DECLARATION OF CONDOMINIUM ESTABLISHING WATERSIDE AT PALM COAST CONDOMINIUM

WATERSIDE PROPERTIES, LLC, a Florida limited liability company, hereby declares:

1. Introduction and Submission.

1.1 The Land. The Developer owns the fee title to certain land located in Flagler County, Florida, as more particularly described in Exhibit A annexed hereto (the "Land").

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

1.3 Name. The name by which this condominium is to be identified is WATERSIDE AT PALM COAST CONDOMINIUM (hereinafter called the "Condominium")

2. Definitions. The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

2.1 "Act" means the Condominium Act (Chapter 718 of the 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.

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

2.4 "Association" means WATERSIDE AT PALM COAST CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.

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(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.

2.8 "By-Laws" mean the By-Laws of the Association, as amended from time to time.

2.9 "Common Areas" means the real property and any improvements thereon which comprise the Common Area within Waterside at Palm Coast Condominium (as that term is defined in this Declaration).

2.10 "Common Elements" mean and include:

(a) The portions of the Condominium Property not included within the Units.

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

(c) An easement of support in every portion of a Unit which contributes to the support of the Building.

(d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.

(e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.

2.11 "Common Expenses" mean all expenses incurred by the Association for the Condominium and charges 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 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.

2.12 "Common Surplus" means the amount of all receipts or revenues of the Condominium (including Assessments, rents, or profits collected by the Association, which exceeds Common Expenses).

2.13 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit such as garages.

2.14 "Condominium Property" means the Land, Improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.

2.15 "County" means the County of Flagler, 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 WATERSIDE PROPERTIES, LLC, 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, may be conditional or unconditional, and may be an assignment of all or only portions of its rights as 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, is exclusive, except as to any previously assigned rights, and the assignee expressly accepts said assignment by written instrument recorded in the public records of the County.

2.18 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property, including, but not limited to, the Building.

2.19 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.

2.20 "Land" shall mean the Land described in Exhibit A annexed hereto.

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

2.22 "Member" shall mean and refer to all those Owners who are members of the "Association".

2.23 "Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating

methods to collect, convey, store, absorb, inhibit, treat use or reuse water to prevent or reduce flooding, overdrainage environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

2.24 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.

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

3. Description of Condominium.

3.1 Survey and Plans. Attached hereto and made a part hereof as Exhibit B, are a boundary survey, graphic description and plot plans of the improvements constituting the Condominium identifying the Units and Common Elements and their ultimate locations and approximate dimensions. Each Unit is identified by specific numerical designation on Exhibit B.

3.2 Description of Buildings and Units. The Condominium shall include four (4) buildings containing a total of thirty-nine (39) residential Units, including entry porches, lanais and the garages. The buildings are more particularly shown and described in Exhibit B. There shall be four (4) different Unit types in the Condominium as depicted in Exhibit B.

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

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

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

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

(b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries, including entry porches, and garages.

(c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, the boundaries of the Unit extend to the interior surface of all windows (which term does not include sliding glass doors but does include glass curtain walls) and extend to the exterior surface of sliding glass doors and unfinished

exterior surfaces of exterior doors. The framework for windows (again not including framework for sliding glass doors) shall not be included in the boundaries of the Unit and shall be Common Elements.

(d) Utility Equipment and Conduits: The Units shall include all plumbing and electrical lines, equipment and fixtures located within the boundaries of the Unit, together with plumbing and electrical and other utility lines within the Common Elements which serve the Unit only. The Unit shall not include electrical and plumbing lines, conduits, equipment, fixtures, pipes, wires, air passageways, ducts, or other utility lines running through or adjacent to the Unit which are utilized for or serve another Unit or the Common Elements, which items shall be made a part of the Common Elements.

(e) Air Conditioning/Heating: Any air conditioning/heating equipment which services only a single Unit shall be considered part of said Unit and not a Common Element.

(f) Appliances: The Unit Owner shall own any electric doorbells/knockers, hot water heaters, refrigerators, dishwashers, electric garage door openers and other appliances which are located within the boundaries of the Unit or the Limited Common Elements.

(g) Fixtures: The Unit Owner shall own all interior fixtures which shall serve the Unit exclusively, including without limitation, all plumbing fixtures, utility and electrical fixtures and cabinets.

(h) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit B hereto shall control in determining the boundaries of a Unit, except that the provisions of Section 3.3(c) above shall control unless specifically depicted otherwise on such survey.

3.4 Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto, vesting in the Owner of each such Unit the exclusive right to use such Limited Common Elements:

(a) Lanai/Covered Porch. Any lanai or covered porch (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s).

(b) Driveways. Any driveway used exclusively by the unit owners, their guests and invitees.

(c) Attic Storage Space. Each unit shall include as a Limited Common Element that attic space above and adjacent to said Unit for storage purposes.

(d) Garage Space. Garage space appurtenant to each unit as shown on the site plan and drawings designated as Exhibit "B".

3.5 Common Elements. The following facilities will be constructed within the Condominium Property for the exclusive use of Unit Owners and their family members, guests, tenants and invitees.

(a) Although the Developer has no present intention of doing so, it reserves the right at any time to expand or add to any of the above described Common Elements and recreational facilities and to include such other facilities as the Developer deems appropriate. The consent of the Unit Owners or the Association shall not be required for any such construction or exclusion. No party is obligated, however, to so expand the facilities or provide additional facilities.

3.6 Easements. The following easements are hereby created (in addition to any easements created under the Act.

(a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall have a right of access to each Unit to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day's notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).

(c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (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.

(d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, 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 subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

(e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any 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.

(f) Sales Activity. For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for guest accommodations, model apartments and sales, management and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units within the Condominium and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease.

(g) Association. The Association shall have an easement of access over, under and through the Condominium Property for the purpose of performing its lawful functions pursuant to this Declaration, including, without limitation, the maintenance of improvements, parking areas, utility lines and equipment, driveways, landscaped areas and any privacy wall/fence located along the boundary of the Condominium Property.

(h) Additional Easements. The Developer or Association, by and through the Board of Directors on behalf of all Unit Owners, shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications, service or other easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property and to grant access easements or relocate any existing access easements in any portion of the Condominium Property as the Developer or Board

shall deem necessary or desirable, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

(i) The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is a part of the surface water or stormwater management system at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

(j) The Developer will construct a boat dock adjacent to the condominium seawall which shall consist of a wooden structure providing for 5, tie up spaces and 10 boat slip spaces which will be sold and transferred to unit owners on land that is subject to a submerged land lease held by Waterside Properties, LLC for an annual charge of TBD. Upon its completion the Developer will convey and the association will accept the transfer of title to said boat dock structure, submerged land lease, and all permits appurtenant thereto for the benefit, use and enjoyment of all unit owners. The cost of operation maintenance, repairs, replacement, security, insurance shall be a common expense of the association and shall be assessed to all unit owners equally. The association may impose an additional assessment against each owner of a boat slip on time up space as it may determine. All such assessment shall be enforced as provided in this Declaration.

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

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

5.1 Percentage Ownership and Shares. The ownership of the Common Elements and Common Surplus (as such terms are defined herein), and the responsibility for the Common Expenses for the Condominium, have been divided among the Units of the Condominium equally for each Unit as set forth in the Schedule attached hereto as Exhibit C.

5.2 Waterside at Palm Coast Condominium Association, Inc. B Membership and Voting Rights. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association.

6. Amendments. Except as elsewhere provided herein, amendments to this Declaration may be effected as follows:

6.1 By The Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the members of the Association. Except as elsewhere provided, approvals of proposed amendments must be by affirmative vote of Unit Owners owning in excess of 75% of the Units. Directors not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting, however, such approval or disapproval may not be used as a vote for or against the action taken and may not be used for purposes of creating a quorum. Notwithstanding anything to the contrary contained herein, the Association reserves the right to amend this Declaration and the Exhibits annexed hereto so as to correct any errors or omissions not materially and adversely affecting the rights of Unit Owners. Amendments enacted to correct errors or omissions may be approved by a majority of the Board of Directors of the Association.

6.2 By The Developer. The Developer, during the time it has the right to elect a majority of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association to correct an omission or error, or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent thereto. Further, the Developer shall not be permitted to make any amendment which requires the approval of Unit Owners under Section 718.110(4) or (8) of the Act without first obtaining such approval.

6.3 Proviso. No amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) of the affected Unit(s), and all record owners of liens on the affected Unit(s), shall join in the execution of the amendment and same is also approved by a majority of the votes of the Association. Neither shall an

amendment of this Declaration make any change to Section 14 of this Declaration entitled "Insurance" or to Section 15 of this Declaration entitled "Reconstruction or Repair After Fire or Other Casualty" which materially affect mortgagees unless said mortgagees join in the execution of the amendment. In no event shall the consent or joinder of mortgagees be required unless the amendment materially affects the rights or interest of the mortgagees or is otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and such consent or joinder may not be unreasonably withheld.

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 Amendment is properly recorded in the public records of the County.

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

7. Maintenance and Repairs.

7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, overhead doors, window screens, the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or other property belonging to the Unit Owner shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

Specifically, Unit Owners shall be responsible to clean the interior and exterior of all windows and the exterior of all windows that can be accessed from the interior of the Unit. The Association shall clean the exterior surfaces when deemed necessary by the Board of Directors of the Association. Unit Owners shall maintain the patio or screened/covered porch appurtenant to their Unit(s) and shall keep the same neat and tidy, except that in order to maintain a uniform appearance, the Association will paint the exterior walls of the

screened/covered porch when deemed necessary by the Board of Directors of the Association.

7.2 Common Elements. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than certain Limited Common Elements as provided in Section 7.1) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense. The Association shall be responsible for the operation and maintenance of the improvements, facilities and systems utilized in connection with the storm and surface water collection, retention, detention, drainage and disposal services for the Condominium Property.

7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Unit or Units shall be the responsibility of the applicable Unit Owner(s), individually, and not the Association.

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 repairs and replacements) costing in excess of five percent (5%) of the annual budget 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 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 less then five percent (5%) in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall be as a "Capital Improvement Assessment" of the Unit Owners as provided in Section 13.2 hereof. For purposes of this section, "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.

9. Additions, Alterations or Improvements by Unit Owner.

9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, his or her Unit or any Limited Common Element without the prior written consent of the Board of Directors, provided that the Board of Directors shall not withhold its consent to the installation of hurricane shutters as long as same have a character, location and other attributes set forth in specifications adopted as a resolution of the Board. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within forty-five (45) days after such request and all additional information requested is received. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any

conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his or her 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. Notwithstanding the foregoing, in order to allow the Association to obtain the operating history and experience necessary to provide for uniformity in the nature of Unit Owner improvements and to protect the aesthetic appeal of the Condominium, no such requests for additions, alterations or improvements may be presented to the Board for its consideration until such time as the Unit Owners, other than the Developer, have elected a majority of the Board of Directors.

9.2 Additions, Alterations or Improvements by Developer. Except as provided for in Section 718.110(4), F.S., 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 and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements).

10. **Proviso**. Without limiting the generality of the provisions of paragraph 9.2 above, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary, and (ii) change the layout or number of rooms in any Developer owned Units, subject to the requirements of Section 9.2, above, if applicable.

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 of the Association (respectively, Exhibits E and D annexed hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

(a) The irrevocable right to have access to 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 any Common Elements therein or 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 charges against Unit Owners and to lease, maintain, repair and replace 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 maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

(e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, provided further that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.

(f) The power to charge a fee for the exclusive use of any Common Elements by an Owner.

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

(h) The power to acquire real and personal property. Personal property shall be acquired upon a majority vote of the Board of Directors, subject to Section 8 hereof. Real property shall be acquired upon a majority vote of the Board of Directors; provided that 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 the acquisition of real property; provided further, however, that the acquisition of a Unit as a result of a foreclosure of the lien for Assessments shall be made upon a majority vote of the Board of Directors, regardless of the price for same.

(i) The authority to operate and maintain the improvements, facilities and systems utilized in connection with the storm and surface water collection, retention,

detention, drainage and disposal services for the Condominium (the "surface water management system"). Maintenance of the stormwater management system shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved by the St. Johns River Water Management District.

(j) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation and By-Laws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration 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.

11.2 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 if whether or not same shall have been approved by the Association pursuant to Section 9.1 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 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 use 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, Flagler County, The City of Tallahassee and/or any other jurisdiction or the prevention of tortious activities; and

(c) Any provision 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 or her acceptance of title to his or her 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, 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.

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

11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.

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

12. **Determination of Common Expenses and Fixing of Assessments Therefor.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by law) the operation, maintenance, repair and replacement of the Common Elements, 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. Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws.

13. **Collection of Assessments.**

13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments levied by the Association coming due while he or she is the Unit Owner. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his or her share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. 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.

13.2 Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium, the Board of Directors may levy "Special Assessments" to cover the cost incurred by the Association for specific purposes of a nonrecurring nature or for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements.

13.3 Default in Payment of Assessments. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at eighteen percent (18%) per annum from the date due until paid and shall be subject to an administrative late fee in

an amount not to exceed the greater of $25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel. The lien is effective and shall relate back to the recording of the Declaration, provided that as to First Mortgagees, the lien is effective from and after recording of the claim of lien. The claim of lien shall 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. It must be executed and acknowledged by an officer or authorized agent of the Association and shall be recorded in the Public Records of Flagler County, Florida. 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 but in no event for a period exceeding one year, unless lien enforcement action has commenced in a court of competent jurisdiction during such year. The one year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Unit Owner or any other person claiming an interest in the Condominium Parcel. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon 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. Upon full payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the Assessment installments to be accelerated which accelerated Assessment installments shall include the amount due for the remainder of the budget year in which the claim of lien was filed, and shall thereupon be immediately due and payable. In the event that the amount of such Assessment installments change prior to the end of the budget year, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

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.

13.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known

address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

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

13.6 First Mortgagee. In the event a first mortgagee or other purchaser shall obtain title to a Unit as a result of a foreclosure action in which the Association has been joined as a defendant, or as a result of a deed given in lieu of foreclosure or in satisfaction of debt, such acquirer of title or its successors and assigns ("first mortgagee") shall be liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure or in satisfaction of debt. However, the first mortgagee's liability as aforesaid shall be limited to (i) the Units Common Expenses or Assessments which accrued or came due during the six months immediately preceding the acquisition of title and for which payment in full has not been received by the Association or (ii) one percent (1%) of the original mortgage debt, whichever is less. The provisions of this Section 13.6 shall not apply unless the first mortgagee joins the Association as a defendant in the foreclosure action. Joinder is not required if, on the date the complaint is filed, the Association was dissolved, administratively or otherwise, or did not maintain an office or agent for service of process at a location which was known or reasonably discoverable by the first mortgagee by the date the foreclosure action was filed. The person acquiring title shall pay the amount owed to the Association within thirty (30) days of transfer of title. The unpaid share of Common Expenses or Assessments are Common Expenses collectible from all of the Unit Owners, including such acquirer and its successors and assigns. A first mortgagee acquiring title to a Condominium Parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such Condominium Parcel, whether or not the Unit is occupied, be excused from the payment of same or all of the Common Expenses coming due during the period of such ownership.

13.7 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 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.

13.8 Installments. Regular Assessments shall be collected monthly, in advance, as determined from time to time by the Board of Directors.

13.9 Developer's Guarantee. So long as the Developer owns a Condominium Unit which is offered for sale, Developer shall be excused from the payment of assessments against these unsold units for the period of time the Developer has guaranteed all purchasers or other unit owners in the Condominium that the assessments will not exceed $300 per month for each unit, and that Developer will pay any common expenses that exceed that amount. This guarantee begins on the date of recording of the Declaration of Condominium and shall end two (2) years from that date and may be extended for three (3) additional six (6) month periods.

Regular, periodic assessments for common expenses provided for in the Declaration or Prospectus and disclosed in the Estimated Operating Budget shall be used for payment of common expenses during such excused period. No funds which are receivable from unit purchasers or unit owners and payable to the Association, including capital contributions or start up funds collected from the unit purchasers at closing, may be used for payment of such common expenses.

14. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

14.1 Purchase, Custody and Payment.

(a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company or provider authorized to do business in Florida.

(b) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.

(c) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed)

(d) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit

covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

(e) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

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

(a) Casualty. The Building, including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies) - but excluding (i) all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and (ii) electrical fixtures, appliances, air conditioners or heating equipment, water heaters and built-in cabinets which are located in Units and the repair and replacement responsibility of Owners - and all Improvements located on the Common Elements or Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property (collectively the "Insured Property") , shall be insured against casualty loss (excluding loss by flood and other causes excluded from typical condominium package policy) in an amount not less than 100% of the full insurable replacement cost thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) Liability. Comprehensive general public liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association.

(c) Worker's Compensation. Worker's Compensation and other mandatory insurance, when applicable.

(d) Fidelity Insurance. As required by the Act, fidelity insurance covering all persons who control or disburse Association funds.

(e) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available and determined by the Board of Directors to be desirable.

(f) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

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

(h) Disclaimer. All Unit Owners, mortgagees and others should be aware of the fact that because of exclusions from coverage, changes in construction costs, land and profit components in sales prices and other factors, the amount of insurance coverage available in the event of substantial damage to the Condominium Property, the proceeds available for reconstruction and/or retirement of mortgage debt may not be entirely sufficient for such purposes. Accordingly, all persons are advised to consult with their own insurance providers as to what supplemental coverage may be available under their own policies to mitigate any impact of a shortage of proceeds for Association policies.

14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units.

14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.

14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida or one or more of the Directors or Officers of the Homeowners Association. The Insurance Trustee shall not

be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

(a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units or their terraces, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.

(b) Optional Property. Proceeds on account of damage solely to Units or their terraces and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

(c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

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

(a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.

(b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.

(c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be

reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

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

14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner arising from occurrences within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association. The foregoing shall also apply to patios of Units, and other Limited Common Elements.

14.9 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

14.10 Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

15. Reconstruction or Repair After Fire or Other Casualty.

15.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If 75% or more of the Insured Property is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lien or, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

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

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

15.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or

reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

(a) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than $500,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

(ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than $500,000.00, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

(iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured) , or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated,

(iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the

reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

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

15.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments shall be in proportion to all of the Owners' respective shares in the Common Elements. In the event of insufficient proceeds of insurance on Optional Property, the shortage shall be the individual responsibility of the Owners thereof.

15.5 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

16. Condemnation.

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

16.2 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.

16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.

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

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

(b) Distribution of Surplus. The balance of the award in respect of the Unit or its Limited Common Elements, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.

(c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

(i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and

(ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit. No Limited Common Elements shall be used in the aforesaid calculations.

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

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

(b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

(c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:

(i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof (the "Percentage Balance"); and

(ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 16.4(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 Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against

all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effective by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

(e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

16.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

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

17. 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:

17.1 Occupancy. Each Unit shall be used as a residence only, except as otherwise herein expressly provided and permitted by the ordinances of the City of Flagler Beach. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families, provided that the Unit Owner or other permitted occupant must reside with his/her family: (i) the individual Unit Owner, (ii) an officer, director, stockholder, employee or designee of such corporation, (iii) a partner, employee or designee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary,

or (v) permitted occupants under an approved lease or sublease of the Unit (as described below) , as the case may be. Occupants of an approved leased or subleased Unit must be the following persons, and such persons' families who reside with them: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder, employee or designee of a corporate lessee or sublessee, (iii) a partner, employee or designee of a partnership lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee. The provisions of this subsection 17.1 shall not be applicable to Units used by the Developer for model apartments, guest accommodations, sales or other offices or management services.

As used herein, "family" or words of similar import shall be deemed to include a spouse, children, parents, brothers, sisters, grandchildren and other persons permanently cohabiting the Unit as or together with the Owner or permitted occupant thereof. As used herein, "guest" or words of similar import shall include only those persons who have a principal residence other than the Unit. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Section 17 and the Board of Directors of the Association shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

17.2 Occupancy and Use Restrictions.

(a) All the Condominium Units shall be used for single family residences only. No separate part of a Condominium Unit may be rented, and no "transient" (as defined in Chapter 509, Florida Statutes) may be accommodated therein. No trade, business, profession or other type of commercial activity may be conducted in any Condominium Unit.

(b) If legal title to a Condominium Unit is in the name of a corporation, trust, partnership or other than an individual or individuals, the Condominium Unit Owner, by certificate delivered to the Secretary of the Association, shall designate one (1) family or person as the authorized occupant of the Condominium Unit. Except for the designated family or person, no other occupant may occupy the Condominium Unit.

(c) Leases and Tenants.

(i) Application. This Declaration and the Condominium Documents shall apply not only to Condominium Unit Owners, but also to any lessee or tenant or the party who is occupying a Condominium Unit by way of lease express or implied, license or invitation.

(ii) Leasing Requirements and Limitations. Each time a Condominium Unit Owner leases his Unit, he shall give written notice of such lease to the Association together with the name and address of 1the lessee and such other information as the Association may reasonably require on forms that are supplied by the Association. No Condominium Unit Owner may lease his Condominium Unit for a term of less than one (1) month.

(iii) Failure to Notify. Failure of a Condominium Unit Owner to notify any person of the existence of the provisions of this Declaration shall not in any way act to limit the right of the Association to enforcement of the provisions of this Declaration against such person.

(iv) Enforcement. The Association may enforce the provisions of this Declaration against any person occupying a Condominium Unit whether Condominium Unit Owner, lessee, tenant, invitee, guest or other person. Further, each Condominium Unit Owner hereby irrevocably delegates to the Association the power for the Association to enforce any provisions of any lease or license or other agreement permitting occupancy of the Condominium Unit to the extent it may against an Owner, and the power to evict a tenant as set forth in the Florida Statutes. The right of enforcement includes the right to evict such lessee, tenant, invitee, guest or other such person pursuant to Florida Statutes, in the event any such person violates any of the provisions of this Declaration. Declarant shall be entitled to all costs thereof including, but not limited to, attorneys' fees.

(v) Right to Use Facilities. During any period when a Condominium Unit Owner has leased his Condominium Unit or otherwise permitted his Condominium Unit to be occupied only by someone other than the Condominium Unit Owner, such Condominium Unit Owner's right to use any recreational facilities otherwise available to Condominium Unit Owners shall be suspended.

(d) A Condominium Unit Owner shall not permit or suffer anything to be done or kept in his Condominium Unit which will increase the insurance rates on his Condominium Unit, the Common Elements or the Common Area or which will obstruct or interfere with the rights of other Condominium Unit Owners or the Association. No Condominium Unit Owner shall annoy other Condominium Unit Owners by unreasonable noises or otherwise, nor shall any Condominium Unit Owner commit or permit to be committed any nuisance or illegal act in his Condominium Unit, on the Common Elements or the Common Area.

(e) No Condominium Unit Owner shall display any sign, advertisement or notice of any type in any window or on the exterior of his Condominium Unit or on the Common Elements, and no Condominium Unit Owner shall erect any exterior antennas, aerials, or wires or cables of any kind upon or protruding from his Condominium Unit or the Common Elements.

(f) A Condominium Unit Owner shall be permitted to keep or harbor in his Condominium Unit no more than two (2) dogs or cats, subject to the provisions immediately following: such dog or cat must be walked only in areas designated for such purpose, provided that such dog or cat is leashed whenever outside the Condominium Unit. Any Condominium Unit Owner having a dog or cat shall also abide by any Rules promulgated by the Board of Directors regarding pets. Violation of this paragraph or of any of said rules may result in the termination of Condominium Unit Owner's right to keep such dog or cat. No other animals, livestock, or poultry, shall be permitted anywhere on the Condominium Property. The foregoing restrictions shall not apply to Seeing Eye dogs or Primate (cebus) guides to the extent required by Florida law.

(g) No Condominium Unit Owner shall install any storm shutters, awnings, hardware or the like without the prior written approval of the Board of Administration, as set forth in the Master Declaration, as to design and specification and color and, in any event, Board of Administration approval shall not be granted unless such items substantially conform to the architectural design of the Condominium and the design of any such items which have been previously installed at the time Board of Administration approval is requested.

(h) No clothesline or other similar device shall be allowed on any portion of the Condominium Property.

(i) The Limited Common Element parking area of each Building is intended solely for access to and from the Units in the Building served by the parking area. Accordingly,

(i) No car or other obstruction may be placed in any parking area or other area which inhibits access to the Units.

(ii) No item including, by way of illustration and not limitation, bicycles, golf carts, toys, lawn furniture, children's pools, barbecue grills or trash containers may be stored or left overnight in the parking area or the balcony or patio of any Condominium Unit. All storage of property on the Condominium Property must be within the Condominium Units.

(iii) The parking areas may not be used as a recreation or play area by any person.

(iv) The parking area may not be used for repair of motor vehicles, except emergency repairs, or for washing of motor vehicles.

(j) The Board of Directors shall, from time to time, promulgate reasonable Rules with respect to the Condominium as it determines to be in the best interests of the Condominium and the Condominium Unit Owners including, but not limited to, reasonable restrictions on occupancy.

(k) To the extent not prohibited by Florida law, this Article XIII shall not apply to Declarant for so long as Declarant shall own any Condominium Unit.

17.3 Pets. Each Unit Owner or occupant (regardless of the number of joint owners or occupants) may maintain no more than two (2) household pets in his or her Unit, to be limited to dog(s) or cat(s) with a total combined weight of not more than forty (40) pounds at maturity (or other household pet defined as such and specifically permitted by the Board of Directors of the Association), provided it is not kept, bred or maintained for any commercial purpose, does not become a nuisance or annoyance to neighbors and is first registered with the Association. No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). There are no pet walk area on the Condominium Property. Unit Owners must pick-up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be kept on a leash no more than six (6) feet in length at all times when outside the Unit. No pets may be kept in/on patios when the Owner is not in the Unit. Without limiting the generality of Section 19 hereof, violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. This Section 17.3 shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that a bird(s) is not kept on Limited Common Elements and does not become a nuisance or annoyance to neighbors. Notwithstanding any of the foregoing, however, neither this Section 17.3, any other provision of this Declaration nor any rule or regulation of the Association shall be enforced, adopted or amended so as to prohibit or unlawfully

restrict any right of the Owner or occupant of a Unit to keep and use a seeing eye dog or other assistive animal for purposes provided for in any local, state or federal law, statute or ordinance protecting the applicable person's right to do so.

17.4 Alterations. Without limiting the generality of Section 9.1 hereof, but subject to the proviso contained therein as to hurricane shutters, and subject to Section 10 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto or Common Elements, including, but not limited to–installing any electrical wiring, television or radio antenna, machinery, or additional air conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Board of Directors of the Association (in the manner specified in section 9.1 hereof). Approval of the Board of Directors of the Association shall not be required for repainting, re-carpeting a previously carpeted area, or otherwise redecorating the interior of a Unit provided the same complies with all other terms and conditions of this Declaration.

17.5 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.

17.6 Nuisances. No nuisances (as reasonably determined by the Board of Directors of the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of unreasonable 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.

17.7 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 over the same shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over the same, 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 17.7. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.

17.8 Exterior Improvements; Landscaping. Without limiting the generality of sections 9.1 or 17.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, terraces or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), or on the interior side thereof so as to be visible to the exterior, without the prior written

consent of the Board of Directors of the Association except for respectfully displaying a United States Flag. Specifically, no "For Rent", "For Sale" or any other sign shall be displayed or exposed to view by a Unit Owner or other occupant without the consent of the Association. To insure a uniform appearance on the exterior of the Building, all window coverings, including, but not limited to verticals, shades, sheers, curtains, drapes, miniblinds and venetian blinds shall be faced on the exterior with white material approved by the Association. The furnishings and decorations which Unit Owners may place in, on or about the terraces may be subject to such additional rules and regulations as the Board of Directors of the Association may adopt from time to time.

17.9 Commercial/Recreational Vehicles and Trailers. Except as permitted below, no commercial vehicles, campers, mobile homes, recreational vehicles or boat or other trailers shall be kept on the Condominium Property exterior parking areas or within covered parking spaces. For purposes of the foregoing, "commercial vehicles" shall mean those not designed or used for customary personal/family purposes. In general, vehicles shall have no more than four (4) wheels, two (2) axles, and be no longer than 17 1/2 feet. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether same is a commercial vehicle. The foregoing shall not prohibit, however, (i) the parking of otherwise prohibited vehicles on the Condominium Property in the course of providing services to the Condominium Property, the occupants thereof or the Association or (ii) vans with windows which contain seating for at least four (4) persons, provided that such vans and trucks shall not bear commercial-type lettering or graphics. All vehicles kept on the Condominium Property shall be operational and in good condition. In the event of doubt or dispute as to whether a vehicle is prohibited by this Section, the good-faith determination of the Board of Directors shall be binding and conclusive.

17.10 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 17 for good cause shown.

17.11 Changes in Permitted Uses. No amendments to this Section 17, any other provision of this Declaration governing the use of Units or the Common Elements or to any Rules and Regulations of the Association shall operate to prohibit the keeping of a pet, parking of a vehicle or leasing or occupancy of a Unit where same was (i) permitted prior to the effectiveness of the amendment, (ii) being conducted in reliance on such permissibility and (iii) is continuing with the same pet, vehicle, lessee or occupant as existed prior to the effectiveness of the amendment. Likewise, no improvement made to or about any Unit (e.g., the installation of hurricane shutters) which was permitted at the time of its making shall be required to be removed by virtue of a change in the permissibility of such types of improvements.

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 Enforcement.

(a) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days. The hearing shall be held before a committee of other Unit Owners appointed by the Board of Directors of the Association. If the committee does not agree with the fine, the fine may not be levied. The notice shall include:

(i) A statement of the date, time and place of the hearing.

(ii) A statement of the provisions of the Declaration, Association By-laws or Association rules which have allegedly been violated; and

(iii) A short and plain statement of the matters asserted by the Association.

(b) The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association.

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

18.3 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 or to sue in a court of law for damages.

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, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).

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, this Declaration, the exhibits annexed

hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

19. **Termination of Condominium**. The Condominium shall continue (unless earlier terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration) for a term of thirty (30) years from the date this Declaration is recorded, after which time the covenants and restrictions contained in this Declaration shall be automatically extended for successive periods of ten (10) years, unless prior to the end of such thirty (30) year period or prior to the end of any successive ten (10) year period, an instrument is duly executed by all of the Unit Owners and by all record owners of first mortgages on the Units agreeing to terminate the covenants and restrictions herein contained at the end of such period of time, which duly executed instrument shall be recorded in the public records of Flagler County, Florida. In the event the Board of Directors intends to terminate the Condominium, notice must be provided to the Department of Business & Professional Regulations, Division of Florida Land Sales, Condominiums and Mobile Homes of such intent before taking any action to terminate the Condominium. In said event, all easements and easement rights herein contained shall not be terminated, but shall continue in perpetuity although the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County. The Association shall notify the Florida Department of Business & Professional Regulations, Division of Florida Land Sales, Condominiums and Mobile Homes within thirty (30) working days of such termination, which notice shall include the date the certificate was recorded, the county where it was recorded and the official records book and page number, and a copy of the recorded termination notice certified by the Clerk of Court.

This Section 20 may not be amended without the affirmative vote of Unit Owners owning not less than 80% of the Units.

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

20.1 Institutional First Mortgagees shall have the right, upon written request to the Association, to: (i) examine the condominium documents and the Association's books and records, (ii) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (iii) receive notices of and attend Association meetings, (iv) receive notice of an alleged default in any obligations hereunder by any Unit Owner, on whose Unit such mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to the Unit Owner, and (v) receive notice of any substantial damage or loss to any portion of the Condominium Property.

20.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the condominium Property or the affected mortgaged Unit, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (iv) any proposed termination of the Condominium, and (v) any proposed action which requires the consent of a specified number of mortgage holders.

21. **Covenant Running With the Land**. All provisions of this Declaration, the Articles, By-Laws 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 Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, 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. **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.

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 (1) address which the Developer initially identifies for that purpose and thereafter as one (1) 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 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel 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.

23.3 Mortgagees. Anything herein to the contrary notwithstanding (except as provided in Section 13.5 hereof) the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.

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

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

23.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto

or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

23.7 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 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.

23.8 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.

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

23.10 Execution of Documents; Attorney-In-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium Property as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This Power of Attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.

23.11 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

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

24. Rights of Developer. In addition to the rights which the Developer has by common law and pursuant to the Act, the Developer shall have the following rights:

24.1 Developer Control. Except as hereafter provided, the Developer shall have the right to appoint all of the members of the Board of Directors of the Association until Unit Owners other than Developer own 15% or more of the Units that will ultimately be operated by the Association. When Unit Owners other than the Developer own 15% or more of the Units

that will ultimately be operated by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than 1/3 of the members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors: (a) three years after 50% of the Units that will ultimately be operated by the Association have been conveyed to purchasers; (b) three months after 90% of the Units that will ultimately be operated by the Association have been conveyed to purchasers; (c) when all of the Units that will ultimately be operated by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by Developer in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by Developer in the ordinary course of business; or (e) seven years after the date the Declaration is recorded, whichever occurs first. Developer is entitled (but not obligated) to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business 5% of the Units that will ultimately be operated by the Association. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer owned Units in the same manner as any other Unit Owner except for purposes of reacquiring control of the Association or selecting the majority members of the Board.

24.2 Easements. Until such time as Developer has completed all of the contemplated improvements and sold all of the Units that will ultimately be contained within the Condominium Property, easements, including but not limited to ingress and egress, are hereby reserved and shall exist through and over the Condominium Property as may be required, convenient, or desired by Developer for the completion of the contemplated improvements and the marketing and sale of said Units. Neither the Unit Owners or the Association, nor their use of the Condominium Property shall interfere in any way with such completion and sale.

24.3 Sale of Units. The Developer shall have the right to transact any business necessary to consummate the sale of Units, including but not limited to, the right to install and maintain a sales office and advertising on the Condominium Property, use the Common Elements and, notwithstanding anything to the contrary contained herein, the Developer may maintain and use sales offices, promotion and development offices, models and Units retained by the Developer, or owned by the Developer, or the use of which has been reserved to the Developer in this Declaration or by contract or otherwise lawfully enforceable as a contract obligation by the Developer against the Association or any of the Unit Owners other than the Developer, so long as such use shall also conform with applicable laws, zoning, rules and ordinances of the appropriate governmental jurisdictions. Specifically, Developer shall have the right to use Units owned by the Developer as motel units for the purpose of housing guests and prospective purchasers of the Condominium Property for promotion and sales purposes, without limitation as to duration of stay or number of guests.

24.4 No Board Action Without Developer's Consent. During the period that Developer holds any Units for sale in the ordinary course of business none of the following actions may be taken by the Association, either through an act of its Board of Directors or as membership, without the Developers approval in writing:

(a) Assessment of the Developer as Unit Owner for Capital Improvements;

(b) Any action by the Association that would be detrimental to the sale of Units by the Developer; however an increase in assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units for the purpose of this paragraph.

24.5 Developer's Rights With Respect To Common Elements. The Developer reserves every right necessary or desirable relative to the Common Elements and the Condominium Property in general for the following purposes:

(a) Furnishing of the Condominium Property;

(b) The sale or mortgage of the Condominium Units; and

24.6 Sale Subject To A Lease. The Developer does not propose a program of leasing Units but does reserve the right to lease any individual Unit at its discretion prior to the sale of the Unit; provided that any lease shall have a term not to exceed twelve (12) months and shall terminate prior to conveyance of title by the Developer to the purchaser of the leased Unit, unless the Developer and such purchaser shall otherwise agree, in writing, to convey subject to any such lease.

25. Surface Water or Stormwater Management System.

(a) It shall be the responsibility of the Declarant to comply with the construction plans for the surface water management system pursuant to Chapter 40C-42, Florida Administrative Code, approved and on file with the St. Johns River Water Management District (SJRWMD).

(b) SJRWMD Enforcement. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system.

(c) Amendments Affecting SJRWMD Provisions. Any amendment to this Declaration which alters the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the Common Area, must have the prior approval of the St. Johns River Water Management District.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 27 day February, 2004.

Signed, sealed and delivered
in the presence of:

Michele R. Hurd
MICHELE R. HURD
Printed Name:

Wendy Hysell
Wendy Hysell
Printed Name:

WATERSIDE PROPERTIES, LLC
a Florida Limited Liability Company

By _____
Printed Name: JERRY THIBOS
Title: Member

STATE OF FLORIDA

COUNTY OF FLAGLER

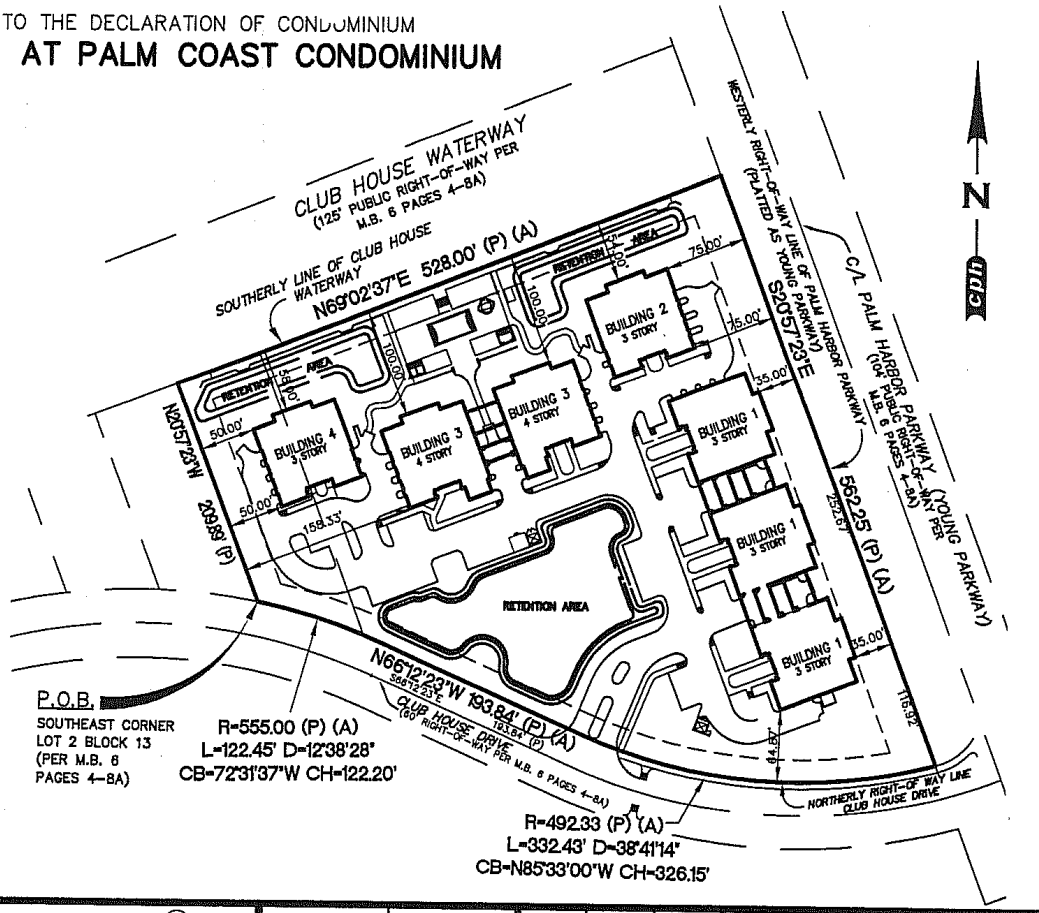
The foregoing Declaration was acknowledged before me this 27 day of February, 2004, by Jerry Thibos, as Member of Waterside Properties, LLC., a Florida limited liability company. He is personally known to me or provided _____ as identification.

Michele R. Hurd
MY COMMISSION # DD041339 EXPIRES
July 17, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

Michele R. Hurd
Printed Name:
Notary Public - State of Florida
My Commission Expires:
My Commission No:
[NOTARIAL SEAL]

EXHIBIT TO THE DECLARATION OF CONDOMINIUM

WATERSIDE, AT PALM COAST CONDOMINIUM



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www.cphengineers.com
500 West Fulton Street, Sanford, Fl. 32771 P.O. Box 2808, Sanford, Fl. 32772-2808
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Scale:	N/A
Date:	NOV 2002
Job No.	C7301.2
File:	C7301CONDO
SHEET 3 OF 24	

REVISION	BY	DATE

Activity	Name	Date
Date of Field Survey		
Drawn by:	R.A.N.	11/02
Checked by:	T.J.G.	
Approved by:	W.C.E.	

Certificate of Authorization No. 7143