common Expense.

(b) By the Unit Owner. Each Unit Owner shall maintain, repair and replace everything within the confines of the Owner's Unit, including the permitted improvements, which is not to be maintained by the Association pursuant to subparagraph (b)(i) of this section, including, but not limited to:

- (i) All exterior doors, windows and screens of any permitted improvement; provided, however, that the painting of the exterior doors shall be a Common Expense, which surfaces shall be maintained in such manner as to preserve a uniform appearance among the Units of the Condominium;
- (ii) Paint finish, covering, wallpaper and decoration of all interior walls, floors and ceilings;
- (iii) All built-in shelves, cabinets, counters, storage areas and closets;
- (iv) Any and all appliances and mechanical, ventilating, heating and air conditioning equipment contained within and serving the Unit;
- (v) All bathroom fixtures, equipment and apparatuses;
- (vi) All electrical, plumbing, telephone and television fixtures, apparatuses, equipment, outlets, switches, wires, pipes and conduits above the concrete slab serving only the respective Unit, and all electric lines between the Unit and its individual service panel or meter;
- (vii) All interior doors, non-load-bearing walls, partitions, and room dividers;
- (viii) All furniture, furnishings and personal property contained within the respective Unit; and
- (ix) All other maintenance or repair of or replacements involving a Unit as contemplated and authorized hereunder.

### **Section 8: Additions, Alterations or Improvements by the Association**

Whenever, in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from maintenance, repairs and replacements) costing in excess of \$5,000.00 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by the Owners of a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate \$5,000.00 or less in a calendar year may be made by the Board of Directors without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall be as a "Capital Improvement Assessment" of the Unit Owners as provided in Section 13.2 hereof. For purposes of this Section 8, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

### **Section 9: Additions, Alterations or Improvements by Unit Owner**

9.1 To the Common Elements. After the completion of the improvements included in the Common Elements which are set forth in this Declaration, or which are contemplated by the Developer in the completion of the development as set forth herein, there shall be no alterations or additions to Limited Common Elements of this Condominium, other than those contemplated under Section 3.3 herein, except as authorized by the Board of Directors and approved by not less than 75% of the total voting interests of the this Condominium, provided that no alterations or additions may be made involuntarily to the Limited Common Elements of any particular Unit if such alteration or addition will adversely affect or prejudice the rights of such Unit Owner unless such Unit Owner's consent first has been obtained. The cost of the foregoing shall be assessed as Common Expenses unless otherwise provided herein.

All open space areas contained within the Common Elements shall be preserved and developed solely as open space areas by the Developer, the Association or the Unit Owners in a manner solely detailed or contemplated herein or on the Condominium Plat. Neither the Association nor the Developer nor the Unit Owners, without an appropriate amendment to the Development Order by the County, may utilize such areas for purposes other than as landscaped open spaces.

9.2 To the Units. Except as otherwise reserved by the Developer, no Unit Owner shall make any alteration or improvement to such Owner's Unit except in accordance with this Section 9.2. A Unit Owner may make alterations and improvements to a Unit so long as such alterations or improvements are not visible from the outside of the Unit, do not impair the structural integrity of the building in which such Unit is contained, do not otherwise violate the terms of this Declaration, and are in compliance with all applicable building codes and laws. A Unit Owner may not expand, enlarge or relocate the boundaries of such Owner's Unit. Other alterations or improvements to a Unit which are not discussed in this Declaration may be made only if prior approval in writing is obtained from the Board or a committee designated by the Board in accordance with the By-Laws.

9.3 Indemnification by Unit Owner. A Unit Owner making or causing to be made any additions, alterations or improvements to the Unit or the Limited Common Elements as contemplated herein agrees, and shall be deemed to have agreed, for such Owner, and such Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association.

### **Section 10: Additions, Alterations or Improvements by Developer**

The foregoing restrictions of 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 non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it, to the proposed or already constructed Unit located or to be located thereon, and Limited Common Elements appurtenant thereto. Such Unit shall include, without limitation: (i) the removal of walls, floors, ceilings and other structural portions of the Unit; (ii) changes to the layout or number of rooms in any Developer-owned Units; and (iii) changes to the size and/or number of Developer-owned Units by combining separate Developer-owned Units or otherwise. Any amendments to this Declaration or the Condominium Plat required by actions taken pursuant to this Section 10 may be effected by the Developer alone without the consent of any other person; provided, however, if any such amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Unit Owner shares the Common Expenses and owns the Common Surplus, the execution of the amendment to the Declaration effecting such change must be joined in by the record Owners of the Unit, all record owners of liens on the affected Unit, and at least a majority of the total voting interests in the Association. Without limiting the generality of Section 6.5 hereof, the provisions of this Section may not be added to, amended or deleted unless by, or with the prior written consent of, the Developer.

### **Section 11: Operation of the Condominium by the Association: Powers and Duties**

11.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation 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 any portion of each Unit and its Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of such portions thereof as required by this Declaration or the Act, for performing extermination services, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.

(b) The power to make and collect Assessments and other related expenses authorized under the Act against Unit Owners, to lease, maintain, repair and replace the Common Elements, and to grant, modify or cancel easements pertaining to the Common Elements.

(c) The duty to maintain accounting records, according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.

(d) The power to contract for the management and maintenance of the Condominium Property and to authorize a duly licensed management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and regulations, and perform the maintenance, repair and replacement required of the Association with such funds as shall be made available by the Association for such purposes. The Association shall also have the power to join with other condominium associations and entities in contracting for the maintenance and repair of the Condominium Property(ies) and other type properties, and may contract for or may join with other condominium associations in contracting for the management of the Condominium Property(ies) and other type properties, as may be more specifically provided for by the Articles of Incorporation and By-Laws of the Association. The Association, through its Board of Directors, has entered into a Management Agreement, attached hereto as Exhibit No. 4, which encompasses the provisions of this subparagraph.

(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. Such actions must be approved by a majority of the entire Board of Directors and the Owners of all the Units or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, and no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.

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

(g) The power to acquire, lease, mortgage, and convey real and personal property and to grant, modify and cancel easements regarding such property, provided that such action may be done only (i) upon the approval of a majority of the Board of Directors, and (ii) a finding by the Board that such action is for the benefit of the members of the Association. The requirements of Section 8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the proviso as to the debt incurred) shall also apply to this acquisition and dealing with Association-owned property; provided, however, that the acquisition of a Unit as a result of a foreclosure of the lien for Assessments shall be exempt from these requirements.

(h) The power to acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands or facilities for recreational purposes as long as such arrangements are also approved by the Owners of a majority of the Units.

(i) 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 and By-Laws, Chapter 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act or the documents of the Condominium.

11.2 Conflict. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached hereto, this Declaration shall take precedence over the Articles 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 authority over the Condominium, consistent with the Act.

11.3 Limitation of 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 done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions hereof.

**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 SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY, INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, 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 CONDOMINIUM PROPERTY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY 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, LEE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND**

(c) **ANY 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 UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) 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 IN THIS PROVISION.**

**AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE DEVELOPER AND ITS AFFILIATES, WHICH SHALL BE FULLY PROTECTED HEREBY.**

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

11.5 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.

11.6 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors is specifically required in this Declaration, the Articles of Incorporation or the By-Laws, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

11.7 Amendment of By-Laws. No modification of or amendment to the By-Laws of said Association shall be valid unless set forth in or annexed to a duly recorded amendment to this Declaration. The By-Laws may be amended in the manner provided for therein, but no amendment of said By-Laws shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Parcel(s), or which would change the provisions of the By-Laws with respect to institutional mortgages without the written approval of all Institutional First Mortgagees of record. No amendment shall change the rights and privileges of the Developer and Management Firm without their respective written consent. Any amendment to the By-Laws, as provided herein, shall be executed by the parties as required in this Section 11 and in Section 6 above, and said amendment shall be recorded in the public records of the County.

11.8 Binding Effect of Condominium Documents. Every Owner of a Condominium Parcel, whether he has acquired his ownership by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the Articles of Incorporation and By-Laws of the Association, the provisions of this Declaration and the Management Agreement. Membership in the Association shall automatically terminate upon the termination of ownership of a Condominium Parcel in this Condominium, and the subsequent Owner(s) taking title shall automatically become entitled to membership.

## **Section 12: Management Agreement**

The Association has entered into a Management Agreement, a copy of which is attached hereto as Exhibit No. 4. The general purpose thereof is to contract for the management and maintenance of the Condominium Property and to authorize a management agent 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 the Common Elements with funds as shall be made available by the Association for such purposes. The Association, its directors and its officers shall, however, retain at all times the powers and duties granted by 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. Each Unit

Owner, his heirs, successors and assigns, shall be bound by said Management Agreement for the purposes therein expressed, and by virtue of said party's taking title to a Condominium Parcel in this Condominium, said Owner shall be deemed to have agreed to, confirm and ratify the following:

12.1 Adopting, ratifying and consenting to the execution of said Management Agreement by the Association.

12.2 Covenanting and promising to perform each and every of the covenants, promises and undertakings to be performed by Unit Owners in the cases provided therefor in said Management Agreement.

12.3 Ratifying, confirming and approving each and every provision of said Management Agreement, and acknowledging that all of the terms and provisions thereof are reasonable.

12.4 Agreeing that the persons acting as directors and officers of the Association entering into such Management Agreement have not breached any of their duties or obligations to the Association.

12.5 It is specifically recognized that some or all of the persons comprising the original Board of Directors and officers of the Association are or may be stockholders, officers and directors of the Management Firm, and that such circumstance shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate such Management Agreement, in whole or in part.

12.6 The acts of the Board of Directors and officers of the Association in entering into the Management Agreement shall be and the same are hereby ratified, approved, confirmed and adopted.

### **Section 13: Determination of Assessments**

13.1 General Assessment. The Board of Directors shall from time to time, and at least annually, prepare and adopt a budget for the Condominium ("Budget for Common Expenses"), determine the amount 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 ("General Assessment"). The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the General Assessment payable by each of them as determined by the Board of Directors as aforesaid. The Budget for Common Expenses shall include the reserves required by law or determined appropriate by the Board, the 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 of Common Expenses adopted shall be subject to change by the Board of Directors, and the amount of the General Assessment shall be changed in accordance with such revised Budget for Common Expenses to cover actual expenses at any time.

13.2 Special and Capital Improvement Assessments. In addition to General Assessments, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

(a) "Special Assessments" shall mean or refer to amounts levied 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 amounts levied 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 maintenance, repairs and replacement) of any capital improvements located or to be located within the Common Elements.

(c) Special Assessments and Capital Improvement Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments and Capital Improvement Assessments, in the aggregate in any year, exceed \$5,000.00 or cause the total Assessments levied to exceed 115% of Assessments for the proceeding calendar year, the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum is attained.

13.3 Reserves. The Association shall maintain a reserve fund to be used solely for making capital expenditures in connection with the Common Elements (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of the improvements to the Common Elements and equipment owned by the Association as well as periodic projections of the cost of anticipated major repairs or improvements to the Common Elements or the purchase of equipment to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the annual Assessment which shall be added to the Capital Reserve, and each Unit Owner shall be deemed to make a capital contribution to the Association equal to such percentage multiplied by each installment of the annual Assessment paid by such Unit Owner. Such reserves may be waived or reduced on an annual basis as provided by the Condominium Act. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portions of any contingency reserve or Capital Reserve, as applicable, which remains unallocated. If the "estimated cash requirement" proves inadequate for any reason or in the event a non-recurring common expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or non-recurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a separate Assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount. Any such separate Assessment, if it involves proposed expenditures resulting in a total payment assessed to a Unit equal to the greater of (i) five (5) times the Unit's most recent monthly Assessment, or (ii) \$2,000.00 shall be subject to the affirmative vote of at least 75% of the total ownership of the Common Elements at a meeting specifically called for approving such separate Assessment.

#### **Section 14: Collection of Assessments**

The General Assessment, Special Assessments and Capital Improvement Assessments (collectively, the "Assessments") shall be collected as follows:

14.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a judicial 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 such Unit Owner may have to recover from the previous owner the amounts paid by such Unit 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.

14.2 Default in Payment of Assessments. Assessments and installments thereof not paid within 10 days from the date when they are due shall bear interest at the rate established from time to time by the Board of Directors from due date until paid (provided, however, that no such rate shall exceed the maximum allowed by law). In the event the Board has not established such rate, the interest rate shall be 15%. Each delinquent payment shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each delinquent installment. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest thereon and for

reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien shall be effective on the earliest date allowed by law, which shall be no later than as of the recording of the claim of lien. Such lien shall be evidenced by the recording of a claim of lien in the public records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, and the amounts due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, the administrative late fee, and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or authorized agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association or its assignee may bring an action to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed in Florida and may also bring an action at law to recover a money judgment for the unpaid Assessments and other amounts due without waiving any claim of lien. The Association is entitled to recover its costs and reasonable attorneys' fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after 30 days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the balance of General Assessment installments due for the remainder of the fiscal year and payments of other known Assessments to be accelerated and shall thereupon be immediately due and payable. In the event that the amount of such accelerated installments or payments changes, 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 10 days of same taking effect.

Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued as provided above, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection as aforesaid and then to the delinquent and any accelerated Assessment. The foregoing application of funds received shall be applicable despite any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

**14.3 Notice of Intention to Foreclose Lien.** Unless otherwise required by the Act or other applicable law, no foreclosure judgment may be entered until at least 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 30 days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by 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 attorneys' fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**14.4 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 to be paid by the party which does not prevail in the foreclosure action.

**14.5 Institutional First Mortgagee.** In the event an Institutional First Mortgagee or other purchaser shall obtain title to a Unit by foreclosure, or by deed in lieu of foreclosure, such Institutional

First Mortgagee or other purchaser, its successors and assigns, shall be liable for Assessments or other related expenses authorized under the Act secured by the claim of lien only to the extent provided by the Act. If, due to the applicable provisions of the Act, any unpaid share of the Assessments or other related expenses authorized under the Act are not required to be paid, then such unpaid share or other related expenses authorized under the Act shall be deemed to be a Common Expense collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.

14.6 Certificate of Unpaid Assessments. Within 15 days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

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

14.8 Developer's Guarantee. If in the purchase agreement or by other means pursuant to the Act Developer shall guarantee to each purchaser that the Assessment for a specific period of time will not exceed a certain dollar amount, then the Developer shall only be obligated to pay the amount of Common Expenses incurred during that period and not produced by the Assessments received from other Unit Owners.

## **Section 15: Insurance**

15.1 "Insurance Trustee". The Board of Directors shall have the option, in its sole discretion, of appointing an Insurance Trustee hereunder. The term "Insurance Trustee" shall also include the Association if the Association fails or elects not to appoint such Trustee, in which case the Association will perform directly all obligations imposed upon such Trustee by this Declaration. If the Insurance Trustee shall fail or cease for any reason to act as the Insurance Trustee, then the Board shall have the option, in its sole discretion, of appointing a successor Insurance Trustee. Fees and expenses of any Insurance Trustee shall be Common Expenses.

### 15.2 Insurance.

(a) The Board of Directors shall have the authority to and shall obtain insurance for the Condominium Property as follows:

(i) Insurance on the Condominium Property, including the Units (to the extent required under the Act) and Common Elements, all items under the terms of this Declaration for which the Association is responsible for the maintenance thereof, and all items for which the Association is required under applicable provisions of the Condominium Act to insure, against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage and vandalism and malicious mischief endorsements, in an amount sufficient to prevent the insured from being a co-insurer within the terms of the applicable policies, but in any event in an amount not less than 100% of the full insurance replacement cost thereof. The "full insurance replacement cost" shall be determined from time to time by the Board, which determination may be based upon appropriate insurance appraisals. The cost of any and all such appraisals shall be Common Expenses;

(ii) To the extent applicable, if any, insurance on the Condominium Property (exclusive of excavations, foundations and footings) against all loss or damage from explosion of heating apparatus, pressure vessels and pressure pipes, if any, installed in, on or about said Condominium Property, without co-insurance clause so long as available, in such amount as the Board shall deem desirable;

(iii) Comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or by any Unit Owner occurring, in, on or about the Condominium Property or upon, in or about the streets and passageways and other areas adjoining the Condominium Property, such public liability and property damage insurance to afford protection to such limits as the Board shall deem desirable (but in no event for less than \$1,000,000.00 with respect to liability for personal injury or property damage arising out of a single accident), and such insurance coverage to include Unit Owners as additional insureds, but only with respect to that portion of the Condominium Property not reserved for the exclusive use of a single Unit Owner;

(iv) Such workmen's compensation insurance as may be necessary to comply with applicable laws;

(v) Employer's liability insurance in such amount as the Board shall deem desirable;

(vi) A fidelity bond indemnifying the Association, the Board, and the Unit Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or its Manager or of any other person handling the funds of the Association, the Board, or the Unit Owners in such amounts as the Board shall deem necessary but not less than that mandated by applicable Florida law. The premium for such fidelity bond shall be a Common Expense. The Board shall use its best efforts to obtain a bond which contains waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "or similar expression;" and

(vii) Such other insurance (including insurance with respect to officers' and directors' liability) as may be required by law or deemed necessary by the Board in such reasonable amounts as the Board shall deem desirable.

The premiums for the above described insurance, and the cost arising from deductibles under any such policies in the event of a loss, except as otherwise provided in this Section 15, shall be Common Expenses.

(b) All insurance provided for in this Section 15 shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Florida.

(c) All policies of insurance of the character described in subsections (a)(i) and (a)(ii) of this Section 15.2: (1) shall name, as insured, the Developer, so long as it has an insurable interest, and the Association individually and as trustee of the Unit Owners without naming them and their respective mortgagees, and shall also name as an insured the Insurance Trustee if appointed in accordance with Section 15.1 hereof, as the respective interests of all such insureds may appear; (2) shall be without contribution as respects other such policies of insurance carried individually by the Unit Owners whether such other insurance covers their respective Units and/or the additions and improvements made by such Unit Owners to their respective Units; (3) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the event the Unit Owners elect to sell the Condominium Property or terminate the Condominium; and (4) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least 30 days prior written notice to the mortgagee of each Unit. Policies of insurance of the character described in subsection (a)(i) of this Section 15.2 may contain an endorsement extending coverage so as to include the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described in subsections (a)(i) and (a)(ii) of this Section 15.2, any losses under such policies shall be payable, and all insurance proceeds recovered thereunder shall be applied and discussed, in accordance with the provisions of this Declaration.

(d) All policies of insurance of the character described in subsections (a)(iii), (a)(iv), (a)(v), (a)(vi) and (a)(vii) of this Section 15.2 shall name as insureds the Association, the Board, its Manager, and the other agents and employees of such Association, Board and Manager and the Developer in its capacity as a Unit Owner and Board member, and shall also provide coverage for each Unit Owner (but as to the insurance described in subsection (a)(iii) of this Section 15.2, only with respect to those portions of the Condominium Property not reserved for his or her exclusive use). In addition, all policies of insurance of the character described in subsection (a)(iii) of this Section 15.2 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Developer, the Manager, their respective employees and agents, and the Unit Owners and occupants and shall cover claims of one or more insured parties against other insured parties.

(e) The Association, for the benefit of the Unit Owners and the mortgagee of each Unit, shall pay the premiums on the policies of insurance described in subsection (a) of this Section 15.2 at least 30 days prior to the expiration dates of the respective policies.

(f) The loss, if any, under any policies of insurance of the character described in subsections (a)(1) and (a)(ii) of this Section 15.2 shall be payable, and the insurance proceeds paid, on account of any such loss shall be applied and disbursed as follows:

(i) To the Association, as trustee for each of the Unit Owners in their respective percentages of ownership in the Common Elements as established in the Declaration, in the case of any one loss, of \$20,000.00 or less in the aggregate, which insurance proceeds, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of the cost of restoring the Condominium Property to substantially the same condition in which it existed immediately prior to such damage or destruction, with each Unit and Common Element having the same vertical and horizontal boundaries as before, free from mechanic's, materialmen's and other similar liens; or,

(ii) In case of any one loss exceeding \$20,000.00 in the aggregate, then the insurance proceeds shall be paid to the Insurance Trustee for the purpose of collecting and disbursing the insurance proceeds described in this subparagraph (f)(ii). The Insurance Trustee shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds, nor for the form or content of the policies. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and distribute the same as herein provided for the purposes elsewhere stated. Such proceeds, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, and the fees of the Insurance Trustee, shall be applied by the Insurance Trustee to the payment of the cost of restoring the Condominium Property to substantially the same condition in which it existed immediately prior to such damage or destruction, with each Unit and Common Element having the same vertical and horizontal boundaries as before. Such proceeds shall be paid by the Insurance Trustee to or for the account of the Association, from time to time as work progresses, in such manner as shall be required to facilitate the restoration of the damaged property. The Association and the Insurance Trustee may, prior or subsequent to any such loss, enter into an insurance trust agreement further implementing the provisions of this Declaration with respect to the collection and disbursement of proceeds of insurance by the Insurance Trustee.

(g) The Board, or, where applicable, the Insurance Trustee, shall have the exclusive authority to negotiate losses under any policy providing property or liability insurance as described in this Article and such other authority as may be necessary in connection with its purchase and maintenance of the insurance required under this Article.

(h) Each Unit Owner shall be responsible for his own insurance and deductibles on the furnishings and personal property located in his Unit and his personal property stored elsewhere on the Condominium Property, and his personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all of the Unit Owners as above provided. All policies of

casualty insurance carried by each Unit Owner shall be without contribution as respects the policies of casualty insurance obtained by the Board for the benefit of all of the Unit Owners as above provided.

(i) Each Unit Owner shall be required to report all additions or alterations to his unit promptly in writing to the Board, without prior request from the Board or the Manager, and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure to so notify the Board. The Board shall not be responsible for obtaining insurance on such additions, alterations or improvements unless and until such Unit Owner shall make such report and request the Board in writing to obtain such insurance, and shall make arrangements satisfactory to the Board for such additional premiums; and upon the failure of such Unit Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. "Additions" or "alterations" shall mean property attached to the Unit and not readily removable without damage to the Unit, including but not limited to, carpeting, special flooring, special wall covering, and paneling. The insurance coverage described in this Section 15.2(i) shall not be deemed to include personal property owned by the Unit Owner and not attached to the Unit.

(j) Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner if any, and their respective employees and agents, for damages to the Common Elements, the Units, or to any personal property located in the Unit or Common Elements caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

(k) No Unit Owner shall cause insurance premiums to be assessed on the basis of increased charges for coverage on certain Units.

15.3 Cancellation of Insurance. The Board shall be responsible, in the event any insurance required under subsections (a)(i), (a)(ii) or (a)(iii) of Section 15.2 is canceled, for serving notice of such cancellation upon any persons insured thereunder.

#### 15.4 Repair, Restoration or Reconstruction of the Improvements.

(a) In the event the improvements forming a part of the Condominium Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus Capital Reserves, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds and, if necessary, the Capital Reserves, shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event within 180 days after said damage or destruction, the Unit Owners shall elect either to sell the property or terminate the Condominium, then such repair, restoration, or reconstruction shall not be undertaken. In the event such repair, restoration, or reconstruction is not undertaken the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Section 5, after first paying out of the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens. In the event repair, restoration or reconstruction are not undertaken, the Association shall not be required to pay the amount of any deductible under applicable insurance policies.

(b) If the insurance proceeds and Capital Reserves are insufficient to reconstruct the Building and the Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction of the Building within 180 days from the date of damage or destruction, then the provisions of the Act shall apply.

(c) In the case of damage or other destruction in which fewer than one-half (1/2) of the Units are rendered uninhabitable, upon the affirmative vote of not fewer than 75% of the Unit Owners

voting at a meeting called for the purpose, the Building or other portion of the property shall be reconstructed. The meeting shall be held within 30 days following the final adjustment of insurance claims, if any; otherwise, such meeting shall be held within 90 days of the occurrence of the damage or other destruction. At such meeting the Board or its representatives, shall present to the members present, an estimate of the cost of repair or reconstruction, and the estimated amount of necessary Assessments against each Unit Owner.

(d) In the case of damage or other destruction in which more than 1/2 of the Units are rendered uninhabitable, upon the affirmative vote of not fewer than 75% of the Unit Owners voting at a meeting called for that purpose, any portion of the property affected by such damage or destruction may be withdrawn from the Condominium. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The payment of just compensation, or the allocation of any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Any proceeds available from the withdrawal of any Limited Common Elements will be distributed in accordance with the interest of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of Assessments on such Unit or portion thereof by the Unit Owner shall cease.

(e) As used in this Article, "repair, restoration or reconstruction" of improvements means restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and Common Element having the same vertical and horizontal boundaries as before unless, if allowed by the Act, other action is approved by holders of first mortgages on Units which have at least 51% of the votes in the Association.

15.5 Eminent Domain. In the event any portion of the Condominium Property is taken by condemnation or eminent domain proceedings, provision for withdrawal from the provisions of the Act of such portion so taken may be made by the Board. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be payable to the Association and shall be allocated on the basis of each Unit Owner's percentage interest therein. Proceeds available from the withdrawal of any Limited Common Element will be distributed in accordance with the interest of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of Assessments on such Unit or portion thereof by the Unit Owner shall cease. The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Elements or any part thereof. In the event of the total taking of the property by eminent domain, the condemnation award available in that connection shall be divided by the Association among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Section 5, after first paying out of the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

## **Section 16: Occupancy and Use Restrictions**

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

16.1 Occupancy. Each Unit shall be used as a single family residence only, except as may be otherwise herein expressly provided. The provisions of this Section 16.1 shall not be applicable to Units used by the Developer for model apartments, guest accommodations, sales or other offices or management services.

16.2 Antennae. No antenna or aerial may be erected or installed on the exterior walls of a Unit or on the Limited Common Elements or Common Elements of the Condominium, which includes the roof, without the prior written consent of the Board of Directors. Any such antenna or aerial so installed without approval may be removed without notice and at the cost of the Unit Owner for whose benefit the installation was made.

16.3 Clotheslines. No clothesline or similar device shall be allowed on any portion of the Condominium Property, nor shall clothes be hung anywhere on the Condominium Property except within a Unit.

16.4 Specific Prohibited Uses. No sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, on or upon any part of the Unit, Limited Common Elements or Condominium Property by any Unit Owner or occupant without prior written consent of the Board of Directors. The foregoing includes signs within a Unit which are visible from outside the Unit.

No person shall use the Common Elements or any part thereof, or a Unit, or the Condominium Property, or any part thereof, in any manner contrary to or not in accordance with the rules and regulations set forth in the By-Laws or properly pertaining thereto and promulgated from time to time by the Association.

The Unit Owner shall not permit or suffer anything to be done or kept in his Unit which will increase the rate of insurance on the Condominium Property, or which will obstruct or interfere with the rights of other Unit Owners, or annoy them by unreasonable noises, or otherwise, nor shall the Unit Owners commit or permit any nuisance, immoral or illegal acts in or about the Condominium Property.

16.5 Nuisances. No nuisances (as reasonably determined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance.

16.6 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, 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. No activity specifically permitted by this Declaration shall be deemed a violation of this Section 16.

### **Section 17: Selling, Leasing and Mortgaging of Units**

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

17.1 **Sales.** No conveyance of a Unit, by parties other than the Developer or Institutional Mortgagees, shall be valid unless a certificate executed and acknowledged by an officer of the Association, stating that all Assessments levied against such Unit have been paid in full, is recorded together with the instrument of conveyance. The Board of Directors shall furnish such certificate upon receipt from the Unit Owner of a request form (which will be prepared by the Association) setting forth the proposed purchaser's name, notice address and date of closing. Each new Owner receiving a conveyance from any party except the Developer shall notify the Association and the Management Firm promptly after becoming a new Owner by delivering a copy of his deed to the Unit to the Association and the Management Firm.

17.2 **Leases.** No Unit Owner may lease or rent his Unit if he is delinquent in the payment of any Assessments. If all Assessments are paid up to date, a Unit Owner may rent or lease his Unit without further approval. However, the Unit Owner renting or leasing his Unit shall promptly notify the Management Firm of each renter and the term of such rental or lease. The sub-leasing or sub-renting of a Unit Owner's interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The Association shall have the right to require upon notice to all Unit Owners that a substantially uniform form of lease or sub-lease be used by all Unit Owners (including the Developer) intending to rent or lease after said notice and to provide such form as a Common Expense. Entire Units only may be rented, provided the occupancy is only by the lessee, his family and guests; no individual rooms may be rented and no transient tenants may be accommodated. The provisions of this paragraph pertaining to transient tenants shall not be applicable to the Developer.

A tenant of a Unit shall have all of the use rights in the Association Property and Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall not have such rights, except as a guest. This shall not, however, interfere with access rights of an Owner as landlord pursuant to applicable law.

17.3 **Continuing Liability.** The liability of the Unit Owner under these covenants shall continue, notwithstanding the fact that he may have leased, rented or sub-let said interest as provided herein. Every purchaser, tenant or lessee shall take subject to this Declaration, the Articles of Incorporation and By-Laws of the Association, and the Management Agreement, as well as the provisions of the Act.

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

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

### **Section 18: Compliance and Default**

Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

18.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

18.2 Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles 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 a court of equity to require performance and/or compliance, to impose any applicable fines in accordance with the provisions of the Act, or to sue in a court of law for damages.

18.3 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the Articles or By-Laws of the Association, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).

18.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Articles and By-Laws of the Association, 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.

### **Section 19: Termination of Condominium**

The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided elsewhere in this Declaration, or (ii) such time as termination of the condominium form of ownership is authorized by a vote of Owners owning 100% of the Units and by the Primary Institutional First Mortgagee. Upon such termination, the former Condominium Property shall be subject to an action for partition by any Owner, and the net proceeds of sale shall be divided among all Owners in proportion to their respective interests in the Common Elements; provided, however, that no payment shall be made to an Owner until all mortgages and liens on his Unit, in the order of their priority, have been satisfied out of his share of such net proceeds. Upon such termination, all funds of the Association, including, but not limited to, reserves, insurance proceeds, and condemnation awards, shall be divided among all Owners in proportion to their respective interests in the Common Elements; provided, however, that no payment shall be made to an Owner until all mortgages and liens on his Unit, in the order of their priority, have been satisfied out of his share of such net proceeds. The termination of the Condominium shall be effective upon a certificate of the Association, executed by its President and Secretary, certifying the basis of the termination being recorded among the public records of the County.

This Section 19 may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.

### **Section 20: Additional Rights of Mortgagees and Others**

The following provisions are intended for the benefit of each holder of a first mortgage upon a Unit, and, to the extent that any other provisions of this Declaration conflicts with the following provisions, if at all, the following provisions shall control:

20.1 Upon request in writing, the Association shall furnish to each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage a written notice of any default by the Unit Owner of such Unit in the performance of such Unit Owner's obligations under this Declaration that has not been cured within 30 days.

20.2 Upon request in writing, each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage on a Unit shall have the right:

(a) to examine current copies of this Declaration, the By-Laws, rules and regulations and the books, records and financial statements of the Association during normal business hours;

(b) to receive, without any charge and within a reasonable time after such request, the annual audited financial statement which is prepared and distributed by the Association to the Unit Owners at the end of its fiscal year; provided, however, that in the event an audited financial statement is not available, the holders of 51% or more of the first mortgages in the Units shall be entitled to have such an audited statement prepared at their expense;

(c) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

(d) to receive written notice of any decision by the Unit Owners to make a material amendment to the Declaration, By-Laws or Articles of Incorporation of the Association;

(e) to receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(f) to receive written notice of any action which would require the consent of a specified number of Institutional First Mortgagees.

20.3 No provision of this Declaration or the Articles of Incorporation or any similar instrument pertaining to the Condominium Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over any rights of the Institutional First Mortgagees of Units pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, and/or the Common Elements, or any portion thereof or interest therein. In such event, the holder of any first mortgage on a Unit shall be entitled, upon specific written request, to timely written notice of any such loss.

20.4 There shall be included in each annual Assessment levied by the Association (but not as a Special Assessment) an amount sufficient to establish an adequate reserve fund for replacements and contingencies.

20.5 The consent of Owners holding at least 75% of the total votes in the Association and the approval of the holders of first mortgages on Units which represent at least 51% of the votes of Units that are subject to first mortgages shall be required to add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

(a) Voting rights;

(b) Increases in Assessments that raise the previously Assessment by more than 25%, Assessment liens or the priority of Assessment liens;

(c) Reductions in reserves for maintenance, repair and replacement of the Common Elements;

(d) Hazard or fidelity insurance requirements;

(e) Rights to use of the Common Elements;

(f) Responsibility for maintenance and repair of the Property;

- (g) Boundaries of any Unit;
- (h) The reallocation of interests in the Common Elements or Limited Common Elements or the rights to their use;
- (i) Convertibility of Units into Common Elements or of Common Elements into Units;
- (j) Leasing of Units;
- (k) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit; and
- (l) Any decision by the members of the Association to establish self-management and terminate the management responsibilities, duties and contractual obligations of the Management Firm (provided, however, that this provision (1) shall apply only if the Condominium contains 50 or more Units, and (2) shall be superseded by the provisions of Section 718.302(1), Florida Statutes, in the event of conflict between such statute and this subparagraph);
- (m) The expansion (other than the proposed phase described in this Declaration) or contraction of the Condominium Property, or the addition (other than the proposed phase described in this Declaration), annexation, or withdrawal of property to or from the Condominium;
- (n) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than as provided in this Declaration; or
- (o) Any provisions which are for the express benefit of holders, insurers or guarantors of first mortgages on the Units.

20.6 Upon specific written request to the Association, each Institutional First Mortgagee of a Unit or holder, insurer or guarantor of a mortgage on a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Elements if such damage or destruction or taking exceeds \$10,000.00 or if damage shall occur to a Unit in excess of \$1,000.00.

20.7 If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder, insurer or guarantor of any first mortgage on a Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle a Unit Owner or other party to priority over such holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

20.8 Any holder of a first mortgage on a Unit who receives a written request to approve additions or amendments and fails to deliver or mail to the requesting party a negative response within 30 days shall be deemed to have approved such request.

20.9 In the event professional management has been previously required by any holder, insurer or guarantor of a first mortgage on a Unit, any decision to establish self management by the Association shall require the prior consent of Unit Owners in accordance with Section 718.302(1), Florida Statutes.

20.10 As required by Section 718.110, Florida Statutes, any mortgagee consent required under this Section 20 shall not be unreasonably withheld and shall otherwise be deemed to apply to the extent applicable.

### **Section 21: Disclaimer of Warranties**

DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, EXCEPT ONLY THOSE SET FORTH IN SECTION 718.203 OF THE ACT. 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 THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY), SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

### **Section 22: Mediation and Arbitration**

All issues or disputes which are recognized by the Act or by administrative rules promulgated under the Act as being appropriate or required for mediation or arbitration shall be resolved through such alternative resolution procedures instead of civil litigation.

### **Section 23: Additional Provisions**

23.1 **Notices.** All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by first class mail 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 address of such Unit Owner appearing in the Association's records at the time the notice is transmitted. Where a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one address which the Developer initially identifies for that purpose and thereafter as one or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or the Owners of the Unit do not agree, to the address provided in the deed of record.

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.

23.2 **Architectural Review.** Inasmuch as the Condominium is comprised of Units of land on which attached single family dwellings will be located, the design and construction of which is an integral part of the aesthetic and environmental character of the Condominium and because individual Unit Owners may construct additional permitted improvements within their Units, it is necessary for the protection of the Unit Owners to establish a method and procedure to assure that the architectural and conceptual character of the Condominium shall be continued. Architectural review shall be applicable as specified in this Section 23.2, and where otherwise provided in this Declaration. The following provisions shall govern the architectural review process:

(a) The Board of Directors may, from time to time, adopt and promulgate architectural standards for the Condominium. The architectural standards may not be contrary to the provisions of this Declaration or the By-Laws and shall be consistent with the original architectural, structural, aesthetic and environmental concept and the original development of the Condominium. All architectural standards shall be adopted and applied on a uniform basis, and may be revised or expanded

from time to time to take cognizance of new materials, construction techniques, rules and regulations or governmental authorities and the laws of Florida.

(b) Architectural review shall be required whenever any alteration or improvement to a Unit is proposed by a Unit Owner for which architectural review is required under this Declaration.

(c) When the Board of Directors has established architectural standards approving certain colors, materials, decorative or other items of routine maintenance, repair or minor improvement, the Unit Owner may comply with such standards without further approval. In all other situations, the Unit Owner shall submit to the Board of Directors a written application setting forth plans, colors, materials and other specifications for the activity for which architectural review is required. The Board of Directors may request additional and supplementary information. The Board of Directors shall, within 30 days after receipt of such application and additional information, either approve or disapprove, or approve in part and disapprove in part, the application. The Board of Directors shall specify its reasons for disapproval and annotate its decision by reference to architectural standards, where applicable. No work shall proceed except in compliance with this Declaration and architectural approval, where required.

(d) The Board may establish reasonable fees for architectural review. In no event shall the maximum fee for any form of review exceed the higher of the sum of \$50.00 or such other amount as may be allowed by the Condominium Act.

(e) The Association shall maintain records of all architectural review proceedings.

(f) The original development and construction by Developer of the improvements comprising the Condominium, including but not limited to permitted improvements, shall not be subject to the provisions of this Section 23.2.

**23.3 Interpretation.** The Board of Directors shall be responsible for interpreting the provisions hereof and of any of the exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel to the Association, or the legal counsel having drafted this Declaration, that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

**23.4 Binding Effect of Section 718.303, Florida Statutes.** The provisions of Section 718.303(1), Florida Statutes, shall be in full force and effect and are incorporated herein. The Management Firm, for as long as the Management Agreement remains in effect, shall assist the Association in the prosecution of any action pursuant to the statute aforescribed.

**23.5 Right of Developer to Add Recreational Facilities and Common Elements.** If the Developer elects to add or expand any recreational facilities or any other portion of the Common Elements, the Developer shall pay all the expenses relating to the construction or the providing of such addition or expansion and shall record an amendment to this Declaration describing such property. The amendment shall be executed with the formalities of a deed and recorded in the public records of the County. No approval or action of the Association, Unit Owners or mortgagees shall be necessary for adding such additional Common Elements to condominium ownership. All costs of maintenance, repair and replacement relating to the addition or expansion of the recreational facilities or any other portion of the Common Elements shall be a Common Expense.

**23.6 Right of Developer to Convey Property to the Association.** The Developer hereby reserves the right to convey to the Association any portion(s) of the real property constituting all or a part of proposed Phase II or other areas contiguous to the Condominium Property free and clear of liens and encumbrances, including, but not limited to, wetlands or other parcels more suitable to become Association Property rather than Common Elements. All costs and expenses associated with such Association Property shall be Common Expenses. The Association shall be required to accept any such conveyance from the Developer.

23.7 Exhibits. There are hereby incorporated into this Declaration all materials contained in the exhibits annexed hereto, except that as to such exhibits, any conflicting provisions set forth specifically therein as to their amendment, modification or enforcement shall control over the provisions hereof.

23.8 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 2 separate capacities.

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

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

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

23.12 Gender; Plurality. For convenience and ease of reference, the third person singular impersonal form of pronoun "it" has been used herein without regard to the proper grammatical person or gender of the party being referred to. All such references shall be deemed to include the singular or plural person and the masculine, feminine or neuter gender, as required by the context.

23.13 Captions. The captions herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 11<sup>th</sup> day of April, 2000.

WITNESSES:

WCI COMMUNITIES, INC., A DELAWARE CORPORATION, F/K/A FLORIDA DESIGN COMMUNITIES, INC.

Name: [Signature]  
Print Name: BARBARA L. NIXON

By: [Signature]  
R.C. Beyer, Jr., Vice President

Name: [Signature]  
Print Name: SHIRLEY THOMAS

(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April, 2000, by R.C. Beyer, Jr., as Vice President of WCI COMMUNITIES, INC., a Delaware corporation, formerly known as Florida Design Communities, Inc., on behalf of the corporation, as Developer of Topaz Cove Condominium. He/She  is personally known to me or  has produced \_\_\_\_\_ as identification.

My Commission Expires:

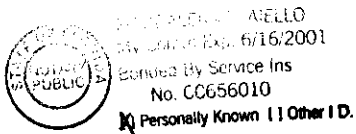
(AFFIX NOTARY SEAL)

[Signature]  
(Signature)

Name: Magdalena T. Aiello  
(Legibly Printed)

Notary Public, State of Florida

CC656010  
(Commission Number, if any)



**CONSENT OF MORTGAGEE REGARDING RECORDATION OF  
DECLARATION OF CONDOMINIUM FOR TOPAZ COVE CONDOMINIUM**

**Fleet National Bank, f/k/a BankBoston, N.A.**, a national banking association, as Agent for the Banks (the "Mortgagee"), the holder of that certain Consolidated, Amended and Restated Mortgage and Security Agreement and Notice of Future Advance dated as of June 29, 1999, and recorded on July 2, 1999, in Official Records Book 3140, at Page 1016 of the Public Records of Lee County, Florida (the "Mortgage"), which Mortgage constitutes a lien upon the real property described in the Declaration of Condominium for Topaz Cove Condominium executed on April 11, 2000 (the "Declaration"), hereby consents to WCI Communities, Inc., a Delaware corporation (the "Developer"), recording the Declaration and subjecting the real property described in the Declaration to the terms and provisions of such Declaration.

Notwithstanding the execution of this consent, nothing herein shall be construed to render the Mortgagee responsible or liable for the performance of any of the covenants or undertakings of the Developer under the Declaration nor shall this consent affect the priority of the Mortgage lien and interest of the Mortgagee.

Dated this 12 day of April, 2000.

**WITNESSES:**

**Fleet National Bank, f/k/a BankBoston, N.A.**, a national banking association

*Jeanette Strandu*  
Name: JEANETTE STRANDU

By: *S. Selbo*  
Steven P. Selbo, Director

*Deborah Parker*  
Name: Deborah PARKER

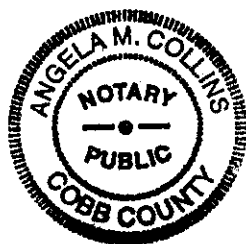
(SEAL)

STATE OF GEORGIA  
COUNTY OF ~~FULTON~~ Cobb

The foregoing instrument was acknowledged before me this 12 day of April, 2000, by Steven P. Selbo, as Director of Fleet National Bank, f/k/a/ BankBoston, N.A., who either  is personally known to me or  has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)



My Commission Expires  
January 19, 2002.

*Angela M. Collins*  
(Signature)  
Name: Angela M. Collins  
(Legibly Printed)  
Notary Public, State of Georgia

\_\_\_\_\_  
(Commission Number, if any)

**EXHIBIT NO. 1 TO DECLARATION OF CONDOMINIUM**

The legal description of Phase I of the Condominium Property, as submitted to condominium ownership pursuant to the recording of the Declaration of Condominium to which this exhibit is attached, is as follows and is provided for the sake of clarity:

**PHASE I:**

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 1, TOWNSHIP 43 SOUTH, RANGE 22 EAST, BEING A PART OF TRACT "C", PUNTA GORDA ISLES SECTION TWENTY TWO AS RECORDED IN PLAT BOOK 28, PAGES 118-138 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 3, BLOCK 1001, PUNTA GORDA ISLES, SECTION TWENTY TWO, PLAT BOOK 28, PAGES 118-138, LEE COUNTY, PUBLIC RECORDS; THENCE S.59°00'17"W., FOR 195.14 FEET; THENCE N.00°22'56"E., FOR 104.90 FEET; THENCE S.89°37'04"E., FOR 119.34 FEET; THENCE S.00°22'56"W., FOR 18.52 FEET; THENCE N.89°37'04"W., FOR 656.66 FEET; THENCE S.05°30'18"W., FOR 16.97 FEET; THENCE S.11°35'01"W., FOR 43.96 FEET; THENCE S.59°32'54"W., FOR 88.73 FEET; THENCE S.80°54'06"W., FOR 49.39 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE S.42°55'19"W., A DISTANCE OF 124.79 FEET TO A POINT ON A CURVE TO THE RIGHT, HAVING: A RADIUS OF 208.00 FEET, A CENTRAL ANGLE OF 19°44'17", A CHORD BEARING OF N.35°56'17"W. AND A CHORD LENGTH OF 71.30 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 71.65 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N.26°04'08"W., A DISTANCE OF 51.26 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 208.00 FEET, A CENTRAL ANGLE OF 26°29'00", A CHORD BEARING OF N.12°49'38"W. AND A CHORD LENGTH OF 95.29 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 96.14 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N.00°24'52"E., A DISTANCE OF 130.72 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 208.00 FEET, A CENTRAL ANGLE OF 25°39'55", A CHORD BEARING OF N.13°14'49"E. AND A CHORD LENGTH OF 92.39 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 93.17 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 92.00 FEET, A CENTRAL ANGLE OF 25°39'55", A CHORD BEARING OF N.13°14'49"E. AND A CHORD LENGTH OF 40.87 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 41.21 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N.00°24'52"E., A DISTANCE OF 14.13 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 192.00 FEET, A CENTRAL ANGLE OF 42°15'18", A CHORD BEARING OF N.20°42'47"W. AND A CHORD LENGTH OF 138.41 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 141.60 FEET TO THE END OF SAID CURVE; THENCE N.48°09'34"E., A DISTANCE OF 2.57 FEET; THENCE S.41°50'26"E., A DISTANCE OF 41.56 FEET; THENCE N.48°09'34"E., A DISTANCE OF 64.67 FEET; THENCE N.41°50'26"W., A DISTANCE OF 5.83 FEET; THENCE N.48°09'34"E., A DISTANCE OF 19.67 FEET; THENCE N.41°50'26"W., A DISTANCE OF 4.00 FEET; THENCE N.48°09'34"E., A DISTANCE OF 34.67 FEET; THENCE S.41°50'26"E., A DISTANCE OF 11.31 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 42°15'18", A CHORD BEARING OF S.20°42'47"E. AND A CHORD LENGTH OF 144.18 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 147.50 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE S.00°24'52"W., A DISTANCE OF 85.51 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 194.50 FEET, A CENTRAL ANGLE OF 16°11'46", A CHORD BEARING OF S.08°30'45"W. AND A CHORD LENGTH OF 54.80 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 54.98 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE S.16°36'38"W., A DISTANCE

OF 48.61 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 205.50 FEET, A CENTRAL ANGLE OF 16°11'46", A CHORD BEARING OF S.08°30'45"W. AND A CHORD LENGTH OF 57.90 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 58.09 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE S.00°24'52"W., A DISTANCE OF 65.69 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 154.50 FEET, A CENTRAL ANGLE OF 47°29'33", A CHORD BEARING OF S.23°19'54"E. AND A CHORD LENGTH OF 124.43 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 128.07 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 74777 SQUARE FEET OR 1.72 ACRES, MORE OR LESS.

The legal descriptions of the proposed phases of the Condominium, none of which are submitted to condominium ownership pursuant to the recording of the Declaration of Condominium to which this exhibit is attached but any or all of which may be submitted to condominium ownership in the future, are as follows and are provided for the sake of clarity:

**PROPOSED PHASE II:**

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 1, TOWNSHIP 43 SOUTH, RANGE 22 EAST, BEING A PART OF TRACT "C", PUNTA GORDA ISLES SECTION TWENTY TWO AS RECORDED IN PLAT BOOK 28, PAGES 118-138 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 3, BLOCK 1001, PUNTA GORDA ISLES, SECTION TWENTY TWO, PLAT BOOK 28, PAGES 118-138, LEE COUNTY, PUBLIC RECORDS; THENCE S.59°00'17"W., FOR 195.14 FEET; THENCE N.00°22'56"E., FOR 104.90 FEET; THENCE S.89°37'04"E., FOR 119.34 FEET; THENCE S.00°22'56"W., FOR 18.52 FEET; THENCE N.89°37'04"W., FOR 656.66 FEET; THENCE S.05°30'18"W., FOR 16.97 FEET; THENCE S.11°35'01"W., FOR 43.96 FEET; THENCE S.59°32'54"W., FOR 88.73 FEET; THENCE S.80°54'06"W., FOR 49.39 FEET; THENCE S.42°55'19"W., FOR 124.79 FEET TO A POINT ON A CURVE TO THE RIGHT, HAVING: A RADIUS OF 208.00 FEET, A CENTRAL ANGLE OF 19°44'17", A CHORD BEARING OF N.35°56'17"W. AND A CHORD LENGTH OF 71.30 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 71.65 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N.26°04'08"W., FOR 51.26 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 208.00 FEET, A CENTRAL ANGLE OF 26°29'00", A CHORD BEARING OF N.12°49'38"W. AND A CHORD LENGTH OF 95.29 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 96.14 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N.00°24'52"E., FOR 130.72 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 208.00 FEET, A CENTRAL ANGLE OF 25°39'55", A CHORD BEARING OF N.13°14'49"E. AND A CHORD LENGTH OF 92.39 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 93.17 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 92.00 FEET, A CENTRAL ANGLE OF 25°39'55", A CHORD BEARING OF N.13°14'49"E. AND A CHORD LENGTH OF 40.87 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 41.21 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N.00°24'52"E., FOR 14.13 TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 192.00 FEET, A CENTRAL ANGLE OF 42°15'18", A CHORD BEARING OF N.20°42'47"W. AND A CHORD LENGTH OF 138.41 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 141.60 FEET TO THE POINT OF TANGENCY OF SAID CURVE AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE N.41°50'26"W., FOR 96.39 FEET TO THE POINT OF CURVATURE

OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 92.00 FEET, A CENTRAL ANGLE OF 112°38'53", A CHORD BEARING OF S.81°50'07"W. AND A CHORD LENGTH OF 153.12 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 180.88 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE S.25°30'41"W., FOR 80.70 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 282.00 FEET, A CENTRAL ANGLE OF 25°10'53", A CHORD BEARING OF S.12°55'14"W. AND A CHORD LENGTH OF 122.94 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 123.94 FEET TO THE END OF SAID CURVE; THENCE S.81°20'58"W., FOR 137.52 FEET TO A POINT ON A CURVE TO THE RIGHT, HAVING: A RADIUS OF 344.50 FEET, A CENTRAL ANGLE OF 28°24'35", A CHORD BEARING OF N.12°43'34"E. AND A CHORD LENGTH OF 169.07 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 170.82 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N.26°55'51"E., FOR 211.23 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 150.00 FEET, A CENTRAL ANGLE OF 111°13'43", A CHORD BEARING OF N.82°32'43"E. AND A CHORD LENGTH OF 247.58 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 291.20 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE S.41°50'26"E., FOR 220.98 FEET; THENCE S.48°09'34"W., FOR 34.67 FEET; THENCE S.41°50'26"E., FOR 4.00 FEET; THENCE S.48°09'34"W., FOR 19.67 FEET; THENCE S.41°50'26"E., FOR 5.83 FEET; THENCE S.48°09'34"W., FOR 64.67 FEET; THENCE N.41°50'26"W., FOR 41.56 FEET; THENCE S.48°09'34"W., FOR 2.57 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 95303 SQUARE FEET OR 2.19 ACRES, MORE OR LESS.

**PROPOSED PHASE III:**

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 1, TOWNSHIP 43 SOUTH, RANGE 22 EAST, BEING A PART OF TRACT "C", PUNTA GORDA ISLES SECTION TWENTY TWO AS RECORDED IN PLAT BOOK 28, PAGES 118-138 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

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FEET, A CENTRAL ANGLE OF 26°50'03", A CHORD BEARING OF S.45°38'07"E. AND A CHORD LENGTH OF 96.53 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 97.42 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE S.32°13'05"E., FOR 9.55 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 1008.00 FEET, A CENTRAL ANGLE OF 08°24'33", A CHORD BEARING OF S.28°00'49"E. AND A CHORD LENGTH OF 147.81 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 147.94 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE S.23°48'32"E., FOR 43.16 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING: A RADIUS OF 207.00 FEET, A CENTRAL ANGLE OF 12°25'51", A CHORD BEARING OF S.30°01'27"E. AND A CHORD LENGTH OF 44.82 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 44.91 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 84008 SQUARE FEET OR 1.93 ACRES, MORE OR LESS.

The original Condominium drawings (which constitute Exhibit No. 1 to the Declaration of Condominium) are recorded in the Condominium Book and Page as referenced on the bottom of the first page of the Declaration of Condominium. A reduced-in-size copy of the Condominium drawings which constitute such Exhibit No. 1 are attached hereto for purposes of reference.









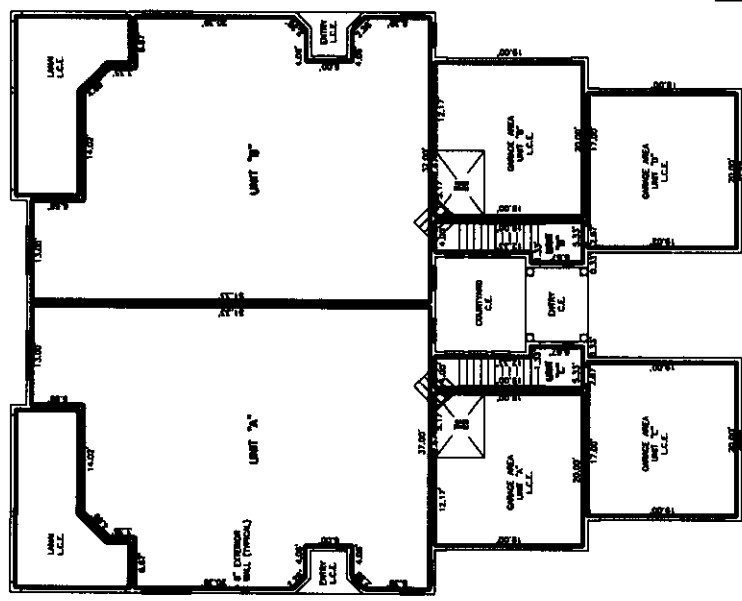
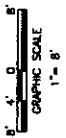


# TOPAZ COVE CONDOMINIUM

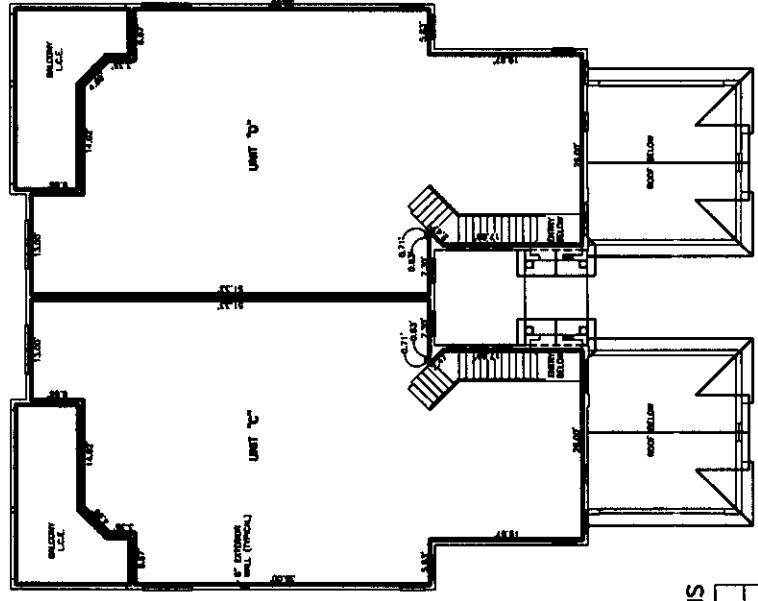
LYING IN  
SECTION 01, TOWNSHIP 43 SOUTH, RANGE 22 EAST  
LEE COUNTY, FLORIDA  
FLOOR PLANS

THIS INSTRUMENT PREPARED BY  
PROFESSIONAL ENGINEER AND ARCHITECT  
FLORIDA CERTIFICATE NO. 3628

**BCI**  
ENGINEERS & SCIENTISTS, INC.  
ENGINEERS • SCIENTISTS • SURVEYORS  
2726 SWAMP CREEK COURT, FORT MYERS, FL 33901  
PHONE: (813) 374-0891  
FAX: (813) 374-0892  
FLORIDA CERTIFICATE OF AUTHORIZATION #6888



FIRST FLOOR



SECOND FLOOR


BUILDING FLOOR ELEVATIONS

FLOOR NUMBER	UNIT 7A	UNIT 7B	UNIT 7C	UNIT 7D
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				

NOTE:  
ALL DIMENSIONS SHOWN ARE APPROXIMATE

**EXHIBIT NO. 2 TO DECLARATION OF CONDOMINIUM**

# State of Florida



Department of State

I certify from the records of this office that TOPAZ COVE CONDOMINIUM ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on April 13, 2000.

The document number of this corporation is N00000002466.

I further certify that said corporation has paid all fees due this office through December 31, 2000, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Thirteenth day of April, 2000



CR2EO22 (1-99)

*Katherine Harris*  
Katherine Harris  
Secretary of State

ARTICLES OF INCORPORATION  
OF  
TOPAZ COVE CONDOMINIUM ASSOCIATION, INC.

FILED

00 APR 13 PM 3:

THE UNDERSIGNED INCORPORATOR, being a natural person competent to contract, for the purpose of forming a corporation not-for-profit under the laws of the State of Florida, does hereby adopt, subscribe and acknowledge the following Articles of Incorporation.

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLE I. NAME**

The name of the corporation shall be TOPAZ COVE CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Corporation."

**ARTICLE II. PURPOSE AND POWERS**

Section 1. Purpose. The purpose for which the Corporation is organized is to provide an entity for the operation and governance of Topaz Cove Condominium (the "Condominium"), located upon lands in Lee County, Florida, said property being described in the duly recorded Declaration of Condominium applicable thereto.

The Corporation shall not be operated for profit and shall make no distribution of income to its members, directors or officers.

Section 2. Powers. The Corporation shall have all of the common-law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles.

The Corporation shall have all of the powers and duties contemplated in the Declaration of Condominium and the Florida Condominium Act together with all of the powers and the duties reasonably necessary to operate the Condominium pursuant to the Declaration as it may be amended from time to time, and such other documents or agreements that may exist from time to time pertaining to the Condominium. The powers and duties, which the By-Laws may set forth in more detail, shall include, but shall not be limited to, the following specific powers and duties:

(a) To make and collect Assessments against members as Unit Owners to defray the costs, expenses and losses of the Condominium, and to make such other Special Assessments against Unit Owners as the Declaration of Condominium shall provide, and to enforce such levy of Assessments through a lien and the foreclosure thereof or by other action pursuant to the Declaration of Condominium.

(b) To use the proceeds of the Assessments in the exercise of its powers and duties, and as provided in the Declaration of Condominium.

(c) To maintain, repair, replace and operate the Condominium Property.

(d) To purchase insurance and enter into contracts for services, utilities and other purposes as may be deemed appropriate.

(e) To reconstruct improvements after casualty and further improve the Condominium Property.

- (f) To make and amend reasonable rules and regulations.
- (g) To perform such functions as may be specified in the Declaration of Condominium and the By-Laws.
- (h) To enforce by legal means the provisions of the Florida Condominium Act, the Declaration of Condominium, these Articles, the By-Laws of the Corporation and such rules and regulations as may be promulgated.
- (i) To employ personnel to perform the services required for proper operation of the Condominium.
- (j) To lease, maintain, repair and replace the Common Elements as same are defined in the Declaration of Condominium.
- (k) To acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands or facilities and to pay the rental, membership fees, operational, replacement and other expenses as Common Expenses.
- (l) To purchase a Unit or Units of the Condominium for any purpose and to hold, lease, mortgage or convey such Units on terms and conditions approved by the Board of Directors.
- (m) To exercise such other power and authority to do and perform every act and thing necessary and proper in the conduct of its business for the accomplishment of its purposes as set forth herein and as permitted by the applicable laws of the State of Florida.
- (n) To contract for the management and maintenance of the Condominium Property and to authorize a management agent to assist the Corporation in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, and other sums due from Unit Owners, preparation of records, enforcement of rules and maintenance, repair and the replacement of the Common Elements with funds as shall be made available by the Corporation for such purposes. The Corporation and its officers shall, however, retain at all times the powers and duties granted by the Condominium documents and the Florida Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Corporation.
- (o) To bring suit as may be necessary to protect the Association's interests, the interests of the Association's Members, or the Condominium Property.

### ARTICLE III. DEVELOPER

WCI COMMUNITIES, INC., a corporation organized under the laws of Delaware, shall make and declare or has made and declared a certain Declaration of Condominium submitting to condominium ownership certain property described therein under the terms, covenants, and conditions expressed more fully therein; the Condominium is to be known as TOPAZ COVE CONDOMINIUM.

**ARTICLE IV. TERM**

The term for which this Corporation shall exist shall be perpetual. In the event the Corporation is dissolved, the Corporation shall ensure that the maintenance of the surface water management system, which is a Common Element as defined in the Declaration, is delegated, transferred or assigned to a similar not-for-profit corporation.

**ARTICLE V. INCORPORATOR**

The name and address of the incorporator of this Corporation is as follows:

Robert S. Freedman  
Carlton, Fields, Ward, Emmanuel,  
Smith & Cutler, P.A.  
One Harbour Place  
Tampa, Florida 33602

**ARTICLE VI. OFFICERS**

The officers of the Corporation shall be a President, Vice President, Secretary and Treasurer and such other officers as the Board of Directors may from time to time determine. The officers of this Corporation shall be elected for a term of 1 year, and until a successor shall be elected and qualified, by the Board of Directors at their annual meeting and in accordance with the provisions provided therefor in the By-Laws of the Corporation. Until transfer of the control of the Corporation to the unit owners other than the Developer has been accomplished, the officers need not be directors or members.

The names of the persons who shall serve as the first officers are:

R.C. Beyer, Jr.	President
Alan B. Smith	Vice President
Jackie Buckler	Secretary-Treasurer

**ARTICLE VII. DIRECTORS**

The affairs of the Corporation shall be managed by a Board of Directors composed of not less than 3 directors. Until control of the Corporation is transferred to unit owners other than the Developer, the Developer shall be entitled to designate non-member directors to the extent permitted by the Florida Condominium Act. Except for non-member directors appointed by the Developer, all directors shall be elected at the annual membership meeting of the Association.

The first Board of Directors shall be comprised of 3 persons who shall serve until their respective successors are elected (or designated) and qualified. The names and addresses of the members of the Board of Directors who shall serve as the first Directors are:

R.C. Beyer, Jr.	2020 Clubhouse Drive Sun City Center, Florida 33573
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**ARTICLE XI. PRINCIPAL PLACE OF BUSINESS**

The principal place of business of the Corporation shall be 2020 Clubhouse Drive, Sun City Center, Florida 33573, or at such other place or places as may be designated from time to time.

**ARTICLE XII. REGISTERED OFFICE AND AGENT**

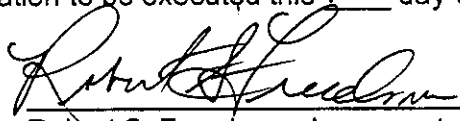
The street address of the initial registered office of the corporation and the name of the initial registered agent at that address are:

Vivien N. Hastings  
24301 Walden Center Drive, Suite 300  
Bonita Springs, Florida 34134

**ARTICLE XIII. INDEMNIFICATION**

The Corporation shall indemnify every director and every officer, his heirs, executors and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Corporation, including reasonable counsel fees, except as to matters wherein he shall be finally adjudged in such action, suit or proceedings to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

**IN WITNESS WHEREOF**, the subscribing Incorporator has hereunto set his hand and seal and caused these Articles of Incorporation to be executed this 12<sup>th</sup> day of April, 2000.



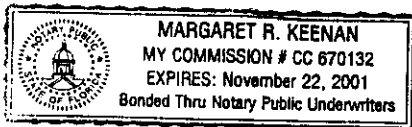
Robert S. Freedman, Incorporator

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of April, 2000, by Robert S. Freedman, being known to me to be the person who executed the foregoing Articles of Incorporation of TOPAZ COVE CONDOMINIUM ASSOCIATION, INC. He is personally known to me.

My Commission Expires:

(AFFIX NOTARY SEAL)



(Signature)

Name: \_\_\_\_\_

(Legibly Printed)

Notary Public, State of Florida

\_\_\_\_\_  
(Commission Number, if any)

**ACCEPTANCE OF DESIGNATION OF REGISTERED AGENT**

The undersigned, having been named as registered agent and to accept service of process for TOPAZ COVE CONDOMINIUM ASSOCIATION, INC., hereby accepts the appointment as registered agent and agrees to act in such capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of his duties and is familiar with and accepts the obligations of his position as registered agent.

  
\_\_\_\_\_  
Vivien N. Hastings

FILED  
00 APR 13 PM 3:38  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**EXHIBIT NO. 3 TO DECLARATION OF CONDOMINIUM**

**BY-LAWS OF  
TOPAZ COVE CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE I: IDENTITY**

TOPAZ COVE CONDOMINIUM ASSOCIATION, INC. ("Association") is a not-for-profit corporation, organized and existing pursuant to the laws of the State of Florida for purposes of operating and administering Topaz Cove Condominium located in Lee County, Florida ("Condominium").

Section 1. Principal Office. The principal office of the Association shall be at 2020 Clubhouse Drive, Sun City Center, Florida 33573, or at such other place as may be subsequently designated by the Board of Directors of the Association.

Section 2. Definitions. As used herein, the word "Condominium Association" shall be the equivalent of "Association," as defined in the Declaration of Condominium to which these By-Laws are attached, and all other terms used herein shall have the same definitions as attributed to them in said Declaration of Condominium. As used herein, in the Declaration of Condominium, or in the Florida Condominium Act, the terms "Board of Directors" and "Board of Administration" shall be synonymous.

**ARTICLE II: MEMBERSHIP AND VOTING PROVISIONS**

Section 1. Membership in the Association. Membership in the Association shall be limited to Owners of Units in the Condominium. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership shall become vested in the transferee. If Unit ownership is vested in more than one Person, then all of the Persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be cast by the "voting member." If Unit ownership is vested in a corporation, said corporation may designate an individual as its "voting member."

Any application for the transfer of membership, or for a conveyance of an interest in, or to encumber or lease a Condominium Parcel, where the approval of the Board of Directors is required by these By-Laws and the Declaration shall be accompanied by application fee in an amount to be set by the Association, to cover the cost of contacting the references given by the applicant, and such other costs of investigation that may be incurred.

Section 2. Voting.

(A) The Owner(s) of each Unit shall be entitled to one vote for each Unit owned. If a Unit Owner owns more than one Unit, such individual shall be entitled to one vote for each Unit owned. The vote of a Unit shall not be divisible.

(B) A majority of the Members who are present in person or by proxy pursuant to applicable Florida law and are entitled to vote under Section 5 of this Article at a meeting at which a quorum is present shall decide any question (except the election of members of the Board of Directors which must be by written ballot or voting machine), unless the Declaration, Articles of Incorporation, By-Laws, or agreement entered into by the Association provides otherwise, in which event the voting percentage required in said documents shall control.

Section 3. Quorum. The presence in person, or by limited or general proxy pursuant to applicable Florida law, of a majority of the members entitled to vote under Section 5 hereof shall constitute a quorum.

Section 4. Proxies. Votes may be cast in person or may be cast by limited or general proxy in certain circumstances in accordance with applicable Florida law. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5) and shall be filed with the secretary not less than 3 days prior to the meeting in which they are to be used. Proxies shall be valid only for the particular meeting designated therein. Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife where a third person is designated.

Section 5. Designation of Voting Member. If a Unit is owned by one Person, such Person's right to vote shall be established by the recorded title to the Unit. If a Unit is owned by more than one Person, the Person entitled to cast the vote for the Unit shall be designated in a certificate, signed by all of the recorded Owners of the Unit and filed with the secretary of the Association. If a Unit is owned by a corporation, the individual entitled to cast the vote of the Unit for the corporation shall be designated in a certificate for this purpose, signed by the president or vice president, attested to by the secretary or assistant secretary of the corporation, and filed with the secretary of the Association. The Person designated in such certificate who is entitled to cast the vote for a Unit shall be known as the "voting member." If such a certificate is required and is not filed with the secretary of the Association for a Unit owned by more than one person or by a corporation, the vote of the Unit concerned may not be cast and shall not be considered in determining the requirement for a quorum or for any purpose requiring the approval of a person entitled to cast the vote for the Unit. Unless the certificate shall otherwise provide, such certificates shall be valid until revoked or until superseded by a subsequent certificate, or until a change in the ownership of the Unit concerned. Notwithstanding the foregoing, if a Unit is owned jointly by a husband and wife, the following 3 provisions are applicable thereto:

(A) They may, but they shall not be required to, designate a voting member by certificate.

(B) If they do not designate a voting member, and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting.

(C) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

### **ARTICLE III: MEETINGS OF THE MEMBERSHIP**

Section 1. Place. All meetings of the Association membership shall be held at such place and at such time as shall be designated by and stated in the notice of the meeting.

Section 2. Notices. It shall be the duty of the secretary to mail or deliver a written notice of each annual or special meeting, stating the time and place thereof and an identification of agenda items to each Unit owner of record at least 14 but not more than 30 days prior to such meeting, and to post at a conspicuous place on the property a copy of the notice of said meeting at least 14 continuous days preceding said meeting. Notice of any annual or special meeting shall state the purpose thereof and said meeting shall be confined to the matters stated in said notice. All notices shall be mailed to or served at the address of the Unit Owner last furnished to the Association and posted as hereinbefore set forth. An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this section, to each Unit Owner at the address last furnished to the Association.

Section 3. Annual Meeting. The annual meeting for the purpose of electing directors and transacting any other business authorized to be transacted by the members shall be held once in each calendar year at such time and on such date in each calendar year as the Board of Directors

shall determine. At the annual meeting, the members shall elect, by plurality vote, a Board of Directors and shall transact such other business as may have been stated in the notice for said meeting. The election of the Board of Directors at the annual meeting shall be conducted in accordance with applicable provisions of the Florida Condominium Act. Cumulative voting shall be prohibited.

Section 4. Special Meeting. Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president, and shall be called by the president or secretary at the request in writing of a majority of the Board of Directors. Except for the purpose of removing a director governed by the provisions of Section 3 of Article IV hereof, a special meeting must be called by the president or secretary upon the request in writing of voting members representing 10% of the members' total votes, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the matters stated in the notice thereof.

Section 5. Waiver and Consent. Any approval by Unit Owners called for by the Florida Condominium Act, the Declaration or these By-Laws shall be made at a duly noticed meeting of Unit Owners and shall be subject to all requirements of the Florida Condominium Act or the Declaration relating to Unit Owner decision making, except that Unit Owners may take action by written agreement, without meetings, on any matters for which the vote of members at a meeting is required or permitted by any provision of these By-Laws, or on matters for which action by written agreement without meeting is expressly allowed by the Declaration, or any Florida statute which provides for Unit Owner action.

Section 6. Adjourned Meeting. If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.

Section 7. Approval or Disapproval of a Unit Owner upon any matter, whether or not the subject of an Association meeting, shall be by the voting members; provided, however, that where a Unit is owned jointly by a husband and wife, and they have not designated one of them as a voting member, their joint approval or disapproval shall be required where they are both present, or in the event only one is present, the person present may cast the vote without establishing the concurrence of the absent person.

#### **ARTICLE IV: DIRECTORS**

Section 1. Number, Term and Qualifications. The affairs of the Association shall be governed by a Board of Directors, serving without compensation, composed of not less than 3 nor more than 9 directors. There shall never be less than 3 directors. The term of each director's service shall extend until the next annual meeting of the members, and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3 below. All directors shall be members of the Association; provided, however, that all directors that the Developer is entitled to elect or designate need not be members. All officers of a corporation owning a Unit shall be deemed to be members of the Association so as to qualify each to become a director hereof. Transfer of control of the Association from the Developer to the Unit owners shall be in accordance with the Florida Condominium Act.

Section 2. First Board of Directors. The first Board of Directors named in the Articles of Incorporation shall hold office and serve until their successors have been elected and qualified.

Section 3. Removal of Directors. Any removal of a director or directors of the Board by recall shall be done in accordance with the provisions of Section 718.112(2)(k), Florida Statutes, or the rules promulgated thereunder, or in accordance with any other applicable provisions of the Florida Condominium Act.

Section 4. Vacancies on Directorate. If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification or otherwise or should a vacancy be created by an enlargement of the Board or should a director be removed by the procedure of Section 3 of this Article and a successor not be elected at the meeting, a majority of the remaining directors, though less than a quorum, shall choose a successor or successors, who shall hold office until the next regularly scheduled election of directors. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors. Notwithstanding the above, only the Developer may elect to fill a vacancy on the Board previously occupied by a Board member elected or appointed by the Developer, in which case a quorum for purposes of that election shall consist of a majority of Units owned by the Developer. Only Unit Owners other than the Developer may elect to fill a vacancy on the Board previously occupied by a Board member elected or appointed by Unit Owners other than the Developer.

Section 5. Disqualification and Resignation of Directors. Any director may resign at any time by sending a written notice of such resignation to the secretary of the Association. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the secretary. Commencing with the directors elected by the Unit owners other than the Developer, the transfer of title of the Unit owned by a director shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors.

Section 6. Regular Meetings. The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such regular meetings (which shall specifically incorporate an identification of agenda items) shall, nevertheless, be given to each director personally or by mail, telephone or telegraph at least 5 days prior to the day named for such meeting and shall be posted in accordance with the procedures of Section 718.112, Florida Statutes.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the president, and in his absence, by the vice president or secretary, or by a majority of the members of the Board of Directors, by giving 5 days' notice, in writing which shall specifically incorporate an identification of agenda items, to all of the members of the Board of Directors of the time and place of said meeting and shall be posted in accordance with the procedures of Section 718.112, Florida Statutes. All notices of special meetings shall state the purpose of the meeting.

Section 8. Directors' Waiver of Notice. Before or at any meeting of the Board of Directors, any director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all of the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. Owners shall be given proper notice pursuant to applicable Florida law.

Section 9. Quorum. At all meetings of the Board of Directors, a majority of the directors constitute a quorum for the transaction of business, and the acts of the majority of the directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At such adjourned meeting, and provided a quorum is then present, any business may be transacted which might have been transacted at the meeting as originally called. Proper notice of any adjourned meeting shall be given in accordance with applicable Florida law.

Section 10. Notice of Board Meetings. All Board meetings, regular or special, shall be properly noticed pursuant to applicable Florida law.

Section 11. Notice to Developer. Until December 31, 2004, the Developer shall be entitled to attend the director's meetings and it may designate such person(s) as it desires to attend

such meetings on its behalf. Such notice may be cancelled by Developer by delivering written notice to the Association.

Section 12. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by the Declaration, or these By-Laws, directed to be exercised and done by Unit Owners. These powers shall specifically include, but shall not be limited to, the following:

(A) To exercise all powers specifically set forth in the Declaration, the Articles of Incorporation, these By-Laws, and in the Florida Condominium Act, and all powers incidental thereto.

(B) To adopt a budget and make and collect Assessments, including Special Assessments, enforce a lien for nonpayment thereof, and use and expend the Assessments to carry out the purposes and powers of the Association, subject to the provisions of the Declaration to which these By-Laws are attached and, where applicable, recognizing obligations of the Association contained in the provisions of the Declaration. The Board of Directors shall also have the power to levy a fine against the Owner of a Unit for the purposes specified in the Declaration.

(C) To employ, dismiss and control the personnel necessary for the maintenance and operation of the Condominium, including the right and power to employ attorneys, accountants, contractors, and other professionals, as the need arises, subject to any applicable provisions of the Declaration.

(D) To make and amend regulations respecting the operation and use of the Common Elements and Condominium Property and facilities, and the use and maintenance of the Units therein.

(E) To contract for the management and maintenance of the Condominium Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments and other sums due from Unit Owners, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association, its directors and officers shall, however, retain at all times the powers and duties granted by the Condominium documents and the Florida Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

(F) To enter into agreements acquiring leaseholds, memberships or other possessory or use interests regarding recreation area(s) and facilities for the use and enjoyment of the members of the Association as provided for in the Declaration.

(G) To further improve of the Condominium Property, both real and personal, and the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and the right to acquire and enter into agreements pursuant to the Florida Condominium Act, subject to the provisions of the Declaration and these By-Laws.

(H) To enter into such agreements or arrangements, as deemed appropriate, with such firms or companies as it may deem for and on behalf of the Unit Owners to provide certain services and/or maintenance otherwise the individual responsibility of the Unit Owners and to increase the assessments due or otherwise charge each Unit Owner a share of the amount charged for said maintenance and service.

(I) To designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the Association. Such committee shall consist of at least 3

members of the Association. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular minutes of their proceedings and report the same to the Board of Directors, as required.

Section 13. Proviso. The validity of any delegation of power and/or duty by the Board of Directors, as hereinbefore provided, shall not affect the remainder of said delegations, or the other provisions of these By-Laws or the condominium documents and its exhibits.

## ARTICLE V: OFFICERS

Section 1. Elective Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors and shall serve without compensation. One person may not hold more than one of the aforementioned offices, except one person may be both Secretary and Treasurer. The President and Vice President shall be members of the Board of Directors. Notwithstanding the foregoing, the restriction as to one person holding only one of the aforementioned offices or the President and Vice President being members of the Board of Directors shall not apply until control of the Association shall be transferred to the Unit Owners other than the Developer.

Section 2. Election. The officers of the Association designated in Section 1 above shall be elected annually by the Board of Directors at the organizational meeting of each new Board following the meeting of the members. Officers may be elected by secret ballot pursuant to applicable Florida law.

Section 3. Appointive Officers. The Board may appoint assistant secretaries and assistant treasurers, and such other officers as the Board of Directors deems necessary.

Section 4. Term. The officers of the Association shall hold office until their successors are chosen and qualified in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors; provided, however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. The President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Unit Owners and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the Association and other officers. He shall sign all written contracts to perform all of the duties incident to his office and which may be delegated to him from time to time by the Board of Directors.

Section 6. The Vice President. The Vice President shall perform all of the duties of the President in his absence and such other duties as may be required of him from time to time by the Board of Directors.

Section 7. The Secretary. The Secretary shall issue notices of all Board of Directors, meetings and all meetings of the Unit owners; he shall attend and keep the minutes of same; he shall have charge of all of the Association's books, records and papers, including roster of members and mortgagees except those kept by the Treasurer. If appointed, an assistant secretary shall perform the duties of the Secretary when the Secretary is absent.

Section 8. The Treasurer.

(A) The Treasurer shall have custody of the Association's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may be designated from time to time by the Board of

Directors. The books shall reflect an account for each Unit which shall designate the name and current mailing address of the Unit Owner, the amount of each Assessment, the dates and amounts in which the Assessment came due, the amount paid upon the account and the balance due.

(B) The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these By-Laws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the Treasurer and of the financial condition of the Association.

(C) The Treasurer shall collect the Assessments and shall promptly report the status of collections and of all delinquencies to the Board of Directors and, when requested, to the Developer or other entity designated by the Board of Directors.

(D) The Treasurer shall give status reports to potential transferees on which reports the transferees may rely.

(E) If appointed, an assistant treasurer shall perform the duties of the Treasurer when the Treasurer is absent.

Section 9. Proviso. Notwithstanding any provisions to the contrary in these By-Laws, the Association shall maintain separate accounting records for this Association, shall keep such records according to good accounting practices, shall open such records for inspection by Unit Owners or their authorized representatives at reasonable times and shall supply written summaries of such records at least annually to the Unit Owners or their authorized representatives. In the event the Board of Directors designates a Management Firm to operate the Condominium on behalf of the Association, said Management Firm shall be required to follow the aforesaid provisions.

#### **ARTICLE VI: FINANCES AND ASSESSMENTS**

Section 1. Depositories. The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board of Directors and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be signed by at least 2 officers of the Association; provided, however, that the provisions of any Management Agreement, entered into by the Association and a Management Firm designated by the Association to operate the Condominium, relative to the subject matter in this Section 1 shall supersede the provisions hereof. The foregoing is further subject to the applicable provisions under the Declaration.

Section 2. Fidelity Bonds. The President, Secretary, Treasurer and all other officers who are authorized to sign checks, and all officers and employees of the Association who control or disburse funds of the Association, and any contractor handling or responsible for Association funds, shall be bonded. The amount of the bond shall be determined by the Board of Directors, but in no manner shall be less than the amount of 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 shall be paid by the Association. The cost of bonding an employee of an Association-designated management firm may be reimbursed by the Association. Notwithstanding the foregoing, the Association and/or any management firm shall not be obligated to obtain fidelity bonding of any persons in excess of any amounts stated in the Florida Condominium Act.

Section 3. Fiscal Or Calendar Year. The Association shall be on a fiscal year basis beginning on the first day of April each year. Notwithstanding the foregoing, the Board of Directors is authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America as such time as the Board of Directors deems it advisable. The setting of a fiscal year, as provided herein, shall

not affect the applicable provisions of Article III, Section 3, of these By-Laws requiring an annual meeting in each calendar year.

Section 4. Determination of Assessments.

(A) The Board of Directors shall fix and determine from time to time the sum or sums necessary and adequate for the Common Expenses. Common Expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, cost of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, obligations of the Association pursuant to the Declaration, water and sewer and any other expenses designated as Common Expenses from time to time by the Board of Directors, or under the provisions of the Declaration. The Board of Directors is specifically empowered, on behalf of the Association, to make and collect Assessments and to lease, maintain, repair and replace the Common Elements and Limited Common Elements; provided, however, the Association shall not charge any fee against a Unit Owner for the use of Common Elements or Association Property unless such use is the subject of a lease between the Association and the Unit Owner. Funds for the payment of Common Expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing Common Expenses as provided in the Declaration and exhibits attached thereto. Said Assessments shall be payable monthly in advance and shall be due on the first (1st) day of each month in advance unless otherwise ordered by the Board of Directors. Special Assessments, should such be required by the Board of Directors, shall be levied in the same manner as hereinbefore provided for regular Assessments and shall be payable in the manner determined by the Board of Directors.

(B) All funds due from Unit Owners not as Common Expenses, including sums due as users of cable television service or pursuant to other applicable agreements or arrangements pertaining to all or substantially all Units, may be collected by the Association, or its agents.

(C) An annual budget and level of Assessment for Common Expenses sufficient to fund such budget shall be proposed and adopted by the Board of Directors. The Board shall mail, or cause to be mailed, to each Unit Owner a notice of the Board of Directors meeting at which the budget will be considered not less than 14 days prior to said meeting. Such notice shall include a copy of the proposed annual budget and Assessment as well as the time and place for the meeting which shall be open to the Unit Owners. If the Association shall fail for any reason to adopt a budget and authorize an Assessment prior to the beginning of the new fiscal year, the budget and assessment for the previous year shall be increased by 15% and shall continue in effect until changed by the Association.

If the adopted budget requires an assessment against the Unit Owners in any fiscal year exceeding 115% of the assessments for the preceding year, the Board, upon written application of 10% of the Unit Owners to the Board, shall call a special meeting of the Unit Owners within 30 days upon not less than 14 days' written notice to each Unit Owner. At this special meeting, Unit Owners shall consider and enact a budget upon the vote of the members representing a majority of all Units. If a special meeting of the Unit Owners has been called pursuant to this section and a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the Board shall go into effect as scheduled. In determining whether Assessments exceed 115% of similar Assessments in the preceding year, any authorized provisions for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or assessments for betterments to the Condominium Property shall be excluded from the computation. However, as long as the Developer is in control of the Board of Directors, the Board shall not impose an assessment for any year greater than 115% of the prior fiscal year's Assessment without prior approval of the members representing a majority of all Units.

(D) All Assessments shall be payable to the Association, subject, however, to the provisions of a Management Agreement for as long as it shall remain in effect providing for collection of such Assessments directly by an Association-designated Management Firm, and also subject to any specific applicable provisions in the Declaration.

Section 5. Application of Payments and Commingling of Funds. Reserve and operating funds collected by the Association, or by an Association-designated Management Firm as long as a Management Agreement shall be in effect, may not be commingled in a single fund for purposes of investment unless otherwise permitted by the Florida Condominium Act, in which event any decision to commingle funds must be made by the Association or such Management Firm as long as the Management Agreement remains in effect, or thereafter as the Board of Directors determines in its sole discretion. All Assessment payments collected shall be applied (1) pursuant to the applicable provisions of the Declaration, or (2) as provided by a Management Agreement as long as the Management Agreement remains in effect, or thereafter, as the Board of Directors determines in its sole discretion. All funds shall be maintained in a separate account in the name of the Association. If so designated by the Board, a Management Firm shall maintain separate accounting records for each condominium it manages pursuant to the provisions of such Management Agreement and the Florida Condominium Act.

Section 6. Acceleration of Assessment Installments Upon Default. If a Unit owner shall be in default in the payment of an installment upon any assessment, an Association-designated Management Firm or the Board of Directors may accelerate the monthly installment for the next 3 months upon notice thereof to the Unit Owner and, thereupon, the unpaid installments of the Assessment together with the monthly assessments for the next three months shall become due upon the date stated in the notice, but not less than 14 days after delivery of or the mailing of such notice to the Unit Owner. The acceleration of installments may be repeated at the end of each 3 month period thereafter if at the end of such period there remains any sums due and unpaid.

#### **ARTICLE VII: UNAUDITED FINANCIAL STATEMENTS**

In addition to any reporting requirements contained in the Florida Condominium Act or any applicable provision of Florida law, the Board, or its agents, shall (1) render to the members of the Association an unaudited statement for each fiscal year no later than 4 months next thereafter, and (2) perform internal audits of the Association's financial records for the purpose of verifying the same but no independent or external audit shall be required of it.

#### **ARTICLE VIII: COMPLIANCE AND DEFAULT**

Section 1. Violations. In the event of a violation (other than the non-payment of an Assessment) by the Unit owner in any of the provisions of the Declaration, of these By-Laws, or of the applicable portions of the Florida Condominium Act, the Association, by direction of its Board of Directors, may notify the Unit Owner by written notice of said breach, transmitted by mail or delivered in person. If such violation shall continue for a period of 30 days from the date of the notice in the case of violations involving alterations and structural changes to the Unit and 5 days from the date of the notice in the case of all other violations, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional and inexcusable and material breach of the Declaration, of the By-Laws, or of the pertinent provisions of the Florida Condominium Act, and the Association may then, at its option, have the following elections:

- (A) An action at law to recover for its damage on behalf of the Association or on behalf of the other Unit Owners;
- (B) An action in equity to enforce performance on the part of the Unit Owner; or
- (C) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Failure on the part of the Association to maintain such action at law or in equity within 30 days from date of a written request, signed by a Unit Owner, sent to the Board of Directors, shall authorize any Unit Owner to bring an action in equity or suit at law on account of the violation in the manner provided for in the Florida Condominium Act.

Section 2. Fines. In addition to the remedies as identified in Section 1 above, the Association may levy a fine not to exceed the maximum amount allowed by the Florida Condominium Act against any owner, resident, guest or invitee, for failure to abide by any provisions of the Declaration, these By-Laws or the rules of the Association. No fine will become a lien against a unit. A fine may be levied on the basis of a continuing violation, with a single notice and an opportunity for a hearing, provided that no such fine shall exceed the maximum aggregate amount allowed under the Florida Condominium Act. No fine may be levied except after giving reasonable notice and an opportunity for a hearing, to be held not less than 14 days after reasonable notice, to the Owner, resident, guest or invitee. Reasonable notice shall include: a statement of the date, time and place of the hearing; a statement as to the provisions of the Declaration, these By-Laws or the rules of the Association which have allegedly been violated; and a short and plain statement of the matters asserted by the Association.

A hearing shall be held before a committee of other Unit Owners. At the sole discretion of the Board of Directors, this committee may be either a standing committee appointed by the Board of Directors for the purpose of addressing all fine situations, or a committee appointed by the Board of Directors for the particular hearing. At such hearing, the party against whom the fine may be levied shall have the opportunity to respond to, to present evidence relating to, and to provide written and oral argument on all issues involved, and shall have an opportunity to review, challenge and respond to any material considered by the committee. A fine may not be levied if more than 75% of the members of the committee disagree with such fine. The notice and hearing procedures shall also satisfy any other requirements of the Florida Condominium Act or the regulations promulgated thereunder.

Section 2. Negligence or Carelessness of Unit Owner, Etc. Any Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance company of rights of subrogation.

Section 3. Costs and Attorneys' Fees. In any proceeding brought by the Association pursuant to this Article, the Association, if it is the prevailing party, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court.

Section 4. No Waiver of Rights. The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 5. Election of Remedies. All rights, remedies and privileges granted to the Association or Unit Owner pursuant to any terms, provisions, covenants or conditions of the Condominium documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by condominium documents, or at law or in equity.

#### **ARTICLE IX: ACQUISITION OF UNITS**

At any foreclosure sale of a Unit, the Board of Directors may, with the authorization and approval by the affirmative vote of voting members casting not less than 75% of the total votes of the

members present at any regular or special meeting of the members wherein said matter is voted upon, acquire in the name of the Association or its designee a Condominium Parcel being foreclosed. The term "foreclosure," as used in this section, shall mean and include any foreclosure of any lien, excluding the Association's lien for assessments. The power of the Board of Directors to acquire a Condominium Parcel at any foreclosure sale shall never be interpreted as any requirement or obligation on the part of the Board of Directors or of the Association to do so at any foreclosure sale. The provisions hereof are permissive in nature and for the purpose of setting forth the power in the Board of Directors to do so should the requisite approval of the voting members be obtained. Once general authority to purchase a Unit at a foreclosure sale is obtained, the Board of Directors shall not be required to obtain the specific approval of Unit Owners regarding the sum the Board of Directors determines to bid at such foreclosure sale unless the limit of such authority has been established in the original authorization.

#### **ARTICLE X: AMENDMENTS TO THE BY-LAWS**

The By-Laws may be altered, amended or added to at any duly called meeting of the Unit owners, provided:

- (A) Notice of the meeting shall contain a statement of the proposed amendment.
- (B) If the amendment has received the unanimous approval of the full Board of Directors, then it shall be approved upon the affirmative vote of two-thirds (2/3) of the votes cast at a meeting called for such purpose.
- (C) If the amendment has not been approved by the unanimous vote of the Board of Directors, then the amendment shall be approved by the affirmative vote of three-fourths (3/4) of the votes cast at a meeting called for such purpose.
- (D) Said amendment shall be recorded and certified as required by the Florida Condominium Act.
- (E) Notwithstanding the foregoing, these By-Laws may only be amended with the written approval when required of the parties specified in Article VIII of the Declaration to which these By-Laws are attached.
- (F) No amendment to these By-Laws shall be made which affects any of the rights and privileges provided to the Developer in the Condominium documents without the written consent of the Developer.

#### **ARTICLE XI: NOTICES**

Whatever notices are required to be sent hereunder shall be posted, delivered or sent in accordance with the applicable provisions as to same as set forth in the Declaration to which these By-Laws and other exhibits attached to said Declaration.

#### **ARTICLE XII: INDEMNIFICATION**

The Association shall indemnify every director and every officer, his heirs, executors and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Association, including reasonable counsel fees, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

**ARTICLE XIII: LIABILITY SURVIVES TERMINATION OF MEMBERSHIP**

The termination of membership in the Condominium shall not relieve or release any such former owner or member from any liability or obligations incurred under or in any connected with the Condominium during the period of such ownership and membership, or impair any rights or remedies which the Association may have against such former owner and member arising out of or in any connected with such ownership and membership, and the covenants and obligations incident thereto.

**ARTICLE XIV: LIMITATION OF LIABILITY**

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage by a latent condition in the Condominium Property, nor for injury or damage caused by the elements or by other owners or persons.

**ARTICLE XV: PARLIAMENTARY RULES**

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Florida Condominium Act, the Declaration, or these By-Laws.

**ARTICLE XVI: MORTGAGE REGISTER**

The Association, or its agents, may maintain a register of all mortgages and at the request of a mortgagee, the Association shall forward copies of all notices for unpaid Assessments or violations served upon a Unit Owner to said mortgagee. If a register is maintained, the Association, or its agent, maintaining same may make such charge as it deems appropriate against the applicable Unit for supplying the information provided herein.

**ARTICLE XVII: RULES AND REGULATIONS**

In addition to the rules and regulations set forth in the Declaration, the following rules and regulations, together with such additional rules and regulations as may hereafter be adopted, shall govern the use of the Units, Common Elements, Limited Common Elements, and any other Condominium Property, and also the conduct of all residents thereof. The Unit Owners shall, at all times, obey said rules and regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees, servants, lessees and persons over whom they exercise control and supervision. Said initial rules and regulations are as follows:

Section 1. The sidewalk, entrances and all of the Limited Common Elements and Common Elements must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises; nor shall any carriages, velocipedes, bicycles, wagons, shopping carts, benches, tables, or any other object of a similar type and nature be stored therein. Children shall not play or loiter upon the Common Elements except in such area and under the rules and regulations as determined by the Association.

Section 2. No fences shall be constructed by a Unit Owner within or surrounding said Unit or the Limited Common Elements adjoining or appurtenant to said Unit.

Section 3. The personal property of all Unit Owners shall be stored within their Units or in assigned storage space.

Section 4. No garbage cans, supplies, recycling containers, or other articles shall be placed on the Common Elements and Limited Common Elements of the Condominium except as authorized by the Association, nor shall any linens, cloths, clothing, curtains, rugs, mops or laundry of any kind, or other articles, be shaken or hung from any of the windows, doors, porches, patios or

entry ways, or exposed on any part of the Limited Common Elements or Common Elements. If applicable, fire exits shall not be obstructed in any manner, and the Limited Common Elements and Common Elements shall be kept free and clear of rubbish, debris, and other unsightly material. No clothes line or similar device shall be allowed on any portion of the Condominium Property nor shall clothes be hung anywhere within the Condominium Property except within a Unit.

Section 5. Where applicable, no Unit Owner shall allow anything whatsoever to fall from the windows, porches, patios, entry ways or doors, nor shall such Unit Owner sweep or throw any dirt or other substance from such Owner's Unit or the Limited Common Elements appurtenant to such Owner's Unit onto the Common Elements or any portion of the Condominium Property.

Section 6. Except as may be permitted by the Declaration, no Unit Owner shall store or leave boats or trailers on the Condominium Property. Refuse and bagged garbage shall be deposited only in the area provided therefor.

Section 7. Agents or employees of the Association shall not be sent off the Condominium Property by any Unit Owner at any time for any purpose. No Unit Owner or resident shall direct, supervise, or in any manner attempt to assert any control over the agents or employees of the Association.

Section 8. The parking facilities shall be used in accordance with the provisions of the Declaration and any regulations duly promulgated by the Association. No vehicle which cannot operate on its own power shall remain on the Condominium Property for more than 24 hours, and no repair of vehicles shall be made on the Condominium Property.

Section 9. No Unit Owner shall make or permit any disturbing noises by himself, his family, servants, employees, agents, visitors, and licensees, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of the Unit Owners. No Unit Owner shall play upon or suffer to be played upon any musical instrument, or operate or suffer to be operated, a phonograph, television, radio or sound amplifier, in such manner as to disturb or annoy other occupants of the Condominium. All party(s) shall lower the volume as to the foregoing as of 11:00 p.m. of each day. No Unit Owner shall conduct or permit to be conducted, vocal or instrumental instruction at any time.

Section 10. Except as may be otherwise provided in the Declaration, no awning, canopy, shutter or other projection shall be attached to or placed upon the outside walls or doors or roof of a Unit or building, without the written consent of the Board of Directors. Patios or porches may not be enclosed, which includes the screening of same, nor may anything be affixed to the walls within such patios or porches or entry ways except with the prior written consent of the Board of Directors, and said consent may be given as to certain Units and not given as to others.

Section 11. The type, color and design of chairs and other items of furniture and furnishings that may be placed and used on any entry way, patio or porch may be determined by the Board of Directors, and a Unit Owner shall not place or use any item thereon or upon any portion of the Common Elements except with the approval and as designated by said Board.

Section 12. No cooking shall be permitted on any porch, patio or entry way nor on the Limited Common Elements nor on the Condominium Property, except in such area, if any, designated by the Board of Directors. Notwithstanding the foregoing, cooking with the use of an outdoor barbecue grill is allowed on the porch of a Unit, provided that when such grill is not in use it shall be stored out of sight from the public.

Section 13. No inflammable, combustible or explosive fluid, chemical or substance, shall be kept in any Unit or Limited Common Element appurtenant thereto or storage areas, except such as are required for normal household use.

Section 14. Each Unit Owner who plans to be absent from such Owner's Unit during the hurricane season must prepare the Unit prior to departure.

Section 15. Food and beverage may not be consumed outside of a Unit, except for such areas as are designated by the Board of Directors.

Section 16. The Board of Directors may, from time to time, adopt or amend rules and regulations governing the details of the operation, use, maintenance, management and control of the Units, Common Elements or Limited Common Elements or other property of the Condominium or services made available to the Unit Owners. A copy of any additional rules and regulations adopted from time to time, as herein provided, shall from time to time be posted in a conspicuous place and/or copies of same shall be furnished to each Unit Owner.

Section 17. In the event of any conflict between the rules and regulations adopted or from time to time amended and the Condominium documents or the Florida Condominium Act, the latter shall prevail. If any unreconciled conflict should exist or hereafter arise with respect to the interpretation of these By-Laws and the Declaration, the provisions of said Declaration shall prevail.

**ARTICLE XVIII: ARBITRATION**

All issues or disputes which are recognized by the Florida Condominium Act or by administrative rules promulgated under the Florida Condominium Act as being appropriate or required for mediation or arbitration shall be resolved through such alternative resolution procedures instead of civil litigation.

**ARTICLE XIX: EMERGENCY POWERS**

The following shall apply to the extent not viewed to be in conflict with the Act:

Section 1. In anticipation of or during any emergency defined in Section 6 below, the Board of Directors may:

(A) Name as assistant officers persons who are not Board members, which assistant officers shall have the same authority as the executive officers to whom they are assistant, during the period of the emergency, to accommodate the incapacity of any officer of the Association; and

(B) Relocate the principal office or designate alternative principal offices or authorize the officers to do so.

Section 2. During any emergency defined in Section 6 below:

(A) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(B) The Director or Directors in attendance at a meeting shall constitute a quorum.

Section 3. Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association:

(A) Binds the Association; and

(B) Shall have the presumption of being reasonable and necessary.

Section 4. An officer, director, or employee of the Association acting in accordance with these emergency provisions is only liable for willful misconduct.

Section 5. These emergency provisions shall supersede any inconsistent or contrary provisions of the By-Laws for the period of the emergency.

Section 6. An emergency exists for purposes of this Article XIX if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

**EXHIBIT NO. 4 TO DECLARATION OF CONDOMINIUM**

**MANAGEMENT AGREEMENT**

**THIS AGREEMENT** ("Agreement") is made and entered into by and between FLORIDA LIFESTYLE MANAGEMENT CO., a Florida corporation (hereinafter called the "Management Firm") and TOPAZ COVE CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation (hereinafter called the "Association"), which said terms shall be deemed to extend to and include the legal representatives, successors and assigns of the said parties hereto.

**WITNESSETH:**

**WHEREAS**, Association has been organized for the administration and operation of Topaz Cove Condominium (the "Condominium"); and

**WHEREAS**, the Management Firm is in the business of managing and providing maintenance for condominiums; and

**WHEREAS**, authority is granted in the Articles of Incorporation of the Association to enter into a contract providing for the management, supervision and maintenance of the Condominium; and

**WHEREAS**, the parties hereto have agreed that the Management Firm shall hereafter provide such operation and management services, all for the consideration, and upon the terms, provisions and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct.
2. **Definitions.** The terms used herein shall have the meanings set forth in the Declaration of Condominium for the Condominium unless the context otherwise requires.
3. **Employment.** The Association hereby employs and hires the Management Firm as the exclusive manager of the Condominium Property and the Management Firm hereby accepts such employment.
4. **Term of Agreement; Exception.** The term of this Agreement shall commence as of the date hereof and continue through March 31, 2003. Beginning April 1, 2003, this Agreement shall continue for additional periods of 1 year unless terminated by either party giving written notice of termination to the other party at least 180 days prior to the last day of the current period. Notwithstanding the foregoing, the members of the Association shall have the right to terminate this Agreement at any time and without any required notice following such time as turnover of control of the Association from the Developer of the Condominium to the members of the Association has occurred.
5. **Management Services.** The Management Firm shall provide the Association with the following managerial services:

(A) Cause to be hired, paid and supervised, all persons necessary to be employed in order to properly maintain, manage and operate the Condominium, including a manager, who, in each instance, shall be the employee of the Management Firm, which in its absolute discretion shall determine and cause to be discharged all persons unnecessary or undesirable.

(B) Perform or cause to be performed all services for the maintenance and repair of the Condominium Property required to be maintained and repaired in the Declaration of Condominium.

(C) Recommend such action as may be necessary to comply with all laws, statutes, ordinances, rules and of all appropriate governmental authority, and the rules and regulations of the National Board of Fire Underwriters, or in the event it shall terminate its present functions, those of any other body exercising similar functions.

(D) Cause to be placed or kept in force all insurance required in the Declaration of Condominium or such additional insurance permitted by the Declaration of Condominium upon the authorization of the Association, and further to act in cooperation with the Association with regard to insurance matters as provided by the Declaration of Condominium and to require each of its employees who control or disburse funds of the Association to be bonded.

(E) Maintain the Association's financial record books, accounts and other records as provided by the Association's By-Laws. The Management Firm may issue certificates of accounts to Association members, their mortgagees and lienors without liability for errors unless as a result of gross negligence. Such records shall be the property of the Association but shall be kept at the office of the Management Firm and shall be open for inspection by any Unit Owner or such Unit Owner's authorized agent, or by an expert employed by and at the cost and expense of the Association. It is understood that any such inspection shall be conducted at reasonable times, without cost to the Management Firm and without reasonable disruption to the employees and operation of the Management Firm. Any expense associated with the copying of records shall be a cost of the Association. Such expert may also conduct an external audit if so qualified, provided that the cost for same is paid by the Association. The Management Firm shall perform internal audits of the Association's financial records for the purpose of verifying the same, but no independent or external audit shall be required of it.

(F) Maintain records as part of the records provided for in the preceding paragraph sufficient to describe its services hereunder and such financial books and records sufficient in accordance with prevailing accounting standards to identify the source of all funds collected and disbursed by it in its capacity as Management Firm.

(G) Prepare a proposed annual budget for the Association setting forth an itemized statement of the anticipated expenses and reserves for the next fiscal year, taking into account the circumstances, directives of the Board, the prior budget, other requirements and obligations of the Association by contract or as specified in the Declaration of Condominium, the exhibits thereto, and other applicable obligations of the Association and/or its members. The proposed budget prepared by the Management Firm shall be submitted to the Board of Directors at least 50 days prior to the commencement of the applicable fiscal year. The Board shall promptly review said proposed budget and forthwith adopt an annual budget and authorize a General Assessment upon its members sufficient to fund the budget in accordance with its By-Laws.

Except to the extent competitive bidding is required under the Florida Condominium Act or other applicable Florida law, the Management Firm may, with impunity, purchase or contract for any service or material from or with such person or party as it deems advisable and in the best interest of the Association. The Management Firm shall not be required to search for the best price unless otherwise directed by the Association or required by applicable law. Notwithstanding the foregoing, the requirements for competitive bidding may be

waived by a two-thirds (2/3) vote of the Association members, and said vote may be accomplished by a proxy specifically setting forth the exemption from such competitive bidding practices.

The Association agrees that Assessments levied upon its members will at all times be maintained so that the amount produced thereby shall be sufficient to provide the monies necessary to pay all items set forth in the Declaration of Condominium, all exhibits annexed thereto, and this Agreement, and to realize a sum sufficient to meet the requirements of the annual budget adopted pursuant to the provisions of the By-Laws, and the requirements of any Association-authorized increase in the budget or Special Assessment item.

(H) Receive the payments of Assessments to be collected from Association members or otherwise owed or accruing to the Association, provide receipts for same on behalf of Association as requested, deposit such funds in a special escrow account at a banking or savings and loan institution in the State of Florida, and otherwise assist the Association in the management of its funds as authorized. To the extent funds of the Association are available, the Management Firm shall withdraw from the escrow account such funds as needed to satisfy authorized obligations of the Association pursuant to the budget and any other agreements or arrangements of the Association, including this Agreement. If reserve accounts are authorized by the Association budget, the Management Firm shall transfer such funds as, if and when received, to a savings account of the Association. Until funds received by the Management Firm pursuant to this paragraph are withdrawn in payment of Association obligations or transferred to a savings account, such funds shall be the funds of the Association rather than the Management Firm.

(I) May cause a representative of its organization to attend meetings of the members of the Association and of the Board of Directors; however, it is understood and agreed that the minutes of all the Association's meetings, whether of members or of the Board of Directors, shall be taken by the Association's secretary and said secretary shall always be responsible for preparing and furnishing notices and minutes of all meetings to the required parties.

(J) Supervise, operate, control and manage the Condominium Property to the extent provided in this Agreement or as otherwise authorized by the Association, and assist the Association in the preparation, promulgation and enforcement of its rules and regulations, for the use and occupancy of the Common Elements, Limited Common Elements and the Units.

(K) Cause such alterations and/or additions to the Common Elements or Limited Common Elements to be made as authorized by the Board of Directors and its members where required, pursuant to and in accordance with the Declaration of Condominium and exhibits attached thereto. As to the foregoing, the Management Firm shall be paid for the cost of its personnel and overhead, materials and equipment in regard thereto, and any and all contractors, sub-contractors or materialmen as are required therefor and authorized by the Board of Directors.

(L) Recommend, and negotiate if applicable, such agreements pertaining to the Condominium, including, but not limited to, agreements granting concessions and licenses to persons to provide facilities and services as to and within the Condominium, and causing coin vending machines and coin operated equipment and pay telephones to be installed within the Condominium. All such agreements shall be entered into by the Association upon its approval, and all income derived from such agreements shall inure to the benefit of the Condominium and all expenses appertaining thereto shall likewise be borne by the said Condominium. The

Management Firm shall only purchase coin vending machines and coin operated equipment with the approval of the Association.

(M) Assist the Association in the levying and collection of any Special Assessments and/or Capital Improvement Assessments for such purposes and against such parties as provided in the Declaration of Condominium and its exhibits. The Management Firm shall initiate the notices that may be required or appropriate in the process of asserting the Special Assessment or Capital Improvement Assessment, perfecting liens for nonpayment of Assessments and the collection of same.

(N) Exercise such powers and rights reasonably necessary to fulfill the terms and provisions of this Agreement.

(O) Assist the Association to perform its functions and act as otherwise authorized, required or delegated in the event of a casualty loss to the Condominium Property.

(P) Create procedures and forms as are necessary to enable the Association to discharge its functions regarding the review prior to any proposed sale or transfer of a Unit and such other functions of the Association as are provided for in the Condominium documents.

(Q) Act as agent for the Association where appropriate and permitted by the Condominium documents and the Florida Condominium Act.

6. Roster of Unit Owners. The Management Firm shall maintain a roster of all Unit Owners of the Condominium, and a roster of all renters from Unit Owners, together with addresses to the extent that such information is provided to the Management Firm.

7. Association Retention of Right to Collect Assessments. Notwithstanding the duty of the Management Firm to collect Assessments during the term of this Agreement, the Association retains the power to make Assessments in accordance with and subject to the Declaration of Condominium and the Articles of Incorporation and By-Laws of the Association.

8. Application of Assessment Funds. All Assessments for Common Expenses of the Association which the Management Firm shall collect shall be applied as follows:

(A) Taxes and Insurance. First, to the payment of premiums on insurance policies carried by the Association and the Management Firm, and taxes and assessments on the Common Elements of the Condominium.

(B) Management Fee. Next, to the payment of the Management Firm of its fee as hereinafter set forth.

(C) Balance. The balance shall be utilized, applied, disbursed and reserved by the Management Firm in accordance with the budget of the Association providing for the expenditure of funds in accordance with this Agreement and/or the Declaration of Condominium and its exhibits.

The Management Firm is herein authorized to act as agent of the Association and as agent may file a Claim of Lien in the name of the Association as provided in the Declaration of Condominium against any Unit whose Owner has failed to pay Assessments. The Management Firm may, but is not obligated to unless requested by the Association, pursue collection of the amount due represented by said Claim of Lien, including interest and attorneys' fees and costs. The Management Firm as agent of the Association may execute a Satisfaction

of Lien upon the full payment of the amount represented due by the Claim of Lien, but the Management Firm may not compromise a lien unless specifically authorized by the Association. The Management Firm may render statements as to the current status of any Unit Owner's account.

9. Assistance of Management Firm. The Management Firm shall aid and assist the Association in any reasonable manner requested by the Association as to the collection of Assessments, or other amounts due, and the Management Firm shall further aid and assist the Association in any reasonable manner required by the Association so as to simplify the method of collecting the Assessments, Special Assessments, Capital Improvement Assessments or other sums due from Unit Owners.

10. Management Firm Not Obligated to Pay Common Expenses; Exception. It is specifically understood that the Management Firm does not undertake to pay Common Expenses from its own funds and shall only be required to perform its services and make disbursements to the extent that, and so long as, payments received from Assessments or other revenue, if any, of the Association are sufficient to pay the costs and expenses of such services and the amounts of such disbursements. However, in the event of an emergency constituting imminent danger to the Condominium Property, including the Common Elements and Limited Common Elements, or to the health or safety of the Unit Owners or other persons, the Management Firm is authorized to expend from its own funds for the protection of said property or persons a sum not to exceed \$5,000.00 which the Association agrees to reimburse the Management Firm.

If it shall appear to the Management Firm that the Assessments and other revenue, if any, of the Association are insufficient, the Management Firm shall recommend such additional Special Assessments and/or increased Assessments as are required and advise the Association. If approved by the Association, the Management Firm may proceed to collect and disburse such Special Assessments or increased Assessments as any other Assessment pursuant to this Agreement.

11. Management Firm Not to Incur Expenses; Payment of Management Fee. It is specifically understood and agreed that the Management Firm shall perform all of the services required of it hereunder at no cost and expense whatsoever to itself, but solely at the cost and expense of the Association. All of the management and maintenance services required above in Paragraph 5 or elsewhere herein shall be rendered on a basis of "out-of-pocket" costs and expenses and the Association, through the Assessments provided for herein, shall pay or reimburse the Management Firm for all costs and expenses incurred by the Management Firm in providing services, materials and supplies to the Association including specifically, but not limited to, the cost of all employees of the Management Firm for the time spent upon performance of matters required by the terms of this Agreement. It is understood that except for emergency situations provided for in Paragraph 10 above, the Management Firm will incur no cost or expense which is not provided for in the Association budget or by prior special assessments.

As compensation, fee or profit for its services hereunder, the Management Firm shall receive a fee during the first fiscal year of the Association to be calculated based upon an amount of \$15.00 per Unit per month. Such fee shall commence as of the first or fifteenth day of the month, whichever is sooner, following the filing of the Declaration of Condominium, to which this Agreement is attached, in the public records of Lee County, Florida. In each subsequent fiscal year of the Association, the Management Firm shall be paid a fee equal to 3% above the management fee paid to the Management Firm during the previous fiscal year.

12. Noninterference by Association. The Association shall not interfere, nor permit, allow or cause any of its officers, directors or members to interfere, with the Management Firm in the performance of its duties or the exercise of any of its powers hereunder.

13. Consolidation and Allocation of Services. The parties recognize that the Management Firm and its employees and agents may be performing services similar to the services performed hereunder for other condominium associations and entities. In this connection, the Management Firm is authorized to provide or cause to be provided such services as appropriate on a consolidated basis whereby such services are provided to more than one association. To require the Management Firm to cost account with regard to each condominium and between the Association and other persons in interest as to other properties managed by the Management Firm, would substantially increase the costs of administration hereunder borne by the Association. Accordingly, the Management Firm is hereby granted the power to allocate to the Association its appropriate and fair share of such costs and expenses as are general, and as to those which are not general, to charge the same to the appropriate party(s) on such weighted basis as the Management Firm deems fair and equitable.

14. Certain Nonliability of Management Firm. The Management Firm shall not be liable to the Association and its members for any loss or damage not caused by the Management Firm's own gross negligence or willful misconduct, and said Association and its members will and do hereby indemnify and save harmless the Management Firm from any such liability for damages, costs and expenses arising from injury to any person or property in, about and in connection with the Condominium from any cause whatsoever unless such injury shall be caused by said Management Firm's own gross negligence or willful misconduct.

15. Assignment of Agreement by Management Firm. The Management Firm may assign this Agreement, as long as the assignee agrees, in writing, to assume and perform the terms and covenants of this Agreement, and upon such assumption, the Management Firm shall be released from any and all obligations hereunder. Said assignment shall be duly recorded in the public records of Lee County, Florida, and notice of same, together with an executed duplicate of said assignment, shall be delivered to the said Association by certified mail or its equivalent. The Management Firm may also subcontract all or portions of its duties and powers under this Agreement.

16. Assignment of Agreement by Association. The Association, on behalf of its members, may assign its right, title and interest in and to this Agreement to another condominium association existing under the laws of Florida to administer and operate the Condominium; however, said assignment shall not be valid unless and until the assignee thereunder expressly assumes and agrees, in writing, to perform each and every covenant and term of this Agreement. The said assignment shall be duly recorded in the public records of Lee County, Florida, and an executed duplicate of said assignment shall be delivered to the Management Firm by certified mail or its equivalent.

17. Assistance of Management Firm with Special Assessments. The Management Firm shall make recommendations to and assist the Association with regard to assessing a Unit Owner for those items of Special Assessments and/or Capital Improvement Assessments as set forth in the Declaration of Condominium and the exhibits attached to said Declaration, and in this Agreement.

18. Association's Power and Authority to Amend Condominium Documents. The power and authority of the Association to amend the Declaration of Condominium and the exhibits attached to said Declaration is subject to the specific provisos applicable thereto set forth in the aforesaid instruments.

19. Stability of Size of Condominium; Levying of Assessments. The Association agrees that during the term of this Agreement, the number of Units specified in the Declaration of Condominium shall not be changed without notice to the Management Firm, except as may be permitted as a result of the recording of a phase amendment. The Association further agrees that it will levy Assessments on its members sufficient to satisfy the requirements of this Agreement and its obligations under the Declaration of Condominium, its exhibits and other applicable agreements. In addition, the Association recognizes certain other agreements or arrangements exist or may exist in the future, including, but not limited to, an agreement regarding the provision of cable television service to individual Unit Owners. The Management Firm is hereby specifically authorized to collect such amounts in accordance with the underlying obligation by agreement or arrangement.

20. Parking Spaces. The Management Firm, in accordance with policies established by the Association, shall assign and change assignments of any specific parking spaces or storage areas, if applicable, and otherwise regulate vehicular parking of all manner and type of vehicles and storage of non-vehicular personalty within the Condominium Property.

21. Renewal of Agreement. This Agreement may be renewed upon such terms and conditions as are mutually agreeable to the Association and the Management Firm.

22. Effect of Waiver of Breach of Covenants. No waiver of a breach of any of the covenants contained in this Agreement shall be construed to be a waiver of any succeeding breach of the same covenant.

23. Time is of the Essence. Time is of the essence in every particular, and especially where the obligation to pay money is involved.

24. Validity of Modification, Release, Discharge or Waiver. No modification, release or discharge or waiver of any provision hereof shall be of any force, effect or value unless in writing and signed by the parties to this Agreement, i.e., the Management Firm and the Association or their respective successors or assigns.

25. Binding Effect of Provisions. All covenants, promises, conditions and obligations herein contained or implied by law shall bind the Management Firm, its successors and assigns, and the Association, its successors and assigns, for the term of this Agreement unless sooner terminated according to applicable provisions of Chapter 718, Florida Statutes.

26. Entire Agreement. This instrument, together with the Declaration of Condominium and the exhibits attached to said Declaration, including this Agreement, constitute the entire agreement between the parties hereto, as of the date of execution hereof, and neither has been induced by the other by representations, promises or understandings not expressed herein, and there are no collateral agreements, stipulations, promises or understandings whatsoever, in any way touching the subject matter of this instrument, or the instruments referred to herein, which are not expressly contained therein.

27. Effect of Invalidity of Portion of Agreement. The invalidity in whole or in part of any covenant, promise or undertaking, or any section, subsection, sentence, clause, phrase or word, or of any provision of this Agreement or the exhibits attached hereto, and the Declaration of Condominium, shall not affect the validity of the remaining portions thereof.

28. Gender and Plurality of Terms. The words "Developer," "Management Firm," "Condominium Association," "member(s)," and "parcel owner(s)," wherever and whenever used herein, shall include the singular and plural thereof, and the use of any gender shall include all

genders, wherever the same shall be appropriate. The term "Condominium Parcel" or "Condominium Unit," or "Unit," or "Parcel" and the owners thereof shall be defined pursuant to the Declaration of Condominium and same are Condominium Parcels and/or Units of such Condominium as created by the aforesaid Declaration of Condominium.

29. Provision of Notice. When either party hereto, and the Association's members, desire to or are required to give notice unto the other, or others, in connection with and according to the terms of this Agreement, such notice shall be given to the Association, its members and the Management Firm, as provided in the Declaration of Condominium.

30. Effect of Default by Association. If the Association or its members shall interfere with the Management Firm in the performance of its duties and exercise of its powers hereunder, or if the said Association shall fail to promptly do any of the things required of it hereunder, the Management Firm may give written notice to said Association of said default by delivering said notice to any officer of the Association or, in their absence, to any member of the said Association, and may declare this Agreement in default unless such default be cured by the said Association within 15 days after such notice. Upon default, the Management Firm may, in addition to any other remedy given it by agreement or in law or in equity, bring an action against the said Association and its members for damages and/or specific performance and/or such other rights and remedies as it may have, and the said Association and its members shall be liable for the Management Firm's reasonable attorney's fees and costs incurred thereby. All of such rights of the Management Firm upon default shall be cumulative, and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other or additional remedy.

31. Effect of Default by Management Firm. Failure by the Management Firm to substantially perform its duties and obligations under this Agreement for a continuous period of 45 days after written notice of default from the Association specifying the default complained of, shall be grounds for the said Association's cancellation of this Agreement.

32. Effect of Termination of Condominium. If the Condominium shall be terminated as provided in its Declaration of Condominium, then each of the Unit Owners shall thereby become a tenant in common, and shall, as to his separate interest, continue to be a party to this Agreement and be bound by the provisions hereof, and the Management Firm shall manage such interest pursuant to the provisions of this Agreement as the nature of such interest and the context of this Agreement shall permit.

33. Exceptions to Management Firm's Liability or Association; Indemnification by Association. The Management Firm shall not be liable or responsible to the Association, its Board of Directors and its members, for its failure to act under the provision of Article VIII, Section 1 of the By-Laws of the Association. Furthermore, everything done by the Management Firm upon authorization of the Association shall be done as agent for the Association, and all obligations or expenses incurred pursuant to such authorization shall be for the account of, on behalf of, and at the expense of the Association. The Management Firm shall not be obligated to make any advance to or for the account of the Association or to pay any sum, except out of funds held or provided by the Association or from its members or occupants, nor shall the Management Firm be obliged to incur any liability or obligation on account of the Association without assurance that the necessary funds for the discharge thereof will be provided. The Association agrees to indemnify and hold the Management Firm harmless from any and all liability for any injury, damage or accident to any member of the Association, a guest or invitee of any such member, or to any third person, arising out of or in the course of the performance of its duties hereunder. The Management Firm's assumption of obligations hereunder is limited to

management and maintenance as agent and does not require the Management Firm to pay from its own funds the costs and expenses which the Association undertakes.

34. Supersedence of Agreement. The applicable terms and provisions of the By-Laws and the applicable provisions of the Declaration of Condominium shall be deemed paramount to the terms and provisions of this Agreement and, where applicable, the terms and provisions of this Agreement shall be deemed amended to comply with the foregoing.

35. Separate Accounting Records. Notwithstanding any provisions to the contrary in the Agreement, the Management Firm shall maintain separate accounting records for each condominium it manages, shall keep such records according to good accounting practices, shall open such records to inspection by Unit Owners or their authorized representatives at reasonable times, and shall supply written summaries of such records at least annually to unit owners or their authorized representatives.

36. Provision of Management Services on Continuing Basis. The Management Firm shall provide all management and maintenance services detailed or contemplated herein on a continuing basis as needed from time to time or to the extent as otherwise required under this Agreement, subject, however, to the terms of Paragraph 10 hereinabove.

37. Number of Management Firm Employees. The Management Firm shall employ a minimum of 1 employee to perform and/or supervise the performance of services pursuant to this Agreement and said minimum employee may also perform and/or supervise the performance of services under similar agreements with other condominium associations at the development commonly known as Burnt Store Marina.

38. Ownership of Management Firm. The Developer of Topaz Cove Condominium, WCI Communities, Inc., a Delaware corporation, owns all of the issued and outstanding stock of the Management Firm.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, and have caused these presents to be signed respectively by their proper officer(s) this 11<sup>th</sup> day of April, 2000.

**MANAGEMENT FIRM:**  
**FLORIDA LIFESTYLE**  
**MANAGEMENT CO.**

**ASSOCIATION:**  
**TOPAZ COVE CONDOMINIUM**  
**ASSOCIATION, INC.**

By: [Signature]  
Name: ROBERT E. GREENE  
Title: PRESIDENT

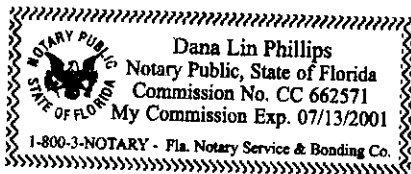
By: [Signature]  
Name: R. BEYER JR  
Title: PRESIDENT

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April, 2000, by ROBERT E. GREENE, as PRESIDENT of FLORIDA LIFESTYLE MANAGEMENT CO., a Florida corporation, on behalf of the corporation. He ~~is~~ is personally known to me or has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)



[Signature]  
(Signature)

Name: DANA LIN PHILLIPS  
(Legibly Printed)  
Notary Public, State of Florida

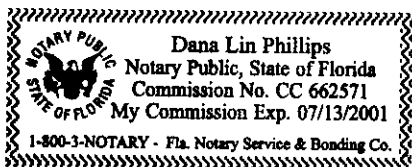
CC 662571  
(Commission Number)

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April, 2000, by R.C. BEYER JR., as PRESIDENT of TOPAZ COVE CONDOMINIUM ASSOCIATION, INC., a Florida corporation, on behalf of the corporation. He ~~is~~ is personally known to me or has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)



[Signature]  
(Signature)

Name: DANA LIN PHILLIPS  
(Legibly Printed)  
Notary Public, State of Florida

CC 662571  
(Commission Number)

2726 Swamp Cabbage Court  
Ft. Myers, FL 33901

(941) 274-0991  
FAX: (941) 274-0992

April 12, 2000

Robert S. Freedman, Esquire  
Carlton, Fields, Ward, Emmanuel,  
Smith & Cutler, P.A.  
P.O. Box 3239  
Tampa, Florida 33601-3239

**RE: TOPAZ COVE CONDOMINIUM**

Dear Mr. Freedman:

Please accept this letter documentation for your needs. The costs for the preparation of the final condominium plat should not exceed \$1,00000 for the above referenced project. This does not however include the fees of \$150.00 per unit required to prepare the substantial completion drawings for this condominium.

If you have any questions or require further information, please contact us. Thank you.

BCI Engineers and Scientists, Inc.



Dennis A. Miller  
Professional Surveyor and Mapper  
Florida Certificate No. 5626