

against the Condominium Parcel and proceed in the same manner as provided herein and in the Act, as amended from time to time, for the collection of unpaid Assessments. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or Association Property or by the abandonment of the Unit for which the Assessments are made or otherwise.

- 12.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the date due until paid. In addition to the above stated interest, the Association shall charge an administrative late fee in an amount not to exceed the highest amount provided for in the Act, as same may be amended from time to time, on Assessments and installments thereof not paid when due. All partial payments upon account shall be applied in the manner prescribed in the Act, as same may be amended from time to time. The Association has a lien on each Condominium Parcel to secure the payment of Assessments. The lien is effective from and shall relate back to the earliest date permitted by law, but in no event later than the date of recording of the applicable Original Declaration. However, as to an Institutional First Mortgagee of record, the lien is effective as of the date of the recording of a claim of lien in the Public Records of Indian River County. All claims of lien must state the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates and must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due at the time a claim of lien is recorded, as well as all regular and special Assessments which may be levied or which may accrue subsequent to the recording of the claim of lien and prior to satisfaction of the lien or the issuance of a certificate of title, together with interest, late charges and all reasonable costs and attorneys' fees incurred by the Association incident to the collection and foreclosure process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose its lien in the same manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred 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, the Association may declare the Assessment installments for the remainder of the fiscal year in which a claim of lien has been filed to be accelerated, as provided in Section 12.7 below.

- 12.3 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit or rents the Unit, the rents are hereby deemed assigned to the Association upon default by the Unit Owner in the timely payment of Assessments and the Association may collect rent from the Unit Owner if the Unit Owner remains in possession after an action for foreclosure is filed, and may request the Court in its discretion to require the Unit Owner to pay such rental for the Unit into the Court Registry or the Association is entitled to the appointment of a receiver to collect such rent. The rights granted in this Section 12.3 are in addition to any other remedies for nonpayment available in these Declarations or the Act, as amended from time to time.
- 12.4 Institutional First Mortgagee. An Institutional First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure of its first mortgage, or by deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. In addition, the Institutional First Mortgagee is liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed; provided, however, the Institutional First Mortgagee's liability for Assessments is limited to the maximum amount set forth in the Act, as same may be amended from time to time. If any unpaid share of Common Expenses or Assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or Assessments are Common Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.
- 12.5 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit have been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may charge a reasonable fee for the preparation of the Certificate.
- 12.6 Installments. Regular Assessments may be collected no more frequently than monthly nor less frequently than quarterly, in advance, at the option of the Board of Directors. Special assessments shall be payable on such terms as may be established by the Board.
- 12.7 Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon an Assessment, the

Board may accelerate the remaining installments of the Assessment upon notice to the Unit Owner, and the then unpaid balance of the Assessment shall be due upon the date stated in the notice.

- 12.8 Set Off. Any funds due and payable by the Association to a Unit Owner under these Declarations of Condominium, the Articles of Incorporation or the Bylaws, or under the Act, shall be subject to a right of set-off for any amounts due and owing to the Association by the Unit Owner under these Declarations, the Articles of Incorporation, the Bylaws, or the Act.
- 12.9 Assignment. The Association, acting through its Board of Directors, shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessment, to any Unit Owner or group of Unit Owners, or to any third party.
- 12.10 Suspension of Voting Rights; Effect of Suspended Voting Rights. The Association may suspend the voting rights of a Unit Owner due to nonpayment of any monetary obligation due to the Association which is more than 90 days delinquent. A voting interest or consent right allocated to a Unit or Member which has been suspended by the Association may not be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under the Act or pursuant to these Declarations, the Articles of Incorporation, or the Bylaws. The suspension ends upon full payment of all obligations currently due or overdue the Association. All suspensions imposed pursuant to this Section 12.10 must be approved by the Association's Board of Directors at a properly noticed board meeting. Upon approval, the Association must notify the Unit Owner by mail or hand delivery.

13. **INSURANCE**. The insurance, other than title insurance, that shall be carried upon the Condominium Property and the property of the Unit Owners will be governed by the following provisions:

- 13.1 Authority to Purchase; Named Insured. The Association, as a multi-condominium association, has elected pursuant to Section 718.111(11)(g)3., Florida Statutes, to operate the Condominiums as a single condominium for purposes of insurance matters, including, but not limited to, the purchase of the property insurance required by this Article 13 and the Act, and the apportionment of deductibles and damages in excess of coverage. The costs of insurance must be stated in the association budget. All insurance policies upon the Condominium Property will be purchased by the Association, except as specified below. The named insured will be the Association individually and as agent for the Unit Owners, without naming them. Provision will be made for the issuance of mortgagee endorsements

and memoranda of insurance to the mortgagees of Unit Owners. Unit Owners may obtain coverage at their own expense upon their personal property and for their personal liability and living expenses.

13.2 Coverage.

- (a) Casualty. Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general casualty, flood and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of all of the Condominiums, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the full replacement or insurable value thereof, less a commercially reasonable deductible as determined by the Board. However, the Board may exclude foundation and excavation costs, in its discretion. Unless otherwise provided by law, the Association may obtain coverage for changes in building codes if commercially reasonable and available. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage (including participation in a self insurance plan in compliance with Section 624.460-624.488, Florida Statutes) as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11), Florida Statutes, as amended from time to time. The original policy of insurance shall be held by the Association, and mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. The word "Building" or "Insurable Improvement" in every property insurance policy issued to protect a Condominium Building does not include: Unit floor, wall, or ceiling coverings; electrical fixtures; appliances; water heaters; water filters; built-in cabinets or countertops; window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; or replacements of any of the foregoing, which are located within the boundaries of a Unit and serve only one Unit. The Unit Owners shall also be responsible to insure any portion of the Condominium Property which may be removed from Association insurance responsibilities by virtue of future amendments to Section 718.111(11), Florida Statutes, as well as alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by a Unit Owner, or his or her predecessor in interest or title. If the Association's master insurance policy obligations are increased by amendments to the Act, the Association shall insure such items.

- (b) Liability. The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage. The Association shall also procure liability coverage for its directors' and officers.
- (c) Worker's Compensation. The Association shall procure a workmen's compensation policy if necessary to meet the requirements of law, or if deemed appropriate by the Board even if not otherwise required by law.
- (d) Other Insurance. The Association may procure such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.
- (e) Insurance By Unit Owners. Title insurance for a Unit is optional, and is the sole responsibility of the Unit Owner. Unit Owners are encouraged to carry basic casualty and flood insurance for those items not required to be insured by the Association pursuant to the Condominium Act, at the Unit Owner's discretion unless otherwise required by law as amended from time to time. Owners are also encouraged to carry Loss Assessment coverage, liability insurance, and such other coverage as their individual insurance agent may recommend to provide full protection. If the Owner fails to obtain adequate insurance coverage, the Unit Owner shall be fully responsible for any uninsured losses, including but not limited to those attributable to the negligent or intentional acts or omissions of the Unit Owner, and/or the Unit Owner's guests, tenants, invitees, agents, employees or contractors.

13.3 Deductible and Other Insurance Features. The Board of Directors shall establish the amount of the deductible under the insurance policies procured by the Association, and other features, as they deem desirable and financially expedient, in the exercise of their business judgment. The Board of Directors shall establish the amount of the deductible in accordance with the notice procedures and criteria as provided in the Act.

- 13.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged to the Unit Owners as Common Expenses.
- 13.5 Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees, as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association. Proceeds of insurance shall be shared as follows:
- (a) Common Elements. Proceeds on account of damage to Common Elements shall be an undivided share for each Unit Owner, each share being the same as the undivided share of the Common Elements appurtenant to his Unit.
 - (b) Units. Proceeds on account of damage to Units shall be held in the following undivided shares:
 - (i) When the Building is to be Restored. For the Owners of damaged Units only, in proportion to the cost of repairing the damage suffered by such Unit Owner, which cost shall be determined by the Association; each Unit Owner shall be bound by a certificate issued by the Association as to his or her proportionate share of the cost of repairs.
 - (ii) When the Building is Not to be Restored. An undivided share for each Unit Owner in the Condominium, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.
 - (c) Mortgages. In the event a mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held for the mortgagee and the Unit Owner as their interests may appear in such endorsement; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions of such proceeds made to the Unit Owner and mortgagee pursuant to the provisions of these Declarations.
 - (d) Common Elements and Units. When both Common Elements and those portions of the Unit insured by the Association are damaged by a single casualty, the proceeds of insurance shall be allocated

between damage to Common Elements, Limited Common Elements, and Units as the Board of Directors shall determine. It shall be presumed that when there are insurance proceeds received on account of such a casualty, but insufficient proceeds for casualty repair (including but not limited to shortfalls occasioned by the existence of a deductible), that such shortfalls shall first be applied to damages to the Common Elements, and then to damages to the Units and Limited Common Elements, it being the intent of this provision that when there is a common casualty loss causing significant damage to the premises, the shortfalls occasioned by deductibles shall be first apportioned to all Unit Owners in proportion to their share of the Common Elements and not applied first to Unit damage.

- (e) Surplus. In the event of a surplus, the surplus shall be treated as a Common Surplus and may be held and applied to Common Expenses or refunded to the Owners, in the discretion of the Board.

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

- (a) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired, the remaining proceeds shall be paid to defray the cost of such repairs as elsewhere provided. Any proceeds which remain after defraying such costs shall be distributed to the Association.
- (b) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which proceeds are paid shall not be repaired, the insurance proceeds shall be distributed to the Association.
- (c) Certificate. In making distribution to the Association or the Unit Owners and their mortgagees, the Association may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners, and their mortgagees, and their respective shares of the distribution.

13.7 The Association as Agent. The Association is hereby irrevocably appointed agent for each Unit Owner and for each owner mortgagee and for each Owner of any other interest in the Condominium Property for the purpose of adjusting or compromising and settling all claims arising out of insurance policies purchased by the Association, and is empowered to execute and deliver releases upon the payment of claims.

14. **RECONSTRUCTION AFTER CASUALTY.** This provision shall apply to the reconstruction and repair of any portion of the Condominium Property damaged by casualty.

14.1 Allocation of Repair and Reconstruction Expenses. Any portion of the Condominium Property that must be insured by the Association against property loss pursuant to the Act and as set forth in these Declarations that is damaged as a result of a casualty loss shall be reconstructed, repaired, or replaced as necessary by the Association as a Common Expense. All property insurance deductibles, uninsured losses, and other damages in excess of the Association's property insurance coverage under its property insurance policies are a Common Expense of the Association, except as follows:

14.1.1. Unit Owner Negligence or Intentional Conduct. A Unit Owner is responsible for the costs of repair or replacement of any portion of the Condominium Property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the Declarations or the rules of the Association by a Unit Owner, the members of his or her family, Unit occupants, tenants, guests, or invitees. In addition, such Unit Owner will also be responsible for the costs of repair or replacement of personal property of other Unit Owners or the Association, as well as other property, whether real or personal, which the Unit Owners are responsible to insure. However, to the extent the Association is reimbursed by insurance proceeds for the cost of repair or reconstruction for which the Unit Owner is responsible, and the Association has collected the cost of such repair or reconstruction from the Unit Owner, the Association shall reimburse the Unit Owner without the waiver of any rights of subrogation.

14.1.2. Delayed Notification; Failure to Notify Association. The Association is not obligated to pay for reconstruction or repairs of property losses as a Common Expense if the property losses were known or should have been known to a Unit Owner and were not reported to the Association until after the insurance claim of the Association for that property was settled or resolved with finality, or denied because it was untimely filed.

14.1.3. Unit Owner/Developer Upgrades or Improvements. The Association is not obligated to pay for any reconstruction or repair expenses due to property loss to any upgrades or improvements that were installed by a current or former Unit Owner or by the Developer if the upgrade or improvement benefits only the Unit for which it was installed and is not part of the standard improvements installed by the Developer on all Units as part of original construction, whether or not such upgrade

or improvement is located within the Unit. This paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for such improvements.

- 14.2 Responsibility for Effectuating Repairs. Any repairs or reconstruction of any portions of the Condominium Property necessitated by a casualty loss for which the Association is responsible for insuring will be performed by and/or at the direction of the Association. However, a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board of Directors. Any such work performed by the Unit Owner may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purposed. Unit Owners are responsible for the cost of reconstruction of any portions of the Condominium Property for which the Unit Owner is responsible for insuring. A Unit Owner must obtain all required governmental permits and approvals before commencing reconstruction. If a Unit Owner fails to repair or reconstruct those portions of the Condominium Property for which the Unit Owner is responsible for insuring, the Association may undertake effectuating those repairs on the Unit Owner's behalf and charge the Unit Owner for such costs incurred. Furthermore, if the Unit Owner does not reimburse the Association for the costs of such repairs upon demand by the Association, the Association may proceed to collect the costs incurred in the same manner as Assessments provided in Article 12 of these Declarations, including any and all costs, charges, fees, and attorney's fees incurred by the Association, and such costs, charges and fees will be a lien against the Unit.
- 14.3 Surplus Funds. Any funds disbursed for the payment of costs to reconstruct and repair the Condominium Property necessitated by a casualty loss shall always be deemed to be disbursed in the following order regardless of when such funds were received by the Association: (1) insurance proceeds; (2) loan money; (3) regular Assessments; (4) reserve funds; and (5) special Assessments. In the event that there is a surplus of funds after the payment of all costs and expenses related to the repair and/or reconstruction of the Condominium Property, the remaining funds (except for reserve funds) shall be Common Surplus and may, at the discretion of the Board, either be returned to the Unit Owners or applied as a credit toward future Assessments.
- 14.4 Plans and Specifications. The Condominium Property must be repaired or reconstructed in accordance with the original as-built plans and specifications as originally constructed by the Developer, except as otherwise lawfully altered or modified by the Association and/or the Unit Owners in accordance with these Declarations, as amended from time to

time. In the event that the Condominium Property cannot be reconstructed in accordance with the original plans and specifications due to building codes or other applicable codes, the Condominium Property will be reconstructed substantially in accordance with the original plans and specifications except for those modifications reasonably necessary, as determined by the Board of Directors in its sole discretion, to comply with the applicable codes.

14.5 Termination of Condominium if not reconstructed. Notwithstanding anything in this Article 14 to the contrary, the Condominium Property must be repaired or reconstructed unless the Condominium is terminated in the manner provided in Article 19 of these Declarations and/or in accordance with the Act, as amended from time to time.

14.6 Additional Board Authority. In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority after a casualty:

- (a) To determine after a casualty whether the Units can be safely occupied.
- (b) To declare any portion of the Condominium Property or Association Property unavailable for occupancy by Owners or guests after a casualty, including during the rebuilding process. Such decision by the Board shall be made only if necessary to protect the health, safety, or welfare of the Association, Owners or guests.
- (c) To mitigate damage and take action to prevent the spread of fungus (mold, mildew, etc.) by tearing out wet drywall and carpet (even if the Unit Owner is obligated to insure and/or replace those items) and to remove personal property from the Unit and store at an offsite location, with Owners responsible for reimbursing the Association for items for which the Owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.
- (d) To contract on behalf of Unit Owners, with said Owners responsible to reimburse the Association, for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes, dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units.

- (e) To implement a disaster plan prior to, during or after an impending casualty including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.
- (f) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.
- (g) To hold Board meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.
- (h) To change or postpone the annual meeting date to a date and time determined by the Board, even if such change will result in not holding an annual meeting in a particular calendar year.
- (i) To use reserve funds to meet Association needs, and use reserve funds as collateral for Association loans.
- (j) To adopt, by Board action, emergency Assessments with such notice deemed practicable by the Board.
- (k) To adopt emergency Rules and Regulations governing the use and occupancy of the Units, Common Elements, Limited Common Elements, and Association Property, with notice given only to those Directors with whom it is practicable to communicate.

15. CONDEMNATION.

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

15.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the

manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

- 15.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If any Condominium is not terminated after condemnation, the size of that Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds after a casualty, or as elsewhere specifically provided herein.
- 15.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion and discretion of the Board), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the effected Condominium(s):
- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged against the Owner of the Unit. The Association shall have the right to collect and enforce any Assessment for such costs and charges in the manner provided in accordance in Section 12 of these Declarations for the enforcement of Assessments.
 - (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, if a mortgagee endorsement has been submitted to the Association, the remittance being made payable jointly to the Owner and such mortgagees in the manner provided in such mortgagee endorsement.
 - (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the allocated percentage in the Common Elements, the Common Expenses and the Common Surplus appurtenant to the Unit shall be reduced by multiplying such allocated percentage by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common

Elements, Common Expenses and Common Surplus shall be restated as follows:

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

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

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

- (a) Payment of Award. The awards shall be paid first to any Institutional First Mortgagees who have submitted a mortgagee endorsement to the Association in amounts sufficient to pay off their mortgages in connection with each Unit which is made uninhabitable; second, to the Association for any unpaid Assessments and other charges; and third, jointly to the affected Unit Owners and other mortgagees of their Units who have submitted a mortgagee endorsement to the Association.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required in Section 8 hereof.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the effected Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Units. This shall be effected by restating the shares of continuing Unit Owners as follows:
 - (i) Add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments

made necessary by Section 15.4(c) hereof (the "Percentage Balance"); and

- (ii) Divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Section 15.4(c) hereof, by the Percentage Balance.

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

- (d) Assessments. If the balance of the award (after payments to the Unit Owners and such Owner's mortgagees as provided above) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners in the effected Condominium who will continue as Owners of Units after the changes in the Condominium affected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

15.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner required by Section 8 hereof. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements in each respective Condominium after adjustments to these shares are effected pursuant hereto by reason of the taking or applied by the Association to other Assessments, in the discretion of the Board. If the Board determines to distribute the surplus and there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit who have submitted a mortgagee endorsement to the Association.

15.7 Amendment of Declarations. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are affected by the taking shall be evidenced by an amendment to these Declarations of Condominium to be approved by, and executed upon the direction of, a majority of the Board.

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.

16.1.1 Residential Use. Each Unit shall be used and occupied as a single family private residence only, except as otherwise herein expressly provided. No Unit may be used as a hospital, sanitarium, church, or charitable, religious or philanthropic institution inconsistent with the purpose of using the Unit as a single family residence. Under no circumstances may any Unit be used for any business or professional purpose which would cause a level of noise, odor, traffic, debris or other activity inconsistent with residential use. As used herein, "single family" or words of similar import shall be deemed to include up to two (2) persons who are not related by blood, marriage or adoption living together as a single housekeeping unit, or an individual and his or her spouse, children, parents or grandchildren. No Unit may be divided or subdivided into a smaller Unit nor any portion thereof sold or otherwise transferred.

16.1.2 Housing for Older Persons. It is the intent of this provision that these Condominiums be exempt from the Fair Housing Amendments Act of 1988 and Housing for Older Persons Act of 1995 as they may be amended or renumbered from time to time, by providing "housing for older persons", as that term is defined therein. The Board of Directors is authorized to promulgate, adopt, amend, modify, or delete policies, procedures, rules and regulations to assure compliance with such exemption. Inasmuch as the Del Mar Community is designed and intended as a retirement community for older persons, to provide housing for residents who are fifty-five (55) years of age or older, no Unit shall, at any time, be permanently occupied by persons who are under eighteen (18) years of age; except that persons below the age of eighteen (18) may be permitted to visit and temporarily reside for periods as provided in the governing documents. No permanent occupancy of any Unit shall be permitted by an individual between the ages of eighteen (18) and fifty-five (55) years of age without at least one resident fifty-five (55) years of age or older also occupying the Unit. Notwithstanding same, the Board in its sole discretion shall have the right to establish hardship exceptions to permit individuals between the ages of eighteen (18) and fifty-five (55) to permanently reside in the community; provided, however, that said exceptions shall not be permitted in situations where the granting of a hardship exception would result in less than 80% of the Units in a Condominium Building having less than one resident fifty-five (55) years of age or older, it being the intent that at least 80% of the Units shall at all times

have at least one resident fifty-five (55) years of age or older. The Board of Directors shall establish policies and procedures for the purpose of assuring that the foregoing required percentages of adult occupancy are maintained at all times. The Board, or its designee, shall have the sole and absolute authority to deny occupancy of a Unit by any person(s) who would thereby create a violation of the aforesaid percentages of adult occupancy.

16.1.3 Guest Occupancy. Guests, including persons under eighteen (18) years of age, are limited to thirty (30) days in any twelve (12) month period. A guest shall be considered any Occupant who is not a Unit Owner. Any guest who occupies a Unit on an overnight basis in excess of thirty (30) days cumulatively in any calendar year, whether with or without the Owner in residence, shall be subject to screening and approval by the Association in the same manner as provided for transfers in Article 17 of these Declarations. Only overnight visitations will be considered when calculating the number of days as provided herein. For purposes of calculating the number of days, if a person visits overnight, two (2) days of visitation shall be computed. However, if a guest does not stay overnight, the visit will not be computed in the number of visitation days as provided above. Prior to any occupancy of the Unit by any guest in the absence of the Owner, the Owner must provide written notice to the Association of the name or names of the intended guests, the anticipated date of arrival, and the anticipated date of departure.

- 16.2 Animals and Pets. No animals or pets of any kind will be kept in any Unit or upon any other portion of the Condominium Property.
- 16.3 Exteriors. The Unit Owner shall not cause anything to be hung, displayed or placed on the exterior walls, balconies, doors or windows of the Building, including but not limited to awnings, curtains, blinds, shades, screens, hanging plants, cleaning supplies and/or equipment, rugs, or clothes, without the prior written approval of the Board of Directors of the Association. Likewise, no clothesline or similar devices, and no "For Sale" signs will be allowed on any portion of the Condominium Property without such written approval.
- 16.4 Exterior Colors. The Association shall determine the exterior color scheme of the Building and all exteriors and interior color scheme of the Common Elements and Limited Common Elements, and shall be responsible for the maintenance thereof. No Owner shall paint an exterior wall, door, window, or balcony, or any exterior surface, or replace any part thereof or anything affixed thereto without the written approval of the Board of Directors.
- 16.5 Use of Common Elements. The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited

and which are incident to the use and occupancy of Units, or in accordance with the Rules and Regulations pertaining thereto, as from time to time promulgated by the Board of Directors. The sidewalks, entrances, passages, vestibules, corridors, and halls located on the Common Elements must not be obstructed or encumbered or used for any other purpose other than ingress and egress to and from the premises, including by baby carriages, bicycles, toys and/or other personal property. No fire exits shall be obstructed in any manner.

- 16.6 Nuisances. No nuisances (as 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. The Board of Directors is hereby authorized to adopt additional Rules and Regulations regarding nuisances and noise, including, but not limited to, regulations regarding the types of activities that are permitted, the level of noise that is permitted, and the hours during the day during which certain types of activities are permitted.
- 16.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction 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 these Declarations, the Articles of Incorporation or Bylaws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this subsection. The Association has the right to cure any violation of any code or regulatory requirement of a governmental agency, whether on the Common Elements, Limited Common Elements or within the Units, which may be enforced in the manner provided for violations of Sections 7 and 8 hereof, as set forth in Section 18.2 of these Declarations.
- 16.8 Leases. No portion of a Unit less than the whole Unit may be rented. A Unit shall not be leased or rented without the prior written approval of the Association, which approval shall not be unreasonably withheld. No Unit shall be leased or rented for a term of less than ninety (90) consecutive days. A Unit shall be considered leased any time it is occupied by a tenant. The Association shall have the right to require that a substantially uniform form of lease be used. The lease shall include a provision

granting the Association authority and standing to evict any lessee of a Unit Owner who is in breach or violation of these Declarations or the Rules and Regulations of the Association. In the event the Association approves a rental or lease, such approval of a lease or rental shall not release the Unit Owner from any obligation under these Declarations. The Unit Owner is responsible for providing the Owner's tenants and guests a copy of any use restrictions provided in these Declarations or in the Rules and Regulations, as amended from time to time. Regardless of whether or not expressed in the applicable lease, if any, all Unit Owners shall be jointly and severally liable with their tenants to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant or for the acts and omissions of the tenant(s) or Occupant(s) (whether or not subject to a lease) which constitute a violation of, or non-compliance with, the provisions of these Declarations and of any and all Rules and Regulations of the Association. All tenants shall comply with and be subject to the provisions of these Declarations, the Bylaws, and the Act and the provisions of same shall be deemed expressly incorporated into any lease of a Unit. Subleases and transient occupants are prohibited.

When a Unit is leased, a tenant shall have all use rights in Association Property and those Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall not have such rights, except as a guest, unless such rights are waived in writing by the tenant. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. Dual usage by a Unit Owner and a tenant of Association Property and Common Elements is prohibited.

- 16.9 Parking. The following guidelines shall apply with regard to parking spaces and proper use thereof:

16.9.1 Parking Spaces; Assignments. Automobiles may be parked in the parking areas of the Condominium Property adjacent to or near a Unit's Condominium Building, but only in accordance with the regulations of the Association. One parking space will be designated for use by the Occupants of each Unit and the remaining spaces will only be used by those persons specified by the Association's Board of Directors. The assignment of parking spaces shall not be recorded in the Public Records of Indian River County, but the Association shall maintain a list of such assigned spaces among the official records of the Association. A portion of the parking spaces may be for the use of guest parking and/or additional parking spaces for Condominium Units in one or more Condominiums operated by the Association as determined by and pursuant to the Rules and Regulations adopted by the Board of Directors

of the Association. When a specific parking space is assigned to a Unit Owner, it shall be deemed a Limited Common Element for the exclusive use of said Unit Owner. The term "Unit Owner" as used in this Section shall mean and include said Unit Owner's lessee or the Occupant of a Unit where said party is occupying said Unit with or in place of the Unit Owner.

16.9.2 Permitted and Prohibited Vehicles. The following provisions govern permitted and prohibited vehicles on the Condominium Property (including, without limitation, any assigned or unassigned parking spaces):

- (a) ONLY passenger automobiles, station wagons, sport utility vehicles (SUVs) and passenger vans may park on the Condominium Property.
- (b) Without limiting the general provisions set forth above, the following types of vehicles WILL NOT be permitted to park on the Condominium Property, unless permitted by the Association's Board of Directors:
 - (i) Commercial vehicles of any type, including, without limitation, any vehicle, including permitted vehicles, showing or displaying any commercial, charitable or institutional (e.g., church or school) markings, signs, displays or otherwise indicating a commercial or other non-personal use, or a vehicle of any kind used for commercial purposes; provided, however, that using a passenger vehicle for commuting to and from work does not solely constitute a commercial purpose;
 - (ii) Vans, other than passenger vans (passenger vans must have windows on all body panels and be designed and used primarily to transport passengers, not cargo);
 - (iii) motorcycles;
 - (iv) Limousines or "stretch" limousines;
 - (v) Agricultural vehicles;
 - (vi) Dune buggies, swamp buggies and any all-terrain vehicles (ATVs);
 - (vii) Any trailer or other device transportable by vehicular towing;
 - (viii) Semis, tractors or tractor trailers;

- (ix) Buses;
 - (x) Travel trailers;
 - (xi) Boats, personal water craft (e.g., wave runners, etc.), kayaks, canoes and trailers with or without boats, personal water crafts, kayaks or canoes;
 - (xii) Vehicles which are not fully mechanically operable or not currently licensed or registered for use;
 - (xiii) Recreational vehicles;
 - (xiv) Mobile homes or mobile houses;
 - (xv) Truck mounted campers attached or detached from the truck chassis;
 - (xvi) Motor homes or motor houses;
 - (xvii) Motor vehicles not having any bodies whatsoever, or incomplete buggies;
 - (xviii) Passenger automobiles that have been converted for racing; and
 - (xix) Any vehicle, including permitted vehicles, illegally or inappropriately parked in any parking spots designated and reserved for parking by disabled persons.
- (c) Service vehicles and moving vans may be temporarily parked in guest spaces or loading zones during daylight hours only and not overnight, provided that any such vehicle does not impede or prevent access to another Unit's assigned parking space or block ingress or egress to and from a Building.
- (d) Items transported by vehicle rooftop racks and other exterior transportation racks, including, but not limited to, luggage, cargo boxes, bicycles, canoes, kayaks, surfboards, and paddle boards, must be removed from the vehicle's rack and stored within the Unit when parked on Condominium Property.
- (e) All vehicles parked on the property contrary to the provisions contained herein shall be subject to being towed in accordance with

Section 715.07, Florida Statutes, as amended from time to time, at the expense of the Owner of the vehicle. Towing shall not be the exclusive remedy of the Association.

- (f) Notwithstanding anything herein to the contrary, no vehicle or other device shall be permitted to park on Condominium Property for other than delivery or service call purposes, if its dimensions exceed the dimensions of the parking space assigned or designated.
- (g) The Board may adopt and amend additional Rules and Regulations regarding the issuance and display of decals to identify residents' or guests' vehicles and to regulate parking by guests, licensees, invitees, employees, agents or contractors.

16.10 Corporate Owner or Purchaser; Limitations on Ownership. Inasmuch as the Condominiums may be used only for residential purposes and a corporation or other business entity cannot occupy a Unit for such use, if the Unit Owner or purchaser of a Unit is a corporation, partnership, limited liability company or other entity of any kind, the approval of ownership of a Unit by such entities may be conditioned by requiring that all persons occupying the Unit be approved by the Board of Directors of the Association pursuant to these Declarations. No ownership or possessory interest in a Unit may be conveyed, leased or otherwise transferred to a corporation, partnership or other entity of any kind except for trustees of trusts or corporations where all of the stock is owned by the members of one of the Unit Owner's immediate family, where such trust or corporation was formed for the purpose of estate or financial planning. This provision is not applicable to the acquisition of Units by the Association. Notwithstanding the provisions above regarding the acquisition of title by an entity, any entity acquiring title to a Unit through the foreclosure of a mortgage or other lien or by deed in lieu of foreclosure may hold title, but any person taking occupancy of the Unit while title is held by such entity shall be subject to all screening and occupancy requirements provided in these Declarations. After the effective date of these amendments to the Declarations, title to a Unit may not be held in the name of more than three (3) natural persons.

16.11 Smoking. Smoking is prohibited in the lobbies, hallways, walkways, elevators, stairwells, inside the clubhouse, and in the pool area. Restrictions on smoking in other areas of the Condominium Property is subject to such Rules and Regulations as may be made and amended from time to time by the Board.

16.12 Signs. No sign, advertisement, notice or other lettering of any kind may be displayed which is visible from a Unit or on the Common Elements, including within parked vehicles, without written approval by the Association.

However, an Owner may post a "For Sale" notice on the bulletin board designated for that purpose, in a location and manner as prescribed by the Board of Directors.

- 16.13 Laundry. No washers or dryers are permitted to be installed in any Unit.
- 16.14 Trash; Construction Debris; Liquids. No garbage cans, refuse, supplies, milk bottles or cartons, or other articles may be placed in the halls or landings. Garbage must be disposed of in the appropriate areas as designated by the Association from time to time. Any construction debris generated by a Unit Owner or the Owner's residents that is located outside of the Unit must be cleaned up daily. Except as otherwise permitted by the Association, any work being performed for a particular Unit must be contained within the Unit. Construction debris or appliances may be placed in the Association's dumpster only if the Unit Owner or contractor has prearranged with the Association to pay for any resulting special pickup fees. Unit Owners, tenants, guests, or contractors of any of the foregoing may not pour any liquids down the parking lot drains that could contaminate the waters in the community.
- 16.15 Miscellaneous. No Unit Owner, Tenant, Occupant or guest shall allow anything whatsoever to fall from or be hung on the window, balconies or doors of the Unit, nor shall any person sweep or throw from the Unit any dirt or other substance into any of the corridors or halls, ventilators or elsewhere on the Common Elements. Linens, cloths, rags, rugs, clothing, mops, or other personal property may not be shaken or rung out from a Unit's balcony, windows or doors. Nothing should be placed on the window sill of the Unit.
- 16.16 Aerials. No external radio, satellite, or television antenna shall be installed or maintained on any portion of the Common Elements or otherwise on exterior of the Buildings without written consent from the Association.
- 16.17 Keys to Units. Unit Owners shall be required to provide the Association with a key for access to the Unit for use by the Association (i) when necessary for the inspection, maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to these Declarations, (ii) at any time as necessary to prevent damage to the Common Elements or to a Unit or Units, and/or (iii) as otherwise required or permitted by the Condominium Act for gaining access to the Unit. If the Owner fails to provide a key that provides access to the Unit, the Association shall not be liable for any damage caused to the Unit or to the Unit Owner's property as a result of the Association gaining access to the Unit or any delay in gaining such access. No Unit Owner shall alter any lock or install a new lock on any door without the written consent of the

Association. In the event such consent is given by the Association, the Unit Owner shall provide the Association with a copy of the new key for the use of the Association as provided in these Declarations.

16.18 Emergency Contact Information. Unit Owners must provide the Association emergency contact information, such as an alternate mailing address, email address, and/or telephone number, for the Association's use in the event the Association needs to contact the Unit Owners prior to, during, or after an emergency situation, as determined by the Association.

17. **CONVEYANCES, SALES AND TRANSFERS.** In order to provide for congenial occupancy of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

17.1 Transfers Subject To Approval; Fees; Orientation Meeting. The following transfers shall be subject to prior written approval of the Board of Directors and any transfer undertaken without prior written approval of the Board of Directors shall be void:

- (a) Sale. All sales of Units, except judicial sales conducted pursuant to a judgment of foreclosure held by an Institutional Mortgagee encumbering a Unit or public sales conducted by the Indian River County Tax Collector resulting from the failure to pay real property taxes.
- (b) Lease. All transfers by lease. All transfers by lease may be conditioned upon the posting of a security deposit not to exceed the maximum amount permitted by the Condominium Act, as same may be amended from time to time. No Unit shall be leased or rented for a term of less than sixty (60) consecutive days.
- (c) Gift. All transfers by gift.
- (d) Devise or Inheritance. All transfers by devise or inheritance.
- (e) Other Transfers. Any other transfer of title to or possession of a Unit.

All transfers subject to approval shall require, as a condition of approval, the payment to the Association of a transfer fee not to exceed the maximum amount permitted by the Condominium Act, as same may be amended from time to time. However, if a lease is a renewal of a previous lease within a period of two consecutive years, the Association Board of Directors may waive the transfer fee in its sole discretion.

The Association may, in the Board of Directors' discretion, require a proposed Occupant or Occupants to participate in an orientation meeting, on a mutually agreeable date following submission of the sale, lease or other transfer application.

- 17.2 Notice to Association. Prior to approving any transfer subject to approval hereunder, the Association shall be entitled to written notice of the transferor's intent to make the transfer with a copy of the documentation evidencing the intended transfer, including, but not limited to, a copy of the contract for sale in the case of a sale, a copy of the transferor's Last Will and Testament in the event of a transfer by devise, a copy of the lease in the case of a lease, and a copy of any other documentation pertaining to a proposed transfer subject to approval hereunder which the Association may reasonably require, completed applications on forms prescribed by the Association, a personal interview with the proposed transferee(s) and any other intended Occupants of the Unit, and such other and further information about the intended transferees or Occupants as the Association may reasonably require.
- 17.3 Association's Election. Within thirty (30) days of receipt of the last of the information required pursuant to Section 17.2 above, the Association must either approve or disapprove the transfer. Failure on the part of the Association to respond within said thirty (30) day period shall constitute automatic approval for the proposed transfer.
- (a) Approval. In the event the Association approves any transfer subject to approval hereunder, the Association shall deliver to the transferor or the transferor's designee an executed certificate of approval, approving the transfer, executed by an authorized representative of the Association.
 - (b) Disapproval of Transfer of Title. In the event the Board of Directors disapproves a proposed sale, unless good cause exists, as defined below, the Association must, within thirty (30) days of receipt of the last of the information provided pursuant to Section 17.2 hereof, provide the Owner with an executed contract from the Association or another purchaser acceptable to the Association, which contract must provide for the purchase of the Unit on the same terms as were set forth in the original proposed contract for sale, which contract must provide for a closing date within sixty (60) days from the date it is delivered to the Owner by the Association. If the conveyance or transfer was a gift, devise or inheritance, unless good cause exists, as defined below, the purchase price shall be determined by an appraiser selected by and at the expense of the substitute purchaser. If the Unit Owner does not agree with the

appraisal, the Owner may select and pay for another appraisal and the purchase price shall be the average of the two appraisals. If the Association does not respond to the application within thirty (30) days, as set forth above, or the substitute purchaser provided by the Association does not close within thirty (30) days, as set forth above, the original transaction shall be deemed approved and the Unit Owner may proceed to closing and shall be entitled to a Certificate of Approval as described in Paragraph (a) of this Section 17.3.

If good cause exists for the Association to disapprove a proposed sale, conveyance or transfer by gift, devise or inheritance, the Association shall not be obligated to purchase or provide a substitute purchaser for the Unit. Good cause shall be defined to include the following:

- (1) The applicant fails to qualify for membership in the Association, including, but not limited to, those applicants who fail to qualify for membership because of the restrictions on occupancy or ownership set forth in these Declarations; or
- (2) The person seeking approval (which shall include all proposed Occupants) has been convicted at any time of a felony involving violence to persons or a felony where the victim was a minor or has been convicted of any other felony within the ten (10) years preceding the date of application; or
- (3) The applicant takes possession of the Unit prior to approval by the Association as provided for herein; or
- (4) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in this Condominium as a lessee, guest, Owner or Occupant of a Unit; or
- (5) The applicant does not produce proof of casualty insurance coverage at time of closing as required in Section 13.2 of these Declarations; or
- (6) The applicant fails to comply with the requirements of Section 17.2 hereof.

No transfer of title will be approved if, at the time of the application or at any time prior to the time approval is to be

granted, the Unit is delinquent in the payment of any financial obligation to the Association under these Declarations or under any of the Condominium Documents or the applicable Statutes, or if the Unit is in violation of any provision of these Declarations or the Rules and Regulations which remains uncured at the time the Association is required to make its election hereunder.

17.4 Leasing. The Association must approve or disapprove a lease within thirty (30) days of receipt of the last of the information provided pursuant to Section 17.2 hereof. The Association may disapprove a lease on any reasonable grounds, including, but not limited to, any of the provisions defining good cause for transfers of title which might be applicable. If the Association disapproves of the proposed lease, the lease shall not be made.

17.5 Exceptions. The foregoing provisions of this article 17 entitled "Maintenance of Community Interests" will not apply to a transfer to the holder of an Institutional Mortgage, whether the title is acquired by deed in lieu of foreclosure from the Unit Owner, his successors or assigns, or through foreclosure proceedings; however, any transfers from such Institutional Mortgagee will be subject hereto. Neither will such provisions require the approval of a purchaser who acquires the title to a Unit at a duly advertised public sale with open bidding provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale, or tax sale.

18. **COMPLIANCE AND DEFAULT**. Each Unit Owner and every Occupant, lessee, guest, agent, employee or contractor of a Unit Owner and the Association shall be governed by and shall comply with the terms of these Declarations of Condominium and all the Exhibits, 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, whether to the Common Elements, Association Property, the Unit or the Unit Owner's personal property, or to the personal property of the Association or other Unit Owners, including, but not limited to, repair after casualty under Section 14 hereinabove, made necessary by his or her violation of any portion of these Declarations or by his or her negligence or intentional misconduct or by that of any member of his family or his or her guests, agents, employees or contractors, but only to the extent such expense is not met by the proceeds of insurance actually collected by the Association. Any such expense advanced by the Association, together with interest, costs and attorneys' fees, shall be

secured by a lien against the Unit enforceable in the same manner as an Assessment under Article 12 hereof.

- 18.2 Compliance. In the event a Unit Owner or Occupant fails to comply with the Unit Owner's obligations hereunder or fails to observe and comply with any provision of the Declarations, the Bylaws, the Articles of Incorporation of the Association, applicable Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to sue in a court of law for damages, and levy a special charge against the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance. Such charge, together with interest, costs and attorneys' fees, shall be secured by a lien against the Condominium Parcel, enforceable in the same manner as Assessments levied under Article 12 hereof.
- 18.3 Fines. In the event a Unit Owner or anyone for whom Unit Owner is responsible fails to comply with a provision of the Declarations, the Bylaws, the Articles of Incorporation of the Association, applicable Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to impose a fine against the Unit Owner and the Unit. The nature and extent of fines levied by the Association, and the manner in which such fines are levied, will be in accordance with the fining procedures provided by the Act, as amended from time to time, but in any event shall not exceed any maximum amount permitted by the Act.
- 18.4 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, these Declarations, the Bylaws, the Articles of Incorporation of the Association, or the Rules and Regulations, 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).
- 18.5 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, these Declarations, the Bylaws, the Articles of Incorporation of the Association, or the Rules and Regulations, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
- 18.6 Election of Remedies. All rights, remedies and privileges granted to the Association or a Unit Owner pursuant to any terms, provisions, covenants or conditions of the Condominium Documents are non-exclusive, and,

therefore, the exercise of any one or more of such remedies shall neither be deemed to constitute a party's exclusive remedy, nor shall it preclude the party from exercising such other additional rights, remedies or privileges as may be granted by the Condominium Documents.

19. **TERMINATION.** The Condominium may be terminated in the following manner in addition to the manner provided in the Condominium Act, as amended from time to time.

19.1 Approval for Termination. All of the Unit Owners, acting jointly, may terminate this Condominium by an instrument drawn to such effect, duly and properly executed and recorded, provided, however, that such termination shall not be effective until the holders of all mortgages, pledges, or other encumbrance affecting any of the Condominium Parcels join therein and consent and agree thereto in writing by such duly recorded instrument, and that agreement be reached by all such Owners and holders of mortgages, liens, pledges or other encumbrances as to the transfer of their claim to the Unit against which the lien, mortgage, pledge or encumbrance exists.

19.2 Certificate of Termination; Termination Trustee. The termination of the Condominium in the manner set forth in 19.1 herein shall be evidenced by a Certificate of Termination, executed by the President or Vice President of the Association with the formalities of a deed, certifying to the facts effecting the termination. Written joinders or consents executed with the formalities of a deed from the requisite number of voting interests of the Association, and mortgage holders, if required, shall be included in or be attached to the Certificate of Termination. The certificate shall include the name and address of a Termination Trustee, which must be one of the following: (1) the Association; (2) a Florida financial institution with trust powers; or (3) a licensed Florida attorney. The Certificate of Termination shall be signed by the Trustee indicating willingness to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this section is recorded in the Public Records of Indian River County, Florida. The recording of that Certificate of Termination automatically divests the Unit Owners of legal title, and vests legal title to all real and personal property formerly the Condominium Property in the Termination Trustee named in the Certificate of Termination without need for further conveyance. Beneficial title to the Condominium Property shall be owned by the former Unit Owners as tenants in common in undivided shares, such shares being the same as the undivided shares in the Common Elements appurtenant to the Units as provided elsewhere in these Declarations. On termination, each lien encumbering a Condominium Parcel shall be transferred automatically to the beneficial shares in the Property with the same priority.

- 19.3 Wind-up of Association Affairs. The termination of the Condominium does not, by itself, terminate or dissolve the Association. The former Unit Owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in these Declarations, the Articles of Incorporation, and Bylaws, and by law, for the purpose of winding up the affairs of the Association. The powers of the Association include the authority to sell real or personal property owned by the Association and distribute net proceeds therefrom, and insurance proceeds, to the Unit Owners in shares that are the same as the undivided shares in the Common Elements appurtenant to the Units as provided elsewhere in these Declarations.
- 19.4 Trustee's Powers and Duties. The Termination Trustee shall hold title to the Condominium Property for the benefit of the former Unit Owners and their successors, assigns, heirs, devisees, mortgagees, and other lienholders, as their interests shall appear. If the former Unit Owners approve a sale of the Condominium Property as provided in this section, the Termination Trustee shall have the power and authority to convey title to the Condominium Property and distribute the net proceeds in accordance with the provisions of these Declarations. In the event the Association is not the Trustee, the following provisions shall apply:
- (a) The Trustee shall be entitled to charge a reasonable fee for acting in such capacity, and that fee, and all costs and expenses incurred by the Trustee in the performance of its duties, may be paid from the proceeds of the sale of the Property.
 - (b) The Trustee shall be entitled to be indemnified and held harmless by the Association and its members from any and all liabilities and costs incurred by virtue of acting as Trustee, except those resulting from the Trustee's gross negligence or malfeasance.
 - (c) The Trustee may rely on written instructions and information provided by the officers, directors, and agents of the Association, and shall not be required to inquire beyond such information and instructions.
- 19.5 Partition; Sale. Following termination, the Condominium Property may be partitioned and sold upon the application of any Unit Owner. If at least two-thirds of the total voting interests of the membership of the Association agree to accept an offer for the sale of any or all of the Condominium Property or to create a new condominium, the Board of Directors shall notify the Termination Trustee (if Association is not the

Trustee), and the Trustee shall complete the transaction. The Trustee shall have the authority to execute any and all documents to complete the sale and convey legal title to the Condominium Property provided an agreement setting forth the terms and conditions of the sale is approved and executed by the requisite two-thirds of the voting interests, with the formalities of a deed, which agreement must be recorded in the Public Records of Indian River County, Florida prior to or simultaneously with the sale of the Condominium Property to a third party. In the event of a sale approved by the Unit Owners, any action for partition of the Condominium Property shall be held in abeyance pending the sale, and on the consummation of the sale shall be discontinued by all parties thereto. If the former Unit Owners have not authorized a sale of the Condominium Property within one year after the recording of the Certificate of Termination, the Trustee may proceed to sell the Condominium Property in a commercially reasonable manner without agreement by the former Unit Owners, or may file an appropriate lawsuit to request judicial assistance regarding the partition and sale of the Condominium Property. The proceeds of the sale of any of the Condominium Property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

- 19.6 New Condominium. The termination of the Condominium does not bar creation of another condominium including all or any portion of the same property.
- 19.7 Provisions Survive Termination. The provisions of this Section 19 are covenants running with the land, and they shall survive the termination of the Condominium until all matters covered by these provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation and applicable law, and shall have the power to levy assessments and to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees, and expenses of the Termination Trustee, as well as post-termination costs of maintaining the Condominium Property, are Common Expenses, the payment of which is secured by a lien on the beneficial interest owned by each former Unit Owner, which to the maximum extent permitted by law shall be superior to, and take priority over, all other liens.
- 19.8 Amendment. This Article 19 may be amended in the same manner in which these Declarations of Condominium may be amended generally, as set forth in Article 6.

20. **RESTRICTIONS AND EASEMENTS.** The real property submitted to Condominium ownership hereby is subject to conditions, limitations, restrictions, dedications, reservations of record, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for ingress and egress for pedestrian and vehicular purposes, easements for Utility Service and drainage now existing or hereafter granted by the Association for the benefit of such persons as the Association designates. The right to grant the foregoing easements shall be subject to said easements not structurally weakening the building(s) and improvements upon the Condominium Property nor unreasonably interfering with the enjoyment of the Condominium Property by the Association's members.

An easement, whether heretofore or hereafter created under and pursuant to these Declarations shall constitute a covenant running with the Land of the Condominium, and, notwithstanding any other provisions of these Declarations, may not be substantially amended or revoked in such a way as to unreasonably interfere with the proper and intended use and purpose and shall survive the termination of the Condominium. The Unit Owners of this Condominium do hereby designate the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purposes of creating all such easements as are contemplated by the provisions hereof.

21. **COVENANT RUNNING WITH THE LAND.** All provisions of these Declarations, the Articles, Bylaws and applicable Rules and Regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Association, the Unit Owners, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners and Occupants of Units shall be subject to and shall comply with the provisions of these Declarations and such Articles, Bylaws and applicable Rules and Regulations, as they may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of these Declarations, and the Articles, Bylaws and applicable Rules and Regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

22. **ADDITIONAL PROVISIONS.**

- 22.1 **No Exemption from Assessments.** The Owner of a Condominium Unit may not exempt himself or herself from liability for his contribution toward the Common Expenses by waiver of the use and enjoyment of any of the Common Elements, or by the abandonment of his Condominium Unit.

- 22.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a Vice-President may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of a Treasurer may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 22.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by these Declarations, the Exhibits or applicable Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 22.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of these Declarations, the Exhibits, 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.
- 22.8 Waiver. No provisions contained in these Declarations 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.
- 22.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each Occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of these Declarations, and the Articles and Bylaws of the Association, and applicable Rules and Regulations, are fair and reasonable in all material respects.
- 22.10 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 22.11 Captions. The captions herein and in the Exhibits 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.
- 22.12 No Partition. No Unit Owner shall bring, or have any right to bring, any act of partition or for division of the Condominium Property, except under the conditions and circumstances prescribed in Section 19.5 of these Declarations.

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