

Prepared by and Return to:  
Karen S. Harkness, Esq.  
96 Willard Street, Suite 302  
Cocoa, Florida 32922



CFN:2004370154 11-24-2004 12:43 pm  
OR Book/Page: 5388 / 2563

**AMENDED AND RESTATED DECLARATION  
OF CONDOMINIUM OF ISLAND POINTE, A CONDOMINIUM**

THIS AMENDED AND RESTATED DECLARATION OF ISLAND POINTE, A CONDOMINIUM AMENDS AND RESTATES THAT CERTAIN DECLARATION OF CONDOMINIUM OF ISLAND POINTE, A CONDOMINIUM, RECORDED ON OCTOBER 21, 2004 IN OFFICIAL RECORD BOOK 5374, PAGE 2577 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN ITS ENTIRETY.

**Scott Ellis**  
Clerk Of Courts, Brevard County  
#Pgs: 94 #Names: 2  
Trust: 47.50 Rec: 753.00 Serv: 0.00  
Dad: 0.00 Excise: 0.00  
Mtg: 0.00 Int Tax: 0.00

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This instrument prepared by and return to:  
KAREN S. HARKNESS, ESQ.  
Amari & Theriac, P.A.  
96 Willard Street, Suite 302  
Cocoa, Florida 32922



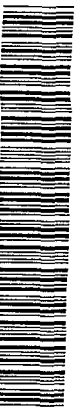
CFN:2004370154  
OR Book/Page: 5388 / 2564

**INDEX TO AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**  
**OF**  
**ISLAND POINTE, A CONDOMINIUM**

	<u>PAGE</u>
I. ESTABLISHMENT OF CONDOMINIUM	2
II. SURVEY AND DESCRIPTION OF IMPROVEMENTS	3
III. OWNERSHIP OF UNITS AND APPURTENANT SHARE IN COMMON ELEMENTS AND COMMON SURPLUS, AND SHARE OF COMMON EXPENSES	8
IV. UNIT BOUNDARIES, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS	9
V. ADMINISTRATION OF CONDOMINIUM BY CONDOMINIUM ASSOCIATION, INC.	10
VI. MEMBERSHIP AND VOTING RIGHTS	10
VII. COMMON EXPENSES, ASSESSMENTS, COLLECTION, LIEN AND ENFORCEMENT LIMITATIONS	11
VIII. INSURANCE COVERAGE, USE AND DISTRIBUTION OF PROCEEDS, REPAIR OR RECONSTRUCTION AFTER CASUALTY CONDEMNATION	14
IX. RESPONSIBILITY FOR MAINTENANCE AND REPAIRS	19
X. USE RESTRICTIONS	21
XI. LIMITATIONS UPON RIGHT OF OWNER TO ALTER OR MODIFY UNIT	24
XII. ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY ASSOCIATION	25
XIII. AMENDMENT OF DECLARATION	25
XIV. TERMINATION OF CONDOMINIUM	27
XV. ENCROACHMENTS	28
XVI. ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES	28
XVII. ESCROW FOR INSURANCE PREMIUMS	28
XVIII. REAL PROPERTY TAXES DURING INITIAL YEAR OF CONDOMINIUM	29
XIX. RESPONSIBILITY OF UNIT OWNERS	29
XX. WAIVER	29
XXI. CONSTRUCTION	29
XXII. GENDER	30
XXIII. CAPTIONS	30
XXIV. REMEDIES FOR VIOLATIONS	30
XXV. TIMESHARE RESERVATION	30
XXVI. FINES	30
XXVII. SIGNAGE	31
XXVIII. INSTITUTIONAL MORTGAGEE	31
XXIX. RIGHTS RESERVED UNTO INSTITUTIONAL MORTGAGEES	31
XXX. NOTICE TO INSTITUTIONAL MORTGAGEES	31
XXXI. CABLE TV AND SATELLITE DISH	32
XXXII. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT	32
XXXIII. ASSOCIATION MAINTENANCE STANDARDS	34
XXXIV. CONSERVATION EASEMENT	35
XXXV. MARINAS	37
XXXVI. ACCESS TO CONDOMINIUM	38
XXXVII. MOLD AND MILDEW AWARENESS AND PREVENTION	38
XXXVIII. MANDATORY NONBINDING ARBITRATION AND MEDIATION OF DISPUTES	39

**EXHIBIT 1 TO THE PROSPECTUS**  
**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**  
**OF**  
**ISLAND POINTE, A CONDOMINIUM**

CFN 2004370154  
OR Book/Page: 5388 / 2565



TOWNE DEVELOPMENT OF ISLAND POINTE, INC., a Florida corporation (hereinafter called "Developer"), does hereby make, declare, and establish this Amended and Restated Declaration of Condominium (hereinafter sometimes called "this Declaration"), as and for a plan of condominium Unit Ownership for ISLAND POINTE, A CONDOMINIUM (hereinafter, the "Condominium"), consisting of real property and improvements thereon as hereinafter described.

All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall rule perpetually unless terminated as provided herein and shall be binding upon all parties or persons subsequently owning property in said Condominium, and in consideration of receiving and by acceptance of a conveyance, grant, devise, lease, or mortgage, all grantees, devisees, leasees, and assigns and all parties claiming by, through or under such persons, agree to be bound by all provisions hereof. Both the burdens imposed and the benefits shall run with each unit and the interests in the common property as herein defined.

**I**

**ESTABLISHMENT OF CONDOMINIUM**

Developer is the owner of the fee simple title to that certain real property situated in Merritt Island, County of Brevard, and State of Florida, which property is more particularly described as follows; to-wit:

SEE SHEET 2 OF EXHIBIT "A" ATTACHED HERETO AND INCORPORATED  
HEREIN BY REFERENCE AND MADE A PART HEREOF FOR LEGAL  
DESCRIPTION

The Condominium consists of one (1) building containing a total of forty-nine (49) residential units and other appurtenant improvements as hereinafter described. Building 1A is an eight (8) story building containing forty-nine (49) units and forty-nine (49) enclosed garage parking spaces. In addition, there are eighty-four (84) parking spaces located on the Condominium property. The enclosed garage parking spaces are located on the first floor. Floors 2 through 8 inclusive, each contain seven (7) units per floor. There are fourteen (14) Type "A" units, each of which has three (3) bedrooms, two (2) baths and contains approximately 2,916 square feet, including balconies. There are twenty-eight (28) Type "B" units, each of which have three (3) bedrooms, two (2) baths and contains approximately 2,304 square feet, including balconies. There are seven (7) Type "C" units each of which has three (3) bedrooms, two (2) baths and contains approximately 2,366 square feet, including balconies. The graphic description of each floor is shown on Sheets 6 through 13 inclusive, of Exhibit A to this Declaration. Developer reserves the right to designate the garages for the exclusive use of the unit owner ("Unit Owner"), and upon such designation, the garages shall become limited common elements. For legal description, survey and plot plan of the Condominium, see Exhibit "A" to this Declaration. Developer estimates Phase IA of the Condominium will be completed on or before February 28, 2005.

The provisions of the Florida Condominium Act are hereby adopted herein by express reference and shall govern the Condominium and the rights, duties and responsibilities of Unit Owners hereof, except where permissive variances therefrom appear in this Declaration, the By-Laws and the Articles of Incorporation of ISLAND POINTE CONDOMINIUM ASSOCIATION OF MERRITT ISLAND, INC., a Florida not for profit corporation (the "Association").

The definitions contained in the Florida Condominium Act shall be the definition of like terms as used in this Declaration and exhibits hereto unless other definitions are specifically set forth.

## II

### SURVEY AND DESCRIPTION OF IMPROVEMENTS

A. Attached hereto and made a part hereof, and marked Exhibit "A" consisting of sixteen (16) pages and Exhibit "B", consisting of eight (8) pages, are boundary surveys of the entire premises of which Subphases IA, IB, and IC of Phase I and Phase II are a part, boundary survey of each phase, a graphic plot plan of the overall planned improvements, and graphic descriptions of the improvements in which units are located, and plot plans thereof, identifying the units, the common elements and the limited common elements, and their respective locations and dimensions.

Said surveys, graphic descriptions and plot plans were prepared by:

Allen Engineering, Inc.  
By: Robert M. Salmon  
Professional Land Surveyor  
No. 4262, State of Florida



CFN: 2004370154  
OR Book/Page: 5388 / 2566

and have been certified in the manner required by the Florida Condominium Act. Each unit is identified and designated by a specific number. No unit bears the same numerical designation as any other unit. The specific numbers identifying each unit are listed on Sheets 7 through 13 of Exhibit "A" attached to this Declaration.

The units to be located on the lands described in Exhibit "B", contemplated as constituting all phases, are not substantially completed but are merely proposed. The time period within which the units must be completed is within twenty-four (24) months from the date of recording this Declaration. All phases must be added to the Condominium within seven (7) years from the date of recording of this Declaration. Developer is not obligated to construct any phases other than Subphase IA of Phase I.

Without the consent of any Unit Owner, Developer, or its successor in title to all or any portion of Subphase IB of Phase I shown on the plans referred to in the exhibits hereto, may at any time amend this Declaration so as to subject to the provisions of the Florida Condominium Act, all of said Subphase IB of Phase I on which will be constructed the Subphase IB of Phase I improvements identified in the exhibits hereto, and from and after the recording of such amendment or amendments, the Condominium shall include Subphase IA of Phase I.

Without the consent of any Unit Owner, Developer, or its successor in title to all or any portion of Subphase IC of Phase I shown on the plans referred to in the exhibits hereto, may at any time amend this Declaration so as to subject to the provisions of the Florida Condominium Act, all of said Subphase IC of Phase I on which will be constructed the Subphase IC of Phase I improvements identified in the exhibits hereto, and from and after the recording of such amendment or amendments, the Condominium shall include Subphase IC of Phase I.

Without the consent of any Unit Owner, Developer, or its successor in title to all or any portion of Phase II shown on the plans referred to in the exhibits hereto, may at any time amend this Declaration so as to subject to the provisions of the Florida Condominium Act, all of said Phase II on which will be constructed the Phase II improvements identified in the exhibits hereto, and from and after the recording of such amendment or amendments, the Condominium shall include Phase II.

The above described phases may be added to the Condominium in any order, in Developer's sole discretion.

Developer intends to construct a maximum of 187 units if all phases are added to the Condominium.

Developer, or any successor in title, shall have the right, prior to the execution and recording of the respective amendments, to change the size, layout and location, and to make non-material changes in the legal description of a phase. No amendment shall be effective until recorded in the Public Records of Brevard County.

**BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE CONDOMINIUM.**

Developer's current plan is to construct one residential building in each of the Subphases of Phase I and in Phase II. The maximum number of Residential buildings in any future subphase or phase is six (6) and the minimum number of Residential buildings is one (1). Residential buildings and units which may be added to the Condominium may be substantially different from the buildings and units in Subphase IA of Phase I of the Condominium. Developer may alter the size, location and layout of any unit in Subphases IB or IC of Phase I or Phase II, inclusive of the Condominium. The minimum size of any unit shall be 600 square feet, including patios or balconies and the maximum size of any unit shall be 6000 square feet, including patios or balconies, in Subphases IB and IC of Phase I, and Phase II. The maximum number of bedrooms in a unit is six (6) and the minimum number is one (1). The maximum number of bathrooms in a unit is six (6) and the minimum number is one (1). Each of these buildings will contain a minimum of one (1) residential floor, although each building may contain more residential floors depending upon the number of units and the type of units Developer may build. Developer has no obligation to construct or add Subphases IB or IC of Phase I or Phase II to the Condominium.

Each unit's percentage ownership in the common elements as each phase is added is determined by a fraction, the numerator of which is one and the denominator of which is the total number of units submitted to the Condominium. This fraction will determine each unit's proportion of ownership in the common elements, manner of sharing common expenses and ownership of the common surplus as additional units are added to the Condominium by the addition of additional phases, if any.

The maximum and minimum number of units in Subphase IA of Phase I is forty-nine (49) units. In each of Subphase IA, IB and IC of Phase I and Phase II, the maximum number of units is eighty (80) units and the minimum number of units is ten (10).

Unless and until a further amendment to this Declaration is recorded adding to the Condominium another phase, each Subphase IA of Phase I Unit Owner will own an undivided one forty-ninth ( $1/49$ ) share in the common elements. Assuming all phases (and subphases) are added to the Condominium, the phases (and subphases) are added in order, and the maximum number of units are added in each phase then the following statements will be true. If Subphase IB of Phase I is added to the Condominium, each Unit Owner in Subphases IA and IB in Phase I will own an undivided one-eighty-third ( $1/83$ ) share in the common elements. If Subphase IC of Phase I is added to the Condominium, each Unit Owner in Subphases IA, IB and IC of Phase I will own an undivided one hundred-seventh ( $1/107$ ) share in the common elements. If Phase II is added to the Condominium, each Unit Owner in Subphases IA, IB and IC of Phase I and Phase II will own an undivided one hundred eighty-seventh ( $1/187$ ) share in the common elements. Developer may add the Phases (and Subphases) to the Condominium in any order that it elects in its sole discretion.

Initially, there shall be a total of forty-nine (49) votes to be cast by the Unit Owners. Assuming all phases and subphases are added to the Condominium, the phases and subphases are added in order, and the maximum number of units are added in each phase (or subphase) then the following statements will be true. If Subphase IB of Phase I is added to the Condominium, there shall be a total of eighty-three (83) votes to be cast by the Unit Owners. If Subphase IC of Phase I is added to the Condominium, there shall be a total of



one hundred-seven (107) votes to be cast by the Unit Owners. If Phase II is added to the Condominium, there shall be a total of one hundred eighty-seven (187) votes to be cast by the Unit Owners. Each Unit Owner shall be entitled to cast one (1) vote as provided in Article VI of this Declaration. If Subphases IB and IC of Phase I or Phase II are not added as a part of the Condominium, the membership vote and ownership in the Association shall not be changed by the failure of Developer to add an additional phase, (or subphases) but shall be as provided in this paragraph. The recreational areas and facilities are described in Exhibits A and B attached hereto. See the Prospectus for a description of these areas and facilities. Developer reserves the right to expand or add to the recreational facilities without the consent of the Unit Owners or the Association. Timeshare estates shall not be created with respect to units in any phase.

B.

(1) Developer does hereby establish and create for the benefit of each of Subphases IB and IC of Phase I and Phase II, inclusive, and does hereby give, grant and convey to each and every individual and business, or other entity hereafter owning any portion of Subphases IB and IC of Phase I and Phase II, inclusive, the following easements, licenses, rights and privileges:

(a) Right-of-way for ingress and egress, by vehicle or on foot, in, to, upon over and under the streets, driveways and walks in Subphase IA of Phase I (as shown on Sheet 1 of Exhibit "A" annexed hereto and as they may be built or relocated in the future), between the roadway bounding the Condominium and Subphases IB and IC of Phase I and Phase II, inclusive, for all purposes for which streets, driveways and walks are commonly used, including the transportation of construction materials for use in Subphases IB and IC of Phase I and Phase II, inclusive, and the Association shall maintain and repair all streets, driveways and walks in Subphase IA of Phase I.

(b) Rights to connect with, make use of underground utility lines, pipes, conduits, sewers and drainage lines which may from time to time exist in Subphase IA of Phase I (as the same may be from time to time relocated) all of which shall be maintained and repaired by the Association.

(c) The right to make use of such recreational facilities that are located in Subphase IA of Phase I (and Phase II, if constructed) non-exclusively with the owners from time to time of Subphases IA, IB and IC of Phase I and Phase II, inclusive, or any parts thereof, their tenants, and the immediate families of such tenants and their guests, who are residents in occupancy of units in Subphases IA, IB and IC of Phase I and Phase II, inclusive.

(2) The easements, licenses, rights and privileges established, created and granted by the provisions of this subparagraph B, shall be for the benefit of and restricted solely to the owners from time to time of Subphases IB and IC of Phase I and Phase II, or any parts thereof, their tenants, and the immediate families of such tenants and their guests who are residents in occupancy of units in Subphases IB and IC of Phase I and Phase II for the duration of their tenancies; but the same is not intended, nor shall it be construed as creating any rights in or for the benefit of the general public or any rights in or to any portion of Subphase IA of Phase I other than the driveways, walks, parking spaces, utility and drainage lines, sewers, conduits, wires and pipes.

(3) Subject to the provisions of Subparagraph IIC.(2) below, the Subphase IA of Phase I Unit Owners, and each of them, for themselves, their heirs, administrators, executors, successors and assigns (and/or the Association) shall through the Association, maintain and repair, at their sole cost and expense, those



portions of Subphase IA of Phase I which are subject to the easements, licenses, rights and privileges described in this subparagraph B. to this Declaration.

C.

(1) Developer does hereby establish and create, and does hereby give, grant and convey to each and every individual and business, or other entity hereafter owning any portion of Subphases IA, IB and IC of Phase I and Phase II, inclusive, those easements, licenses, rights and privileges, as are applicable to Subphases IA, IB and IC of Phase I and Phase II as follows:

(a) As appurtenant to and benefiting Subphase IA of Phase I.

(i) Right-of-way for ingress and egress, by vehicle or on foot in, to, upon, over and under the streets, driveways and walks in Subphases IB and IC of Phase I and Phase II, inclusive, when constructed (and as they may be built or relocated in the future), for all purposes for which streets, driveways and walks are commonly used; and

(ii) Rights to connect with, make use of underground utility lines, pipes, conduits, sewers and drainage lines which may from time to time exist in Subphases IB and IC of Phase I and Phase II, inclusive (as the same may be from time to time relocated); and

(b) As appurtenant to and benefiting Subphase IB of Phase I.

(i) Right-of-way for ingress and egress, by vehicle or on foot in, to, upon, over and under the streets, driveways and walks in Subphases IA and IC of Phase I and Phase II, inclusive, when constructed (and as they may be built or relocated in the future), for all purposes for which streets, driveways and walks are commonly used; and

(ii) Rights to connect with, make use of underground utility lines, pipes, conduits, sewers and drainage lines which may from time to time exist in Subphase IA and IC of Phase I and Phase II, inclusive (as the same may be from time to time relocated).

(c) As appurtenant to and benefiting Subphase IC of Phase I.

(i) Right-of-way for ingress and egress, by vehicle or on foot in, to, upon, over and under the streets, driveways and walks in Subphases IA and IB of Phase I and Phase II, inclusive, when constructed (and as they may be built or relocated in the future), for all purposes for which streets, driveways and walks are commonly used; and

(ii) Rights to connect with, make use of underground utility lines, pipes, conduits, sewers and drainage lines which may from time to time exist in Subphases IA and IB of Phase I and Phase II, inclusive (as the same may be from time to time relocated).

(d) As appurtenant to and benefiting Phase II.

(i) Right-of-way for ingress and egress, by vehicle or on foot in, to, upon, over and under the streets, driveways and walks in Subphases IA, IB and IC of Phase I when constructed (and as they may be built or relocated in the future), for all purposes for which streets, driveways and walks are commonly used; and



(ii) Rights to connect with, make use of underground utility lines, pipes, conduits, sewers and drainage lines which may from time to time exist in Subphases IA, IB and IC of Phase I (as the same may be from time to time relocated).

The Association shall maintain and repair the streets, driveways, walks, underground utility lines, pipes, conduits, sewers, drainage lines and the recreational facilities located in the common elements. The owners of phase land not added to the Condominium shall have a right to enforce the duty of the Association to maintain and repair such facilities as described herein.

(2) Unless and until Subphase IB and IC of Phase I and Phase II, inclusive, have been added to the Condominium, Developer or any successor in title to Subphase IA of Phase I, shall have the right to charge owners of Subphases IB and IC of Phase I and Phase II, inclusive, a fair and equitable fee to be shared with the owners of Subphase IA of Phase I until Subphases IB and IC of Phase I and Phase II, inclusive, are added to the Condominium, if ever, for the cost of maintaining and keeping in good order, condition and repair those recreational facilities, streets, driveways and walks as have been constructed in Subphase IA of Phase I. The owner of any phase land not submitted to the Condominium not paying the fee when due shall lose the privilege of using the recreational facilities, streets, driveways and walks until his account is brought current. This paragraph shall not apply to any Unit Owner who may not be denied the privilege of using the recreational facilities, streets, driveways and walks for failure to pay maintenance fees under the Florida Condominium Act.

(3) The easements, licenses, rights and privileges established, created and granted by Developer pursuant to the provisions of this subparagraph C shall be for the benefit of, and restricted solely to, the owners from time to time of each of the phases so benefited, or any parts thereof, their tenants, and the immediate families of such tenants and their guests, who are residents in occupancy of units in each of the phases so benefited, for the duration of their tenancies, but the same is not intended, nor shall it be construed as creating any rights in or for the benefit of the general public or any rights in or to any portion of each phase (or subphase) other than as hereinabove provided in this subparagraph C.

D. In the event of a taking under the power of eminent domain of all or any part of Subphases IA, IB and IC of Phase I and/or Phase II, that portion of the award attributable to the value of any land within the phase so taken shall be payable only to the owner or owners in fee thereof, and no claim thereon shall be made by the owners of any phase, or parts thereof, not so taken, provided, however, the owners of any phase, or parts thereof, not so taken may file collateral claims with the condemning authority, over and above the value of the land in any phase so taken, to the extent of any damage suffered by a phase not taken resulting from the loss of the easements, licenses, rights and privileges so taken; and provided further, however, that the owners of the phase so taken, to the maximum extent possible, shall promptly repair and restore the remaining portion of the phase so taken and affected by said easements, licenses, rights and privileges as nearly as practicable to the condition they were in immediately prior to such taking and without contribution from the owners of those phases not so taken, but if the net proceeds of such award are insufficient to pay the costs of such restoration and repair, the owner or owners of the phases not so taken shall contribute the new awards, if any, received by them to the extent necessary to make up such deficiency. The easements, licenses, rights and privileges affecting the land in those phases made subject to a taking shall remain in full force and effect on the remaining portion of the phase, as repaired and restored. The provisions of this subparagraph D do not control, and shall be wholly inapplicable to, the rights of any Unit Owners in any phase (or subphase) that has been added to the Condominium by amendment to this Declaration. Once a phase (or subphase) is added to the Condominium by amendment to this Declaration, all Unit Owners will own an undivided share in the additional common elements as set forth





in Article II of this Declaration. Therefore, any award for a taking of any portion of the phase land that has been submitted to Condominium through the power of eminent domain, shall be owned by all Unit Owners in their undivided interest as set forth in this Declaration.

E. Each of the easements, covenants, restrictions, benefits and obligations hereunder shall be perpetual and run with the land. The provisions of this Article II may not be abrogated, modified or rescinded in whole or in part other than with the consent of the owner or owners of Subphases IA, IB and IC of Phase I and/or Phase II and of all mortgagees under any mortgages covering all or any part of Subphases IA, IB and IC of Phase I and/or Phase II evidenced by a declaration in writing, executed and acknowledged by all said owners and mortgagees and duly recorded in the Public Records of Brevard County. However, in the event all phases shall be included in the Condominium, the provisions of subparagraphs B, C and D of this Article II shall become null and void, just as if never entered into and without the necessity for the execution of any further documents, whereupon the common elements of the Condominium shall expressly include within its meaning, in addition to the items as listed in the Florida Condominium Act and those items heretofore set forth in this Declaration, non-exclusive cross-easements for ingress, egress, and the installation and maintenance, repair and replacement of all utility and drainage lines serving any of the units of the Condominium, but the provisions contained in subparagraph A of this Article II shall not be so rendered null and void, and, to the extent applicable, shall remain in full force and effect.

### III

#### **OWNERSHIP OF UNITS AND APPURTENANT SHARE IN COMMON ELEMENTS AND COMMON SURPLUS, AND SHARE OF COMMON EXPENSES**

Each unit shall be conveyed as an individual property capable of independent use and fee simple ownership and the owner or owners of each unit shall own, as an appurtenance to the ownership of each said unit, an undivided one-forty-ninth (1/49) share of all common elements of the Condominium, which includes, but is not limited to, ground support area, walkways, yard area, parking areas, foundations, etc., and substantial portions of the exterior walls, floors, ceiling and walls between units. The space within any of the units and common elements shall not be further subdivided. Any undivided interest in the common property is hereby declared to be appurtenant to each unit and such undivided interest shall not be separate from the unit and such interest shall be deemed conveyed, devised, encumbered or otherwise included with the unit even though such interest is not expressly mentioned or described in the conveyance, or other instrument. Any instrument, whether a conveyance, mortgage or otherwise, which describes only a portion of the space within any unit shall be deemed to describe the entire unit owned by the person executing such instrument and an undivided one-forty-ninth (1/49) interest in all common elements of the Condominium.

Developer hereby, and each subsequent owner of any interest in a unit and in the common elements, by acceptance of a conveyance or any instrument transferring an interest, waives the right of partition of any interest in the common elements under the laws of the State of Florida as it exists now or hereafter until this Condominium is terminated according to the provisions hereof or by law. Any owner may freely convey an interest in a unit together with an undivided interest in the common elements subject to the provisions of this Declaration. Developer hereby reserves the right to remove any party walls between any units owned by Developer in order that the said units may be used together as one (1) integral unit. All assessments and voting rights, however, shall be calculated as if such units were as originally designated on the exhibits attached to this Declaration, notwithstanding the fact that the several units are used as one.

All owners of units shall have as an appurtenance to their units a perpetual easement of ingress to and egress from their units over streets, walks, terraces and other common elements from and to the public highways bounding the Condominium property, and a perpetual right or easement, in common with all persons owning an interest in any unit in the Condominium property, to the use



and enjoyment of all public portions of the buildings and to other common facilities (including but not limited to facilities as they now exist) located in the common elements.

All property covered by the exhibits hereto shall be subject to a perpetual easement for encroachments which now exist or hereafter may exist caused by settlement or movement of the buildings, and such encroachments shall be permitted to remain undisturbed and such easement shall continue until such encroachment no longer exists.

All units and the common elements shall be subject to a perpetual easement in gross granted to the Association, and its successors, for ingress and egress for the purpose of having its employees and agents perform all obligations and duties of the Association set forth herein. The Association shall have the right to grant utility easements under, through or over the common elements and such other easements as the Board, in its sole discretion, shall decide. The consent of the Unit Owners to the granting of any such easement shall not be required.

The common expenses shall be shared and the common surplus shall be owned in the same proportion as each such Unit Owner's share of the ownership of the common elements, that is one-forty-ninth (1/49).

#### IV

#### **UNIT BOUNDARIES, COMMON ELEMENTS, AND LIMITED COMMON ELEMENTS**

The units of the Condominium consist of that volume of space which is contained within the decorated or finished exposed interior surfaces of the perimeter walls, floors (excluding carpeting and other floor coverings) and ceilings of the units. The boundaries of the units are more specifically shown in Exhibit "A", attached hereto. The dark solid lines on the floor plans hereinabove mentioned represent the perimetrical boundaries of the units, while the upper and lower boundaries of the units, relating to the elevations of the units, are shown in notes on said plan.

There are limited common elements appurtenant to each of the units in the Condominium, as shown and reflected by the floor and plot plans. These limited common elements are reserved for the use of the units appurtenant thereto, to the exclusion of other units, and there shall pass with a unit, as an appurtenance thereto, the exclusive right to use the limited common elements so appurtenant. In addition, there are forty-nine (49) enclosed garage parking spaces as shown on Sheet 6 of Exhibit "A". These garage parking spaces are common elements for which Developer reserves the right to designate the unit which shall be entitled to exclusive use of the garage parking. After such designation the garage parking spaces shall be appurtenant to the unit and shall become a limited common element.

Unit Owners have the right to transfer garages to other units or Unit Owners pursuant to Section 718.106(2)(b), Florida Statutes. The transfer will be subject to rules promulgated by the Association.

Any air conditioning and/or heating equipment which exclusively services a unit shall be a limited common element appurtenant to the Unit it services. The common elements of the Condominium unit consist of all of the real property, improvements and facilities of the Condominium other than the units and the limited common elements as the same are hereinabove defined, and shall include easements through the units for conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the units, limited common elements and common elements and easements of support in every portion of a unit which contributes to the support of improvements and shall further include all personal property held and maintained for the joint use and enjoyment of all the Unit Owners.

There are located on the common elements of the Condominium property swale areas for the purpose of water retention and these areas are to be perpetually maintained by the Association so that they will continue to function as water retention areas.



V.

**ADMINISTRATION OF CONDOMINIUM BY  
CONDOMINIUM ASSOCIATION, INC.**

The operation and management of the Condominium shall be administered by the Association.

The Association shall make available to Unit Owners, lenders and the holders and insurers of the first mortgage on any unit, current copies of this Declaration, the By-Laws and other rules governing the Condominium, and other books, records and financial statements of the Association. The Association also shall be required to make available to prospective purchasers current copies of this Declaration, the By-Laws, other rules governing the Condominium, and the most recent annual audited financial statement, if such is prepared. "Available" shall at least mean available for inspection upon request, during normal business hours or under other reasonable circumstances.

The Association, upon written request from any institutional lenders which have an interest or prospective interest in the Condominium, shall furnish within a reasonable time the financial report of the Association required by Section 718.111(13), Florida Statutes, for the immediately preceding fiscal year.

The Association shall have all of the powers and duties set forth in the Florida Condominium Act and, where not inconsistent therewith, those powers and duties set forth in this Declaration, the Articles of Incorporation and the By-Laws of the Association. True and correct copies of the Articles of Incorporation and the By-Laws are attached hereto, made a part hereof, and marked Exhibit "C" and Exhibit "D", respectively.

VI.

**MEMBERSHIP AND VOTING RIGHTS**

Developer and all persons hereafter owning a vested present interest in the fee title to any one of the units shown on the exhibits hereto and which interest is evidenced by recordation of a proper instrument in the Public Records of Brevard County, Florida, shall automatically be members and their memberships shall automatically terminate when they no longer own such interest.

There shall be a total of forty-nine (49) votes to be cast by the Unit Owners. Such votes shall be apportioned and cast as follows: each Unit Owner (designated as such on the exhibits attached to this Declaration) shall be entitled to cast one (1) vote. Where a unit is owned by a corporation, partnership or other legal entity or by more than one (1) person, all the owners thereof shall be collectively entitled to the vote assigned to such unit and such owners shall, in writing, designate an individual who shall be entitled to cast the vote on behalf of the owners of such unit of which he is a part until such authorization shall have been changed in writing. The term, "owner," as used herein, shall be deemed to include Developer.

All of the affairs, policies, regulations and property of the Association shall be controlled and governed by the Board of Administration of the Association (hereinafter, the "Board" or "Board of Administration") who are all to be elected annually by the members entitled to vote, as provided in the By-Laws of the Association. Each director shall be the owner of a unit (or a partial owner of a unit where such unit is owned by more than one (1) individual, or if a unit is owned by a corporation, including Developer, any duly elected officer or officers of an owner corporation may be elected a director or directors).

The owners shall place members on the Board of Administration in accordance with the schedule as follows: when Unit Owners other than Developer own fifteen percent (15%) or more of the units in a Condominium that will be operated ultimately by an Association, the Unit Owners shall be entitled to elect not less than one-third (1/3) of the members of the Board of Administration. Unit Owners other than Developer are entitled to elect not less than a majority of the members of the Board of Administration: (a) three years after fifty (50%) percent of the



units that will be operated ultimately by the Association have been conveyed to the purchasers; (b) three (3) months after ninety (90%) percent of the units that will be operated ultimately by the Association have been conveyed to purchasers; (c) when all the units that will be operated ultimately 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 recordation of this Declaration, or in the case of an association which may ultimately operate more than one condominium, seven years after recordation of this Declaration for the first condominium it operates, or in the case of an association operating a phase condominium created pursuant to Section 718.403, Florida Statutes, seven years after recordation of this Declaration creating the initial phase, whichever shall occur first. Developer is entitled to elect or appoint at least one member of the Board of Administration as long as Developer holds for sale in the ordinary course of business at least five (5%) percent of the units operated by the Association. Following the time Developer relinquishes control of the Association, Developer may exercise the right to vote any Developer-owned units in the same manner as any other Unit Owner except for purposes of re-acquiring control of the Association or selecting the majority members of the Board of Administration.

Developer reserves the right to transfer control of the Association to Unit Owners other than Developer at any time, in its sole discretion. The Unit Owners shall take control of the Association if Developer so elects prior to the time stated in the above schedule.

## VII.

### **COMMON EXPENSES, ASSESSMENTS, COLLECTION, LIEN AND ENFORCEMENT LIMITATIONS**

The Board of Administration shall propose annual budgets in advance for each fiscal year which shall contain estimates of the cost of performing the functions of the Association, including but not limited to the common expense budget, which shall include, but not be limited to, the estimated amounts necessary for maintenance, and operation of common elements and limited common elements, landscaping, streets and walkways, office expenses, utility services, replacement and operating reserve, casualty insurance, liability insurance, administration and salaries. Failure of the Board of Administration to include any item in the annual budget shall not preclude the Board of Administration from levying an additional assessment in any calendar year for which the budget has been projected. Each Unit Owner shall be liable for the payment to the Association of one-forty-ninth (1/49) of the common expenses as determined in said budget.

Common expenses include the expenses of the operation, maintenance, repair, or replacement of the common elements, costs of carrying out the powers and duties of the Association and any other expenses designated as common expense by the Condominium Act, this Declaration, the Articles of Incorporation, or the By-Laws of the Association. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications and security services, which are reasonably related to the general benefit of the Unit Owners, even if such expenses do not attach to the common elements or property of the Condominium. However, such common expenses must either have been services or items provided from the date the control of the Board of Administration was transferred from Developer to the Unit Owners or must be services or items provided for in the Condominium documents or the By-Laws.

After adoption of the budget and determination of the annual assessment per unit, as provided in the By-Laws, the Association shall assess such sum by promptly notifying all owners by delivering or mailing notice thereof to the voting member representing each unit at such member's most recent address as shown by the books and records of the Association. One-twelfth (1/12) of the annual assessment shall be due and payable in advance to the Association on the first (1st) day of each month.



Each initial Unit Owner other than Developer shall pay at closing a contribution in an amount at least equal to two monthly assessments for common expenses to the Condominium Working Capital Fund. The present monthly assessment is \$396.00 per month, therefore, the contribution is \$792.00. This contribution shall not be credited as advance maintenance payments for the unit.

Special assessments may be made by the Board of Administration from time to time to meet other needs or requirements of the Association in the operation and management of the Condominium and to provide for emergencies, repairs or replacements, and infrequently recurring items of maintenance. However, any special assessment in excess of five hundred dollars (\$500) which is not connected with an actual operating, managerial or maintenance expense of the Condominium, shall not be levied without the prior approval of the members owning a majority of the units in the Condominium.

The specific purpose or purposes of any special assessment approved in accordance with the condominium documents shall be set forth in a written notice of such assessment sent or delivered to each Unit Owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the Board, either be returned to the Unit Owners or applied as a credit towards future assessments.

The liability for any assessment or portion thereof may not be avoided by a Unit Owner or waived by reason of such Unit Owner's waiver of the use and enjoyment of any of the common elements of the Condominium or by abandonment of the unit for which the assessments are made.

The record owners of each unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, made by the Association and for all costs of collection of delinquent assessments. In the event assessments against a unit are not paid within thirty (30) days after their due date, the Association shall have the right to foreclose its lien for such assessments.

Assessments and installments on them that are unpaid for over thirty (30) days after due date shall bear interest at the maximum rate permitted by law per annum from the due date until paid. If a payment is more than ten (10) days late, the Association may charge an administrative late fee in addition to such interest, in an amount not to exceed the greater of Twenty-Five and No/100 Dollars (\$25.00) or five percent (5%) of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by the Association shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee shall not be subject to the provisions in Chapter 687 or Section 718.303(3), Florida Statutes.

The Association has a lien on each Condominium parcel for any unpaid assessments with interest and for reasonable attorney's fees incurred by the Association which are incident to the collection of the assessment for enforcement of the lien. Except as set forth below, the lien shall be effective from and shall relate back to the recording of the original Declaration. In the case of a lien on a parcel located in a phase condominium created pursuant to Section 718.403, Florida Statutes, the lien is effective from and shall relate back to the recording of this Declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be recorded in the Public Records in the county in which the Condominium parcel is located and shall state the description of the Condominium parcel, the name of the record owner, the amount due, the due dates, and the name and address of the Association which is ISLAND POINTE CONDOMINIUM ASSOCIATION OF MERRITT ISLAND, INC., 460 Sail Lane, Merritt Island, Florida 32953. No such lien shall continue for a longer period than one year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure all unpaid assessments, interest, costs and



attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. A claim of lien must be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien. By recording a notice in substantially the following form, a Unit Owner or his agent or attorney may require the Association to enforce a recorded claim of lien against his Condominium parcel:

Notice of Contest of Lien

TO: ISLAND POINTE CONDOMINIUM ASSOCIATION OF  
MERRITT ISLAND, INC.  
460 Sail Lane  
Merritt Island, FL 32953

You are notified that the undersigned contests the claim of lien filed by you on \_\_\_\_\_, 200\_\_, and recorded in Official Records Book \_\_\_\_ at Page \_\_\_\_ of the Public Records of Brevard County, Florida, and that the time within which you may file suit to enforce your lien is limited to ninety (90) days from the date of service of this notice.

Executed this \_\_\_ day of \_\_\_\_\_, 200\_\_.

Signed: \_\_\_\_\_

After service of a copy of the Notice of Contest of Lien, the Association shall have ninety (90) days in which to file an action to enforce the lien, and if the action is not filed within that ninety (90) day period, the lien is void.

The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage on real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or any action to recover a money judgment for unpaid assessments.

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 his last known address; and upon such mailing, the notice shall be deemed to have been given, and the court shall 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 above. The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the unit is pending before any court; if the rights of the Association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the Unit Owner.

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 the receiver shall be paid by the party which does not prevail in the foreclosure action.

The Association has the power to purchase the Condominium parcel at the foreclosure sale and to hold, lease, mortgage or convey it.

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 parcel, whether or not



such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

Within fifteen (15) days after request by a Unit Owner or unit mortgagee, the Association shall provide a certificate stating all assessments and other monies owed to the Association by the Unit Owner with respect to the Condominium parcel. Any person other than the owner who relies upon such certificate shall be protected thereby.

Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his Condominium parcel. The holder of a mortgage or other lien of record has the same right as to any Condominium parcel upon which he has a lien.

Any first mortgagee may make use of any unit acquired as may facilitate its sale including, but not limited to, the showing of the property and neither the other Unit Owners nor the Association shall interfere with the sale of such units.

As to priority between the lien of a recorded mortgage and the lien for any assessment, the lien for assessment shall be subordinate and inferior to any recorded mortgage, unless the assessment is secured by a claim of lien which is recorded prior to the recording date of the mortgage.

Any person purchasing or encumbering a unit shall have the right to rely upon any statement made in writing by an officer of the Association regarding assessments against units which have already been made and which are due and payable to the Association, and the Association and the members shall be bound thereby.

In addition the Association may accelerate assessments of a Unit Owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

A Unit Owner, regardless of how his title has been acquired, including a purchaser at a judicial sale, is liable for all assessments which come due while he is the Unit Owner. The grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. A first mortgagee who acquires title to the unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed. The first mortgagee shall pay the amount owed to the Association within thirty (30) days after transfer of title. The liability of a first mortgagee is limited to the lesser of six (6) months of the unit's unpaid common expenses or assessments accrued before the acquisition of the title to the unit by the mortgagee or one percent of the original mortgage debt, whichever amount is less, provided the first mortgagee joined the Association as a defendant in the foreclosure action.

## VIII.

### **INSURANCE COVERAGE, USE AND DISTRIBUTION OF PROCEEDS, REPAIR OR RECONSTRUCTION AFTER CASUALTY, CONDEMNATION**

#### A. Type and Scope of Insurance Coverage Required

##### 1. Insurance for Fire and Other Perils

The Association shall obtain, maintain, and pay the premiums upon, as a common expense, a "master" or "blanket" type policy of property insurance covering all of the common elements and limited common elements, (except land, foundation and excavation costs) including fixtures, to the extent they are part of the common elements of the Condominium, building service equipment and supplies, and other common personal property belonging to the Association. All references herein to



a "master" or "blanket" type policy of property insurance shall denote single entity condominium insurance coverage. Every hazard policy which is issued to protect a building shall provide that the word "building" wherever used in the policy including, but not necessarily be limited to, fixtures, installations, or additions comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual units initially installed, or replacements thereof of like kind or quality, in accordance with the original plans and specifications, or as they existed at the time the unit was initially conveyed if the original plans and specifications are not available. The word "building" does not include unit floor coverings, wall coverings, or ceiling coverings, and does not include the following equipment if it is located within a unit and the Unit Owner is required to repair or replace such equipment: electrical fixtures, appliances, air conditioner or heating equipment, water heaters, or built-in-cabinets. With respect to the coverage provided for by this paragraph, the Unit Owners shall be considered additional insureds under the policy.

The "master" policy shall be in an amount equal to one hundred (100%) percent of current replacement cost of the Condominium, exclusive of land, foundation, excavation and other items normally excluded from coverage, if available.

The policies may also be issued in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor trustee, as insured, for the use and benefit of the individual owners. Loss payable shall be in favor of the Association or insurance trustee, as a trustee, for each Unit Owner and each such owner's mortgagee. The Association or insurance trustee, if any, shall hold any proceeds of insurance in trust for the Unit Owner and their first mortgage holders, as their interests may appear. Each Unit Owner and each Unit Owner's mortgagee, if any, shall be beneficiaries of the policy in the fraction of common ownership set forth in this Declaration. Certificates of insurance shall be issued to each Unit Owner and mortgagee upon request. Such policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the Brevard County area and shall name any holder of first mortgages on units within the Condominium. Such policies shall provide that they may not be canceled or substantially modified, without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies.

Policies are unacceptable where: (i) under the terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against borrowers, FEDERAL HOME LOAN MORTGAGE CORPORATION, hereinafter referred to as FHLMC, FEDERAL NATIONAL MORTGAGE ASSOCIATION, hereinafter referred to as FNMA, or the designee of FHLMC or FNMA; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

The policies shall also provide for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Unit Owners individually; that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such owners collectively; and that the policy is primary in the event the Unit Owner has other insurance covering the same loss.

The insurance policy shall afford, as a minimum, protection against the following:



(a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(b) In the event the Condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent based on the nature of the property); and

(c) All other perils which are customarily covered with respect to Condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement.

In addition, such policies shall include an "agreed amount endorsement" and, if available, an "inflation guard endorsement."

The Association shall provide, on an individual case basis, if required by the holder of first mortgages on individual units, construction code endorsements (such as a demolition cost endorsement, a contingent liability from operation of building laws endorsement and an increased cost of construction endorsement) if the Condominium is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of the Condominium by an insured hazard.

## 2. Liability Insurance

The Association shall maintain comprehensive general liability insurance coverage covering all of the common elements, commercial space owned and leased by the Association, and public ways of the Condominium project. Coverage limits shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common elements, and legal liability arising out of lawsuits related to employment contracts of the Association, if available at a reasonable cost. Such policies shall provide that they may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage on any unit in the Condominium which is listed as a scheduled holder of a first mortgage in the insurance policy. The Association shall provide, if required by the holder of first mortgages on individual units, such coverage to include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and use, including but not limited to host liquor liability, employers liability insurance, contractual and all written contract insurance, and comprehensive automobile liability insurance.

## 3. Flood Insurance

If the Condominium is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association shall obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein insurable property), in an amount deemed appropriate by the Association, as follows:

the lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the Condominium to the extent that such buildings and other insurable property are within an area having special



flood hazards; or (b) one hundred (100%) percent of current "replacement cost" of all buildings and other insurable property within such area. Due to circumstances existing in Florida at the present time, Developer believes that the maximum flood insurance coverage that is available is 80% of the full value of the buildings.

Such policy shall be in a form which meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator.

4. Fidelity Bonds

Blanket fidelity bonds shall be maintained by the Association for all officers, directors, and employees of the Association and all other persons who control or disburse funds of the Association. If a management agent has the responsibility for handling or administering funds of the Association, the management agent shall maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall name the Association as an obligee. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The premiums of all bonds required herein, except those maintained by the management agent, shall be paid by the Association as a common expense. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association, insurance trustee and the Federal National Mortgage Association, if applicable. Under no circumstances shall the principal sum of the bonds be less than the amount required by Section 718.111(11)(d), Florida Statutes.

5. Errors and Omissions Insurance

The Association shall obtain and maintain for the benefit of the officers and directors of the Association a policy or policies of insurance insuring the Association, its officers and directors against liability resulting from the errors and/or omissions of the officers and/or directors in the amount of no less than \$1,000,000.00. Said policy shall also contain an extended reporting period endorsement (a tail) for a two (2) year period.

6. Insurance Trustees; Power of Attorney

The Association may name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement or any successor to such trustee (each of whom shall be referred to herein as "insurance trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

Each Unit Owner by acceptance of a deed conveying a unit in the Condominium to the Unit Owner hereby appoints the Association, or any insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

7. Qualifications of Insurance Carriers

The Association shall use generally acceptable insurance carriers. Only those carriers meeting the specific requirements regarding the qualifications of



insurance carriers as set forth in the Federal National Mortgage Association Conventional Home Mortgage Selling Contract Supplements and the FHLMC Sellers Guide shall be used.

8. Condemnation and Total or Partial Loss or Destruction

The Association shall represent the Unit Owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common elements, or part thereof, by the condemning authority. Each Unit Owner hereby appoints the Association as attorney-in-fact for such purpose.

The Association may appoint a trustee to act on behalf of the Unit Owners, in carrying out the above functions, in lieu of the Association.

In the event of a taking or acquisition of part or all of the common elements by a Condominium authority, the award or proceeds of settlement shall be payable to the Association, or any trustee, to be held in trust for the Unit Owners and their first mortgage holders as their interests may appear.

In the event any loss, damage or destruction to the insured premises is not substantial (as such term "substantial" is hereinafter defined), and such loss, damage or destruction is replaced, repaired or restored with the Association's funds, the first mortgagees which are named as payees upon the draft issued by the insurance carrier shall endorse the draft and deliver the same to the Association, provided, however, that any repair and restoration on account of physical damage shall restore the improvements to substantially the same condition as existed prior to the casualty.

Substantial loss, damage or destruction as the term is herein used, shall mean any loss, damage or destruction sustained to the insured improvements which would require an expenditure of sums in excess of ten (10%) percent of the amount of coverage under the Association's casualty insurance policy or policies then existing, in order to restore, repair or reconstruct the loss, damage or destruction sustained.

In the event the Association chooses not to appoint an insurance trustee, any casualty insurance proceeds becoming due by reason of substantial loss, damage or destruction sustained to the Condominium improvements shall be payable to the Association and all first mortgagees which shall have been issued loss payable mortgagee endorsements, and such proceeds shall be made available to the first mortgagee which shall hold the greater number of mortgages encumbering the units in the Condominium, which proceeds shall be held in a construction fund to provide for the payment for all work, labor and materials to be furnished for the reconstruction, restoration and repair of the Condominium improvements. Disbursements from such construction fund shall be by usual and customary construction loan procedures. No fee whatsoever shall be charged by such first mortgagee for its services in the administration of the construction loan fund. Any sums remaining in the construction loan fund after the completion of the restoration, reconstruction and repair of the improvements and full payment therefor, shall be paid over to the Association and held for, and/or distributed to the Unit Owners in proportion to each Unit Owner's share of common surplus. If the insurance proceeds payable as the result of such casualty are not sufficient to pay the estimated costs of such restoration, repair and reconstruction, which estimate shall be made prior to proceeding with restoration, repair or reconstruction, the Association shall levy a special assessment against the Unit Owners for the amount of such insufficiency, and shall pay said sum into the aforesaid construction loan fund.



Notwithstanding which first mortgagee holds the greater number of mortgages encumbering the units, such mortgagees may agree between themselves as to which one shall administer the construction loan fund.

If the damage sustained to the improvements is less than substantial, as heretofore defined, the Board of Administration may determine that it is in the best interests of the Association to pay the insurance proceeds into a construction fund to be administered by an institutional first mortgagee as hereinabove provided. No institutional first mortgagee shall be required to cause such insurance proceeds to be made available to the Association prior to completion of any necessary restoration, repairs or reconstruction, unless arrangements are made by the Association to satisfactorily assure that such restoration, repairs and reconstruction shall be completed. Such assurances may consist of, without limitation: (1) obtaining a construction loan from other sources; (2) obtaining a binding contract with a contractor or contractors to perform the necessary restoration, repairs and reconstruction; and (3) the furnishing of performance and payment bonds.

Any restoration, repair or reconstruction made necessary through a casualty shall be commenced and completed as expeditiously as reasonably possible, and must substantially be in accordance with the plans and specifications for the construction of the original building. In no event shall any reconstruction or repair change the relative locations and approximate dimensions of the common elements and of any unit, unless an appropriate amendment be made to this Declaration.

Where physical damage has been sustained to the Condominium improvements and the insurance proceeds have not been paid into a construction loan fund as hereinabove more fully provided, and where restoration, repair or reconstruction has not been commenced, an institutional mortgagee who has commenced foreclosure proceedings upon a mortgage encumbering a unit, shall be entitled to receive that portion of the insurance proceeds apportioned to said unit in the same share as the share in the common elements appurtenant to said unit.

If substantial loss, damage or destruction shall be sustained to the condominium improvements, and at a special members' meeting called for such purpose, the owners of a majority of the units in the Condominium vote and agree in writing that the damaged property will not be repaired or reconstructed, the Condominium shall be terminated; provided, however, such termination will not be effective without the written consent of all first mortgagees holding mortgages encumbering units.

## IX

### RESPONSIBILITY FOR MAINTENANCE AND REPAIRS

A. Each Unit Owner shall bear the cost and be responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, electrical and plumbing fixtures, kitchen and bathroom fixtures, and all other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his unit and which may now or hereafter be affixed or contained within his/her unit. Such Unit Owner shall further be responsible for maintenance, repair and replacement of any air conditioning equipment exclusively servicing his/her unit, although such equipment may not be located in the unit, and of any and all wall, ceiling and floor surfaces, painting, decorating and furnishings and all other accessories which such owner may desire to place or maintain therein. Unit Owners are responsible for the maintenance, including cleaning, repair or replacement of windows and any screening thereon, screen doors and fixed and sliding glass doors. Air conditioning and heating equipment servicing individual units is a limited common element appurtenant to such units. The maintenance, repair or replacement of the interior surfaces of the



garages, any floor coverings on the exterior surface of the balconies installed by owner and permitted by the Association and any storm protection shutters installed by Developer or owner as provided herein shall be the responsibility of the Unit Owner at his/her expense. For safety reasons and to prevent damage to the roof, the Association has the management company flush the air conditioning units located on the roof monthly but this accommodation does not relieve the Unit Owners of the responsibility to maintain, repair and replace the air conditioning units.

B. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all the common elements, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, sprinkler systems, wiring and other facilities located in the common elements, for the furnishing of utility services to the units, including artesian wells, pumps, piping, and fixtures serving individual air conditioning units. Painting and cleaning of all exterior portions of the building, including all exterior doors opening into walkways, shall also be the Association's responsibility. Sliding glass doors, screen doors, storm protection shutters on balconies and windows, windows and screens on windows, shall not be the Association's responsibility, but shall be the responsibility of the Unit Owner. Should any damage be caused to any unit by reason of any work, which may be done by the Association in the maintenance, repair or replacement of the common elements, the Association shall bear the expense of repairing such damage. In addition to the foregoing obligations of the Association, Developer has provided a maintenance manual to the Association, which contains a checklist for maintenance of the common elements.

C. Where loss, damage or destruction is sustained by casualty to any part of the building, whether interior or exterior, whether inside a unit or not, whether a fixture or equipment attached to the common elements or attached to and completely located inside a unit, and such loss, damage or destruction is insured for such casualty under the terms of the Association's casualty insurance policy or policies, but the insurance proceeds payable on account of such loss, damage or destruction are insufficient for restoration, repair or reconstruction, all the Unit Owners shall be specially assessed to make up the deficiency, irrespective of a determination as to whether the loss, damage or destruction is to a part of the building, or to fixtures or equipment which it is a Unit Owner's responsibility to maintain.

No Unit Owner shall do anything within his unit or on the common elements which would adversely affect the safety or soundness of the common elements or any portion of the Association property or Condominium property which is to be maintained by the Association.

D. In the event a Unit Owner makes any structural addition or alteration without the required written consent, the Association or an owner with an interest in any unit shall have the right to proceed in a court of equity to seek compliance with the provisions hereof. The Association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or as necessary to prevent damage to the common elements or to a unit or units. Unit Owners shall provide the Association with a copy of all keys to their unit. The Association shall maintain the keys to the units in a safe secure location that is accessible only to the Board of Directors or their designee.

Maintenance of the common elements is the responsibility of the Association. All limited common elements shall be maintained by the Association except for air conditioning and heating equipment servicing individual units, the interior surfaces of the garages and any permitted floor coverings on balconies. The Unit Owner shall maintain the air conditioning and heating equipment servicing his individual unit at the Unit Owner's expense. In the event the Association shall grant a Unit Owner permission to cover the exterior surface of the balcony floors then, in the event the floor covering is damaged or destroyed by the Association in making repairs to the balconies it shall be the responsibility of the Unit Owner and not the Association to pay for the repair or replacement of the floor covering. The owner of the unit to which a garage is appurtenant



shall pay the expenses of maintaining, repairing or replacing the doors, remote control units and devises, and the interior walls of the garage. If the record Unit Owner has been granted permission to install a DSS satellite dish which has a maximum diameter of 18 inches and can be mounted or affixed to the Condominium building at a location approved by the Association in writing, in advance of the installation, then the record owner of each such unit shall bear the costs and shall be responsible for the maintenance, repair and replacement of the satellite dish.

E. The Board of Administration may enter into a contract with any firm, person or corporation for the maintenance and repair of the common elements and may join with other Condominium corporations in contracting with the same firm, person or corporation for maintenance and repair.

F. The Association shall determine the exterior color scheme of all buildings and shall be responsible for the maintenance thereof, and no Unit Owner shall paint an exterior wall, door, window, patio or any exterior surface, etc., at any time without the written consent of the Association.

## X

### USE RESTRICTIONS

A. Each unit is hereby restricted to residential use by the owner or owners thereof, their immediate families, lessees, guests and invitees. Each unit is restricted to no more than six (6) occupants, without the Association's consent. There are no restrictions upon children.

B. The unit may be rented provided the occupancy is only by one (1) lessee and members of his immediate family and guests. The minimum rental period is ninety (90) days and the maximum rental period is unrestricted which minimum and maximum rental periods shall not be amended without the approval of at least seventy-five (75%) percent of the Unit Owners in the Condominium (i.e. at least thirty-seven (37) of the forty-nine (49) subphase IA of Phase I Unit Owners must vote for the modification or amendment) at a duly called meeting of the Association for the purpose of amending the rental restrictions. No rooms may be rented and no transient tenants may be accommodated. No lease of a unit shall release or discharge the owner thereof of compliance with this Section X or any of his other duties as a Unit Owner. Time sharing of units is prohibited. Ownership of a unit on a monthly or weekly time sharing program is prohibited. Subleasing of units is prohibited. All leases shall be in writing and shall be subject to this Declaration, the Articles of Incorporation, By-Laws, and the Rules and Regulations of the Association and shall be approved by the Association.

C. No nuisances shall be allowed to be committed or maintained upon the Condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate, nor any fire hazard allowed to exist. No Unit Owner shall permit any use of his unit or use of the common elements that will increase the cost of insurance upon the Condominium property.

D. No immoral, improper, or offensive use shall be made of the Condominium property nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed.

E. Reasonable rules and regulations concerning the use of the Condominium property may be made and amended from time to time by the Board of Administration of the Association as provided by its Articles of Incorporation and By-Laws.

F. The Association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any



common elements or of any portion of a unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the common elements or to a unit or units.

G. No sign, advertisement or notice of any type shall be shown on the common elements or any unit. This restriction on signs, advertising and notices shall not apply to Developer. No exterior antennas or aerials shall be erected on the Condominium property. Developer or the Association after transfer of control of the Association to Unit Owners other than Developer, may grant permission to record Unit Owners to install DSS satellite dishes which are approximately 18 inches in diameter. Developer or the Association after turnover may grant written permission to the record Unit Owner and, if granted, shall designate the location of the DSS satellite dish in writing prior to the installation of the satellite dish. The record Unit Owner shall be responsible for all costs related to the installation, maintenance, repair and replacement, of the DSS satellite dish and shall indemnify, defend and hold the Association harmless therefor. Upon the sale of the unit by the record owner of the unit the DSS satellite dish may be removed, at the owner's expense, or it may be transferred to the purchaser as part of the sale and purchase. In the event the DSS satellite dish is not removed by the record Unit Owner at closing then, by acceptance of the deed of conveyance by the purchaser, the purchaser shall be deemed to have assumed the responsibility for the maintenance, repair and replacement of the DSS satellite dish, together with the costs and expenses thereof, including the obligation to indemnify, defend and hold the Association harmless therefor. The installation of the DSS satellite dish does not relieve the Unit Owner from payment of the fee for the installed cable television connection provided by the Association as part of the Association's common expenses. This provision shall be deemed a covenant running with the land and shall be binding upon each successive owner of any unit utilizing a DSS satellite dish.

H. A Unit Owner shall not place or cause to be placed in the walkways or in or on any other common elements and facilities, stairs, or stairwells, any furniture, packages or objects of any kind. Such areas shall be used for no other reason than for normal transit through them. The Association may permit a Unit Owner to place small potted plants or small decorative items near the front doors of the unit so long as the potted plants or decorative items do not protrude into or block access to the common walkways. The Association reserves the right to restrict or prohibit the placement of potted plants or decorative items on the common elements.

I. It is prohibited to hang garments, rugs, etc., from the windows, patios or balconies from any of the facades of the building.

J. It is prohibited to dust rugs, etc., from windows, patios or balconies or to clean rugs, etc., by beating on the exterior of the building.

K. There are no special parking or storage facilities located on the Condominium property. No boats, utility trailers, recreational vehicles or special purpose vehicles shall be parked on the Condominium property. No motorhome, trailer, camper, watercraft, or commercial vehicle may be parked on the Condominium property. No resident shall park any vehicle on any driveway on the Condominium property. Any vehicle with visible advertising on the vehicle may be deemed a commercial vehicle, in the sole discretion of the Board of Administration. However, trucks with one (1) ton capacity or less and sport utility vehicles will not be deemed to be commercial vehicles unless the Board of Administration deems the vehicle to be a commercial vehicle as set forth above. Any vehicle may be temporarily parked on the streets and driveways when loading and unloading. Prior written approval of the Association to temporarily park a commercial vehicle is required and may not exceed four (4) forty-eight (48) hour periods in any year. No non-operating or non-functioning vehicle of any kind shall be permitted to be parked on the Condominium property. There shall be no repair, except emergency repair, performed on any permitted motor vehicle on the Condominium property. It is acknowledged and agreed by all Unit Owners that a violation of any of the provisions of this paragraph shall impose irreparable harm to the other Unit Owners in this



Condominium and that levying of fines by the Association for violations is appropriate. See Article XXVI Fines for Procedures for Levying Fines by the Association. No parking space shall be used by any other person other than an occupant of the Condominium who is an actual resident or by a guest or visitor and by such guest or visitor only when such guest or visitor is, in fact, visiting and upon the premises. All owners and residents of the Condominium are restricted to two (2) permitted vehicles per unit without the Association's consent to bring additional vehicles on the premises. All vehicles shall be parked in the open parking spaces or garages except when loading or unloading vehicles. Storage is permitted in the enclosed garages provided it does not prevent the use of the enclosed garages by an authorized motor vehicle. The enclosed garages are not air-conditioned. As a result mildew and rust may form on any items placed or stored in the enclosed garages. The Unit Owner shall be responsible for any damage caused to stored items by mildew or rust and the Unit Owner releases Developer, its contractor and/or its subcontractors of any and all liability for same.

L. Until Developer has closed the sales of all of the units in the Condominium, neither the other Unit Owners nor the Association shall interfere with the sale of such units. Developer may make such use of the unsold units and common elements as may facilitate its sales, including but not limited to maintenance of a sales office, model units, the showing of the property, and the display of signs. Developer may not be restricted in the use of the other common elements or areas.

M. Two household pets not exceeding thirty-five (35) pounds each which shall mean cats or dogs unless otherwise approved by the Board of Administration shall be allowed to be kept in the owner's unit. All pets must be kept on a leash when outside the owner's unit. Each pet owner shall be responsible for cleaning up after his pets in the common elements. Pets shall not create a nuisance. Notwithstanding any provision to the contrary contained herein, certified guide dogs, service animals and signal dogs (as defined herein below; hereinafter collectively referred to as "specially trained animals") shall be permitted at the Condominium subject to the following restrictions:

- i. Such specially trained animals shall not be kept, bred, or used at the Condominium for any commercial purpose; and
- ii. Such specially trained animals shall be on a leash while on the common elements.

Any pet as described above and any specially trained animal causing a nuisance or unreasonable disturbance to any other occupant of the Condominium shall be promptly and permanently removed from the Condominium upon notice given by the Board or Managing Agent; provided, however, that any such notice given with respect to a specially trained animal shall provide that before such animal must be removed, its owner shall have a reasonable time to acquire a replacement specially trained animal unless the Board determines that such animal poses an imminent serious threat of physical harm to other occupants at the Condominium. The Board may from time to time promulgate such rules and regulations regarding the continued keeping of such pets and specially trained animals as the circumstances may then require or the Board may deem advisable.

The term "guide dog" shall mean "any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person".

The term "service animal" shall mean "any animal that is trained to provide those life activities limited by the disability of the person".

The term "signal dog" shall mean "any dog that is trained to alert a deaf person to intruders or sounds".



N. No Unit Owner shall allow anything whatsoever to fall from the window, patio, balcony, terrace, porch, or doors of the premises, nor shall he sweep or throw from the premises any dirt or other substance into any of the corridors, halls, patios, balconies, terraces or porches, elevators, ventilators, or elsewhere in the building or upon the grounds. A Unit Owner shall not place, store or use any item, upon any patio, balcony, terrace or porch without the approval of the Association, other than standard patio chairs, tables and furnishings and potted plants. Charcoal grills are prohibited.

O. When a unit is leased, a tenant shall have all use rights in the Association property and those common elements otherwise readily available for use generally by Unit Owners and the Unit Owner shall not have such rights except as a guest. Nothing in this subsection shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a Unit Owner and a tenant of Association property and common elements otherwise readily available for use generally by Unit Owners.

P. All electric lights shall be turned off when the garage parking space is not occupied and all garage doors shall be kept closed at all times except when parking or removing cars from the garage.

Q. The Association reserves the right to levy a charge to any Unit Owner using the enclosed parking garage to store appliances, dehumidifiers, table saws or any other type of devices that use electricity.

R. Carpeting of any type on individual unit balconies or walkways is prohibited and the Association shall not grant permission to install carpet on the individual unit balconies.

## XI

### **LIMITATIONS UPON RIGHT OF OWNER TO ALTER OR MODIFY UNIT**

No Unit Owner shall make any structural modifications or alterations of the unit. Further, no Unit Owner shall cause any improvements or changes to be made on or to the exterior of the buildings or enclosed garages, including painting or other decoration, the installation of awnings, electrical wiring, air conditioning units and other things which might protrude through or be attached to the walls of the buildings or enclosed garages; further, no Unit Owner shall in any manner change the appearance of any portion of the buildings or enclosed garages not wholly within the boundaries of the unit or enclosed garages. The Association has adopted storm protection shutter specifications for each building which include color, style and other factors deemed relevant by the Board and will permit the installation of storm protection shutters for the balconies, patio doors and windows. The maintenance, repair or replacement of the storm protection shutters shall be the responsibility of the Unit Owner at the owner's expense. The installation, repair, replacement and maintenance of the storm protection shutters, including color, shall be approved by the Association prior to installation, repair, replacement or maintenance and such installation, repair, replacement or maintenance shall comply with applicable building codes. The installation, repair, replacement, and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed material alterations to the common elements within the meaning of the Condominium Act. No Unit Owner shall install hard flooring (tile, wood, etc.) in lieu of carpeting in the living/dining room area or the bedrooms of any unit without the prior written approval of the Association. Any owner desiring to replace the carpeting in these areas with hard flooring shall submit the proposed changes to the Board of Directors who shall ensure that the installation of the hard flooring shall include such materials as the Board may approve in its discretion under the hard flooring to dampen the sound. Any Unit Owner may display one portable, removable United States flag in a respectful way on any day. On Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, any Unit Owner may display in a respectful way, portable, removable official flags not larger than 4 1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or



Coast Guard, regardless of any Declaration rules or requirements dealing with flags or decorations.

## XII

### **ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY ASSOCIATION**

Whenever in the judgment of the Board of Administration the Condominium property shall require additions, material alterations or substantial improvements (in excess of the usual items of maintenance), and the making of such additions, material alterations or substantial improvements shall have been approved by a majority of the Unit Owners, the Board of Administration shall proceed with such additions, alterations or improvements and shall specially assess all Unit Owners for the cost thereof as a common expense.

## XIII

### **AMENDMENT OF DECLARATION**

These restrictions, reservations, covenants, conditions and easements may be modified or amended by recording such modifications in the Public Records of Brevard County, Florida, only after approval by the owners of at least seventy-five (75%) percent of the total units in the Condominium (i.e. at least thirty-seven (37) of the forty-nine (49) Subphase IA of Phase I Unit Owners must vote for the modification or amendment). No amendment to this Declaration shall be adopted which would operate to materially affect the validity or priority of any mortgage held by an institutional first mortgagee or which would alter, amend or modify, in any manner whatsoever, the rights, powers, interests or privileges granted in favor of any institutional first mortgagee or in favor of Developer without the consent of all such mortgagees or Developer, as the case may be, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation which consent may not be unreasonably withheld. There shall be no amendment adopted altering the share of ownership in the common elements or surplus, or altering the share of common expenses, unless the record Unit Owner and all record owners of liens on the unit join in the execution of the Amendment and unless a majority of all owners in the Association approve the Amendment.

Notwithstanding anything to the contrary contained in this Declaration, Developer expressly reserves the right to amend this Declaration so as to correct any legal description contained herein, which legal description or descriptions may have been incorrect by reason of a scrivener's or surveyor's error. Developer may amend this Declaration as aforescribed by filing an amended legal description (or descriptions) as an amendment to this Declaration among the Public Records of Brevard County, Florida, which amendment (or amendments) shall expressly describe that legal description which is being corrected (by reference to the exhibit containing said legal description or otherwise), in addition to the corrected legal description. Such amendments need be executed and acknowledged only by Developer and need not be approved by the Association, Unit Owners, lienors or mortgagees of units of the Condominium whether or not elsewhere required for amendments. As part and parcel of any such amendment as provided for in this subparagraph, however, there shall be attached thereto an affidavit of the individual or individuals responsible for the original incorrect legal description, whether he be scrivener or surveyor, which affidavit shall set forth (1) that said individual made an error in the legal description, (2) that the error is corrected by the description contained in the amendment, and (3) that it was the intent at the time of the incorrect original legal description to make that description such as is contained in the new amendment. In the event the party responsible for the original incorrect legal description has died, or is not available, then in that event, any other party having personal knowledge of the incorrect legal description by reason of the scrivener's or surveyor's error may execute the required affidavit for the amendment provided herein. Any amendment subject to Section 718.110(4), Florida Statutes shall be approved by a majority of the voting interests of the Condominium and all record owners of liens on the unit.

Pursuant to Section 718.110(2), Florida Statutes, Developer may make amendments to this Declaration without consent of the Unit Owners which shall be limited to matters other than those under Sections 718.110(4) and (8), Florida Statutes.

In the event it shall appear that there is an error or omission in this Declaration or exhibits thereto, then and in that event the Association may correct such error and/or omission by an amendment to this Declaration in the manner hereinafter described to effectuate an amendment for the purpose of curing defects, errors or omissions. Such an amendment shall not require a vote of approval as provided above but shall require a vote in the following manner:

- (A) Notice of the subject matter of a proposed amendment to cure a defect, error or omission shall be included in the notice of any meeting at which such proposed amendment is to be considered.
- (B) A resolution for the adoption of such a proposed amendment may be proposed by either the Board of Administration or by the members of the Association, and members not present in person or by proxy at the meeting considering the amendment may express their agreement or disagreement with any action at a meeting that the member did not attend, provided that the agreement or disagreement may not be used for purposes of creating a quorum or as a vote for or against action taken by those in attendance. Except as elsewhere provided, such approvals must be either by:
  - (i) not less than thirty-three and one-third (33 1/3%) percent of the Board of Directors and by not less than ten (10%) percent of the votes of the entire membership of the Condominium; or
  - (ii) not less than twenty-five (25%) percent of the votes of the entire membership of the Association; or
  - (iii) in the alternative, an amendment may be made by an agreement signed and acknowledged by a majority of the Unit Owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Brevard County, Florida.
- (C) The foregoing provisions relative to amendments for defects, errors or omissions are in accordance with and pursuant to Sections 718.110(1) and (5), Florida Statutes.
- (D) That the amendment made pursuant to this paragraph need only be executed and acknowledged by Developer or the Association and by no other parties whatsoever.
- (E) Any amendment pursuant to Section 718.110(5), Florida Statutes, may be approved by the Board of Administration or a majority of the voting interests.

Notwithstanding anything to the contrary contained in this Declaration, Developer reserves the right to change the interior designs and arrangement of all units and to alter the boundaries between units, as long as Developer owns the units so altered; however, no such change shall increase the number of units nor alter the boundaries of the common elements, except the party wall between any units, without amendment of this Declaration in the manner hereinbefore set forth. If Developer shall make any changes in units, as provided in this paragraph, such changes shall be reflected by an amendment to this Declaration with a survey attached reflecting such authorized alteration of units, and said amendment need only be executed and acknowledged by Developer, any holders of institutional mortgages encumbering the altered units and if the amendment is subject to Section 718.110(4), Florida Statutes, it shall be approved by a majority of the voting interests of the Condominium. The survey shall be certified in the manner required by the Condominium Act. If more than one (1) unit is concerned, Developer shall not apportion between the units the shares in the common elements, common expenses and common surplus of the units concerned and such shares of common elements, common expenses and common surplus shall remain unchanged in the amendment of this Declaration unless all Unit Owners approve the amendment changing the shares.

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." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

Invalidation of any one (1) or more of these restrictions, reservations, covenants, conditions and easements, or any provision contained in this Declaration, or in a conveyance of unit by Developer, by judgment, court order, or law, shall in no way affect any of the other provisions which shall remain in full force and effect.

In the event that any court should hereafter determine that any provision, as originally drafted herein, violates the rule against perpetuities or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose, the measuring life shall be that of the youngest incorporator of the Association.

These restrictions, reservations, covenants, conditions and easements shall be binding upon and inure to the benefit of all property owners and their grantees, heirs, personal representatives, successors and assigns, and all parties claiming by, through or under any member.

#### XIV

#### TERMINATION OF CONDOMINIUM

Except as otherwise provided in Article VIII of this Declaration, the Condominium created and established hereby may only be terminated upon the vote of members of the Association owning ninety (90%) percent of the units in the Condominium, provided that the written consent to such termination is obtained from all institutional first mortgagees holding mortgages encumbering the units.

Immediately after the required vote of consent to terminate, each and every Unit Owner shall immediately convey by warranty deed to the Association all of said Unit Owners' right, title and interest to any unit and to the common elements, provided the Association's officers and employees handling funds have been adequately bonded and the Association or any member shall have the right to enforce such conveyance by specific performance in a court of equity.

The Board of Administration of the Association shall then sell all of the property at public or private sale upon terms approved in writing by all of the institutional first mortgagees. Upon the sale of said property, the costs, fees and charges for affecting said sale, the cost of liquidation and dissolution of the Association and all obligations incurred by the Association in connection with the management and operation of the property up to and including the time when distribution is made to the Unit Owners, shall be paid out of the proceeds of said sale, and the remaining balance (hereinafter referred to as "net proceeds of sale") shall be distributed to the Unit Owners in the manner now about to be set forth.

The distributive share of each Unit Owner in the net proceeds of sale, though subject to the provisions hereinafter contained, shall be the following portion thereof; to-wit:

#### AN UNDIVIDED ONE-FORTY-NINTH (1/49)

The distributive share of each Unit Owner will change as each phase (or subphase) is added to the Condominium as set forth in Article II of this Declaration. Upon the determination of each Unit Owner's share as above provided for, the Association shall pay out of each Unit Owner's share all mortgages and other liens encumbering said unit in accordance with their priority, and upon such payment being made, all mortgagees and lienors shall execute and record satisfactions or releases of their liens against said unit or units, regardless of whether the same are paid in full. Thereupon, the directors of the Association shall proceed to liquidate and dissolve the Association, and distribute the remaining portion of each distributive share, if any, to the owner



or owners entitled thereto. If more than one person has an interest in a unit, the Association shall pay the remaining distributive share allocable to said unit to the various owners of such unit, excepting that if there is a dispute as to the validity, priority or amount of mortgages or liens encumbering a unit, then payment shall be made to the owner and/or owners of such unit and to the owners and holders of the mortgages and liens encumbering said unit.

As evidence of the members' resolution to abandon passed by the required vote or written consent of the members, the President and Secretary of the Association shall effect and place in the Public Records of Brevard County, Florida, an affidavit stating that such resolution was properly passed, so approved by the members, and also shall record the written consents, if any, of institutional first mortgagees to such abandonment. Upon recordation of the instrument evidencing consent of ninety (90%) percent of the Unit Owners to terminate the Condominium, the Association shall notify the division within thirty (30) working days of the termination and the date the document was recorded, the county where the document was recorded, and the book and page number of the public records where the document was recorded.

After such an affidavit has been recorded and all owners have conveyed their interest in the Condominium parcel to the Association and the Association to the purchaser, the title to said property thereafter shall be free and clear from all restrictions, reservations, covenants, conditions and easements set forth in this Declaration, and the purchaser and subsequent grantees of any of said property shall receive title to said lands free and clear thereof.

## XV

### ENCROACHMENTS

If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, or if any encroachment shall hereafter occur as the result of settling of the building, or alteration to the common elements made pursuant to the provisions herein, or as the result of repair and restoration, a valid easement shall exist for the continuance of such encroachment for so long as the same shall exist.

## XVI

### ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

The Association shall at all times maintain a register setting forth the names of all Unit Owners in the Condominium, and any purchaser or transferee of an unit shall notify the Association of the names of any party holding a mortgage upon any unit and the name of all lessees in order that the Association may keep a record of same.

## XVII

### ESCROW FOR INSURANCE PREMIUMS

Any institutional first mortgagee holding a mortgage upon a unit in the Condominium shall have the right to cause the Association to create and maintain an escrow account for the purpose of assuring the availability of funds with which to pay premium or premiums due from time to time on casualty insurance policy or policies which the Association is required to keep in existence, it being understood that the Association shall deposit in an escrow depository satisfactory to such institutional first mortgagee or institutional first mortgagees a monthly sum equal to one twelfth (1/12) of the annual amount of such insurance expense, and to contribute such other sum as may be required therefor to the end that there shall be on deposit in said escrow account at least one (1) month prior to the due date for payment of such premium or premiums, a sum which will be sufficient to make full payment therefor.

Premiums for insurance required to be placed by the Association shall be a common expense and shall be paid by the Association.



If two (2) or more institutional mortgagees hold any mortgage or mortgages upon any Condominium parcel, and/or shall be the owner of any Condominium parcel or Condominium parcels, the exercise of the rights above described or manner of exercising said rights shall vest in the institutional mortgagee owning and holding the first recorded mortgage encumbering a Condominium parcel, and the decision of such institutional mortgagee shall be controlling.

## XVIII

### **REAL PROPERTY TAXES DURING INITIAL YEAR OF CONDOMINIUM**

In the event that during the year in which this Condominium is established, real property taxes are assessed against the Condominium property as a whole, and are paid by the Association such taxes will be a common expense.

## XIX

### **RESPONSIBILITY OF UNIT OWNERS**

The owner of each unit shall be governed by and shall comply with the provisions of this Declaration as well as the By-Laws and the Articles of Incorporation of the Association. Any Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his act, neglect or carelessness, or by that of any members of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Nothing herein contained, however, shall be construed so as to modify any waiver of rights or subrogation by insurance companies.

In any action brought against a Unit Owner by the Association for damages, or injunctive relief due to such Unit Owner's failure to comply with the provisions of this Declaration or the By-Laws of the Association, the prevailing party shall be entitled to court costs, reasonable attorney's fees and expenses incurred by it in connection with the prosecution of such action.

## XX

### **WAIVER**

The failure of the Association, a Unit Owner or institutional first mortgagee to enforce any right, provision, covenant or condition which may be granted herein, or in the By-Laws and the Articles of Incorporation of the Association, or the failure to insist upon the compliance with same, shall not constitute a waiver by the Association, such Unit Owner or institutional first mortgagee to enforce such right, provision, covenant or condition, or insist upon the compliance with same, in the future.

No breach of any of the provisions contained herein shall defeat or adversely affect the lien of any mortgage at any time made in good faith and for a valuable consideration upon said property, or any part thereof, and made by a bank, savings and loan association, or insurance company authorized to transact business in the State of Florida and engage in the business of making loans constituting a first lien upon real property, but the rights and remedies herein granted to Developer, the Association, and the owner or owners of any part of said Condominium, may be enforced against the owner of said property subject to such mortgage, notwithstanding such mortgage.

## XXI

### **CONSTRUCTION**

The provisions of this Declaration shall be liberally construed so as to effectuate its purposes. The invalidity of any provision herein shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration.

**XXII****GENDER**

The use of the masculine gender in this Declaration shall be deemed to refer to the feminine or neuter gender, and the use of the singular or plural shall be taken to mean the other whenever the context may require.

**XXIII****CAPTIONS**

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.

**XXIV****REMEDIES FOR VIOLATIONS**

Each Unit Owner, each tenant and other invitee, and the Association shall be governed by, and shall comply with the provisions of the Florida Condominium Act, this Declaration, the documents creating the Association, and the Association By-Laws and the provisions thereof shall be deemed expressly incorporated into any lease of a unit. Actions for damages for injunctive relief, or both, for failure to comply with these provisions may be brought by the Association or by a Unit Owner against:

- A. the Association;
- B. a Unit Owner;
- C. directors designated by Developer, for actions taken by them prior to the time control of the Association is assumed by Unit Owners other than Developer;
- D. any director who willfully and knowingly fails to comply with these provisions;
- E. any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in Section 718.503(1)(a), Florida Statutes, is entitled to recover reasonable attorney's fees. A Unit Owner prevailing in an action between the Association and the Unit Owner under this section, in addition to recovering his reasonable attorney's fees, may recover additional amounts as determined by the Court to be necessary to reimburse the Unit Owner for his share of assessments levied by the Association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law.

**XXV****TIMESHARE RESERVATION**

No reservation is made pursuant to Section 718.1045, Florida Statutes, for the creation of timeshare estates. Timeshare estates are prohibited.

**XXVI****FINES**

The Association may levy reasonable fines against a unit for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of this Declaration, the Association By-Laws, or reasonable rules of the Association. No fine will become a lien against a unit. No fine may exceed \$100.00 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided



that no fine in the aggregate exceeds \$1,000.00. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the Unit Owner and, if applicable, its licensee or invitee. The hearing must be held before a committee of other Unit Owners. If the committee does not agree with the fine, the fine may not be levied. The provisions of this Article do not apply to unoccupied units.

## XXVII

### SIGNAGE

After Developer has completed its sales program, the Association, through its Board of Administration, shall have the right to determine the type, style and location of all signage associated with the Condominium property. Prior to completion of its sales program Developer shall control signage for the Condominium.

## XXVIII

### INSTITUTIONAL MORTGAGEE

An institutional mortgagee means the owner and holder of a mortgage encumbering a Condominium parcel, which owner and holder of said mortgage is either a bank or life insurance company or a federal or state savings and loan association, or a mortgage or real estate investment trust, or a pension and profit sharing fund, or a credit union, or a Massachusetts business trust, or an agency of the United States Government, or the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or any entity controlling, controlled by or under common control with any of the foregoing, or a lender generally recognized in the community as an institutional lender or developer, or assignee, nominee, or designee of Developer.

An institutional mortgage means a mortgage owned or held by an institutional mortgagee.

An insurance trustee means that Florida bank having trust powers, designated by the Board to receive proceeds on behalf of the Association, which proceeds are paid as a result of casualty or fire loss covered by insurance policies.

## XXIX

### RIGHTS RESERVED UNTO INSTITUTIONAL MORTGAGEES

The rights and privileges in this Declaration and the exhibits hereto in favor of Developer are freely assignable, in whole or in part, by Developer to any party who may be hereafter designated by Developer to have and exercise such rights including an institutional mortgagee in the event of a foreclosure against Developer or deed in lieu thereof by Developer. Such rights may be exercised by the nominee, assignee or designee of Developer and/or exercised by the successor or successors in trust of Developer and/or exercised by the successor or successors in interest or the nominees, assignees or designees of the nominees, assignees or designees of Developer.

## XXX

### NOTICE TO INSTITUTIONAL MORTGAGEES

The Association shall provide a holder, insurer or guarantor of a first mortgagee, upon written request (such request to state the name and address of such holder, insurer or guarantor and the unit number) timely notice of:

- A. any proposed amendment of the Condominium instruments effecting a change in (i) the boundaries of any unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the Association appertaining to any unit; or (iv) the purposes to which any unit or the common elements are restricted;





- B. any proposed termination of the Condominium regime;
- C. any condemnation loss or any casualty loss which affects a material portion of the condominium or which affects any unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- D. any delinquency in the payment of assessments or charges owed by a Unit Owner subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
- E. any lapse, cancellation or material modification of any insurance policy maintained by the Association.

**XXXI**

**CABLE TELEVISION AND SATELLITE DISH**

The cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract shall be deemed a common expense, and if not, such cost shall be considered common expense if it is designated as such in a written contract between the Board of Administration and the company providing the master television antenna system or the cable television service. The contract shall be for a term of not less than two years.

A. Any contract made by the Board of Administration for a community antenna system or duly franchised cable television service may be canceled by a majority of the voting interests present at the next regular or special meeting of the Association. Any member may make a motion to cancel said contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.

B. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind Unit Owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating Unit Owners. The Association may use the provisions of Section 718.116, Florida Statutes, to enforce payment of the shares of such costs by the Unit Owners receiving cable television.

C. The Association has approved the installation of DSS type satellite dishes for the Condominium property. The approved satellite dish is approximately eighteen (18) inches in diameter. The Association shall determine the location of the satellite dish, in its sole discretion. All costs of installation, maintenance or repair of the satellite dish shall be the responsibility of the record owner of the unit and the owner shall indemnify and hold the Association harmless therefor.

**XXXII.**

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**

The rules of the St. Johns River Water Management District require the following provisions to be included in this Declaration:

A. Property Description: Property encompassed by the permit granted by the St. Johns River Water Management District (where the surface water management system will be located) is included in the legal description of the parent tract located on sheet 3 of Exhibit "B" attached hereto and made a part hereof.



B. Definitions: "Surface Water or 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.

C. Duties of Association: The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) 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.

D. Covenant for maintenance assessments for 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.

E. Easement for Access and Drainage: 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 the common elements 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 prior written approval of the St. Johns River Water Management District.

F. Amendment: Any amendment to this Declaration which alters any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common elements must have the prior approval of the St. Johns River Water Management District.

G. 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.

H. Swale Maintenance: Developer has constructed a drainage swale upon the common elements for the purpose of managing and containing the flow of excess surface water, if any, found upon such common elements from time to time. The Association shall be responsible for the maintenance, operation and repair of the swales on the common elements. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the St. Johns River Water Management District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swale shall be authorized and any damage to any drainage swale, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Association.



### XXXIII

#### ASSOCIATION MAINTENANCE STANDARDS

It is mandatory that the Association, in carrying out its responsibilities under this Article XXXIII, comply with the following minimum standards, requirements and guidelines:

A. The Board shall cause all utilities and utility systems forming a part of the common elements to be maintained properly and in good condition, and effect repairs thereto as needed. It is mandatory that the Board cause all water and/or sewer infrastructure to be inspected at least annually by a licensed and qualified contractor, engineer or architect, with expertise in the construction and maintenance of such water/sewer infrastructure.

B. It is mandatory that the Board cause all drainage systems, landscape installations, and irrigation systems within the common elements to be inspected at least annually. In particular, the Board shall inspect for any misaligned, malfunctioning or non-functional sprinkler or blocked drainage grates, basins, lines and systems, which circumstances could cause damage to the Condominium property. It is mandatory that at least one such inspection each year shall be performed by a licensed and qualified contractor, engineer or architect with expertise in the construction and maintenance of such drainage and landscape installations. Without limiting the foregoing, all landscaping shall be maintained in accordance with the following minimum maintenance standards:

1. Lawn and ground cover shall be kept mowed and/or trimmed regularly;
2. Planting shall be kept in a healthy and growing condition;
3. Fertilization, cultivation, spraying and tree pruning shall be performed as part of the regular landscaping program;
4. Stakes, guides, and ties on trees shall be checked regularly to insure the correct function of each; ties shall be adjusted to avoid creating abrasions or girdling of the trunk or stem;
5. Damage to planting shall be repaired and corrected within thirty (30) days of occurrence; and
6. Irrigation systems shall be kept in sound working condition; adjustments, replacement or malfunctioning parts and cleaning of systems shall be an integral part of the regular landscaping program.

C. It is mandatory that the Board cause all hardscape, paved areas and internal streets within the Condominium property to be inspected at least annually by a licensed and qualified contractor, engineer or architect with expertise in the construction and maintenance of such hardscape and paved areas.

D. It is mandatory that the Board cause all waterscape or water features within the common elements (including, but not necessarily limited to, the swimming pool and spa), to be inspected each year by a licensed and qualified contractor, engineer, or architect with expertise in the construction and maintenance of such waterscape and water features.

E. It is mandatory that the Board cause the structures and roofs of all improvements within the Condominium property to be inspected each year by a licensed and qualified contractor, engineer, or architect with expertise in the construction and maintenance of such structures and roofs.

F. It is mandatory that the Board carry out such other periodic inspections, and obtain such other reports, as may be prudent and appropriate. In each instance in which a contractor, engineer, architect or other professional with expertise in a specific area is



engaged to conduct an investigation or inspection, such expert shall promptly provide a written report thereof to the Board. The written report shall identify all items of maintenance or repair which either requires current action by the Association, or which will need further review, inspection or analysis. The Board shall, in each case, cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage.

G. This Section XXXIII is intended only to provide specific minimum maintenance and inspection requirements in particular areas, and shall in no way limit the Association's general responsibility with respect to maintenance in a prudent manner, designed to prevent avoidable deterioration or property damage.

#### XXXIV

### CONSERVATION EASEMENTS

Pursuant to the provisions of Section 704.06, Florida Statutes, Developer (sometimes referred to herein as "Grantor") hereby voluntarily grants and conveys to the St. Johns River Water Management District (the "District" or "Grantee") a conservation easement in perpetuity over the real property described in Exhibit "E" attached hereto and incorporated herein (the "Property" or "Conservation Easement Areas"). Developer fully warrants title to said Conservation Easement Areas, and will warrant and defend the same against the lawful claims of all persons whomsoever. Developer grants this Conservation Easement as a condition of permit number 40-009-86161-1 (the "Permit") issued by the District, to offset adverse impacts to natural resources, fish and wildlife, and wetland functions. This Conservation Easement is also given to prevent secondary impacts to natural resources, fish and wildlife, surface waters and wetland functions.

A. Purpose. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property. It is the further purpose of this Conservation Easement to ensure that no structures for water dependent activities shall be constructed, placed or maintained on the Property or the adjacent submerged lands other than those allowed in the Permit. The term "water dependent activities" shall mean those activities which can only be constructed on, in, over, or adjacent to water areas because the activity requires direct access to the water body or sovereignty lands for transportation, recreation, energy production or transmission, or source of water, and whether the use of the water or sovereignty lands is an integral part of the activity.

1. Riparian Rights. This conservation easement shall convey to the Grantee all riparian rights associated with the Property described in Exhibit "E" other than as may be necessary to use and maintain the facility described in the Permit.

2. Maintenance. Grantor agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and does hereby indemnify and hold Grantee harmless therefrom.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

(b) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.

(c) Removing, destroying, or trimming trees, shrubs, or other vegetation, except for exotic or nuisance species.



- (d) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
- (e) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.
- (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- (g) Acts or uses detrimental to such retention of land or water areas.
- (h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

5. Rights of Grantee. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:

(a) To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.

(b) To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement. Grantor intends that any cost incurred by Grantee in enforcing, judicially or otherwise, the terms and restrictions of this conservation easement against Grantor, its heirs, successors, personal representatives or assigns, including, without limitation, costs of suit, attorneys' fees and any costs of restoration necessitated by the violation of the terms of this conservation easement by Grantor, its heirs, successors, personal representatives or assigns, be borne by and recoverable against Grantor, its heirs, successors, personal representatives or assigns.

6. Grantee's Discretion. Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its rights under this Conservation Easement, Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

7. Grantee's Liability. Grantor will assume all liability for any injury or damage to the person or property of third parties, which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantors, nor any person or entity claiming by or through Grantor shall hold Grantee liable for



any damage or injury to person or personal property, which may occur, on the Property.

8. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to persons resulting from such causes.

9. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of Brevard County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

10. Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property. Grantor agrees that the terms, conditions, restrictions and purposes of this conservation easement will be included in any subsequent deed or other legal instrument by which the Grantor divests itself of any interest in the Property.

11. Amendment. This Conservation Easement may be amended, altered, released or revoked only by written agreement between the District and Developer or their respective successors or assigns.

## XXXV

### MARINAS

Two commercial marinas are located adjacent to the Condominium property. The marinas are open to the public. Unit Owners will be entitled to lease slips as members of the public on a first come, first serve basis. The Association will enter into a land lease with the operator of the commercial marinas for a portion of the Condominium upland parcel lying adjacent to the marinas to provide, without limitation, an access boardwalk around the perimeter of the marina basin, and a parking lot and dockmaster office located on the south end of the marina basin. Prior to the conveyance of title of any of the Condominium units to Unit Owners, the Association shall execute the land lease with the marina operator. The land lease will have a term of ninety-nine (99) years with annual lease base rental payments of One and No/100 Dollars (\$1.00) and additional rental payments for real and personal property taxes, utilities, maintenance, repairs and replacements as set forth in the land lease. The land lease shall also have one additional ninety-nine (99) year term renewable at the sole option of the marina operator under the same terms and conditions. The land lease shall terminate, at the election of Landlord, upon termination or expiration of the sovereign submerged land leases between each Tenant and the State of Florida as more particularly set forth in the land lease. The marina operator's land lease will include the exclusive use and benefit of the property for the operation of the marina, including the sole and exclusive right to obtain and maintain with the State of Florida the necessary sovereign submerged land leases necessary for the operation of the marina. The marina operator will be responsible for all direct costs for the maintenance of the property, including, without limitation, insurance, taxes, maintenance, repairs, and utilities solely serving the marina. Notwithstanding the foregoing exclusive rights of the marina operator, the Association will retain the rights for the Association and its Unit Owners to utilize portions of the leased premises for ingress and egress, both pedestrian and vehicular, and for the installation and maintenance of utilities by Developer and/or the Association, all as described in the land lease. Developer reserves the right to change the legal description of the leased area under the land lease as may be required under the submerged land leases and to create easements between the Condominium



property and the marinas as Developer deems necessary or advisable in its sole discretion. A copy of the land lease will upon execution be made available upon request to the Unit Owners.

### XXXVI

#### ACCESS TO CONDOMINIUM

Sail Lane, the roadway providing access to the Condominium property is a private road and is built upon property owned by the Association and upon property in which the Association maintains an easement. Additionally, the other property owners along Sail Lane maintain an easement across Sail Lane for access, pursuant to those easement agreements recorded at Official Records Book 397, Page 413; Official Records Book 738, Page 642; and Official Records Book 4669, Page 1215, all of the Public Records of Brevard County, Florida. Pursuant to the foregoing easement agreements and pursuant to an Agreement between Developer and Merle Babcox and Ruth Babcox, the owner of the properties located at 450 Sail Lane, 460 Sail Lane and 215 N. Tropical Trail, Merritt Island, Florida 32953, the Association has the sole responsibility for the ordinary maintenance, repair or upkeep of Sail Lane in its entirety. Each owner in Island Pointe acknowledges that the property abutting Sail Lane is zoned commercial; and, therefore, commercial activities are and will be in the future conducted on Sail Lane and on properties adjoining Sail Lane.

### XXXVII

#### MOLD AND MILDEW AWARENESS AND PREVENTIONS

As part of the Association's and the Board's responsibility for maintenance and repair of the Condominium property as set forth in Articles IX and XXXIII of this Declaration and the Unit Owner's responsibility to maintain their unit, there are many ways that the Association, the Board and Unit Owners can help to control moisture and mold located on, under, within or adjacent to the Condominium property, including, but not limited to, the common elements and limited common elements. The following is a list of suggestions, which is not meant to be all inclusive:

- Keep indoor humidity levels as low as possible by running the air-conditioning unit at a comfortable level. Remember, the cooler the air is, the less humidity it will hold, thereby limiting the growth of mold and mildew.
- Use of a dehumidifier is a great way to keep the humidity levels lower than normal when needed.
- The addition of a humidistat to existing air conditioning control systems is also an excellent way to keep the humidity levels lower when an indoor space is left unoccupied for extended periods of time.
- There are numerous brands of moisture absorbent chemicals available to help keep the humidity inside at a proper level while indoor space is unoccupied for short periods of time.
- Do not run air conditioners with windows open. The air conditioning system is not designed to keep up with the moisture and heat load this condition will generate. When windows are left open, there is a risk of saturating everything inside the indoor space (walls, furniture, carpeting, etc.) with more moisture than the air conditioning system is designed to remove. Remember, mold needs moisture to survive. The drier the indoor space, the better off the indoor space will be.
- Fix leaking plumbing and any other source of unwanted water immediately.
- Maintain proper indoor humidity. Equipment that conditions the air, such as air conditioners, dehumidifiers and ventilation systems should be operated year round.



- Have major appliances and equipment, such as heating, ventilating and air conditioning systems inspected, cleaned and serviced regularly by a qualified professional.
- Clean and dry refrigerator, air conditioner and dehumidifier drip pans and filters regularly.
- The Association and/or the Board should respond promptly when they see or have called to their attention signs of moisture or mold on the common elements.
- Do not allow moisture to stand or make contact with carpet, furniture and cellulose-based materials, such as wood, drywall or other non-tile, non-plastic or non-metal materials.
- Dry all water damaged areas and items immediately to prevent mold growth.
- If mold develops, clean up the mold by washing off hard surfaces with a commercial strength cleaner and mold/mildew inhibitor (such as "Tile Air II" or "Miltrol" from the Marinize Product Corporation) or equal, making sure to follow directions as specified.
- Depending upon the nature and extent of the mold infestation, trained professionals may be needed to assist in the remediation effort.
- Mold that is not properly and adequately removed may reappear.

The Association acknowledges and agrees that neither Developer, nor its general contractor, Benko Construction Co., Inc. ("Contractor"), will be liable to the Association for any special, incidental or consequential damages based on any legal theory whatsoever, including but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of mold, mildew and/or microscopic spores located on, under, within or adjacent to the Condominium property, including, but not limited to, the common elements and limited common elements, unless caused by the sole negligence or willful misconduct of Developer or Contractor. The Association, on behalf of itself and its members, tenants, invitees and licensees hereby releases and agrees to indemnify Developer and Contractor and their officers, directors, partners, members, successors and assigns from and against any and all claims, actions, damages, causes of action, liabilities and expenses (including, without limitation, attorneys' fees and costs of enforcing this release and indemnity) for property damage, injury or death resulting from the exposure to microscopic spores, mold and/or mildew and from any loss of resale value due to the presence and/or existence of mold, mildew and/or microscopic spores; provided, however, that in no event is the Association releasing or indemnifying Developer or Contractor as a result of the presence and/or existence of mold, mildew and/or microscopic spores if caused by the sole negligence or willful misconduct of Developer or Contractor.

### XXXVIII.

#### MANDATORY NONBINDING ARBITRATION AND MEDIATION OF DISPUTES

Pursuant to the provisions of Sections 718.112(2)(k) and 718.1255, Florida Statutes, in the event of a dispute between the Association and a Unit Owner, such dispute shall be submitted to mandatory non-binding arbitration and/or mediation prior to institution of any litigation or administrative proceeding by the Association or any Unit Owner. For purposes herein, "dispute" shall mean any disagreement between two or more parties that involves:

- A. the authority of the Board of Directors, under Chapter 718, Florida Statutes, or under the Articles or By-laws to:





1. require any owner to take an action, or not to take an action, involving the owner's unit or appurtenances thereto.
2. or alter or add to a common area or element.

B. the authority the failure of a governing body, when required by Chapter 71, Florida Statutes, or the Articles and/or By-laws, to:

1. properly conduct elections.
2. give adequate notice of meetings or other actions.
3. properly conduct meetings; allow inspection of books and records.

Please refer to Sections 718.112(2)(k) and 718.1255, Florida Statutes for additional information regarding arbitration and mediation.



CFN:2004370154

OR Book/Page: 5388 / 2603

IN WITNESS WHEREOF, Developer has caused these presents to be signed and sealed on this day of November, 2004.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

DEVELOPER:

TOWNE DEVELOPMENT OF ISLAND  
POINTE, INC., a Florida corporation

Karen S. Harkness  
Print Name: Karen S. Harkness


By: [Signature]  
Name: Kohn Bennett  
Title: Vice President

Debra Fischer  
Print Name: Debra Fischer

STATE OF FLORIDA            )  
COUNTY OF BREVARD        )

The foregoing instrument was acknowledged before me this 23 day of November, 2004 by Kohn Bennett, as Vice President of TOWNE DEVELOPMENT OF ISLAND POINTE, INC. , a Florida corporation, on behalf of the corporation. He is personally known to me or produced \_\_\_\_\_ as identification.

Karen Harkness  
NOTARY PUBLIC  
My Commission Expires:

 Karen S Harkness  
My Commission DD370460  
Expires November 09, 2008



CFN:2004370154  
OR Book/Page: 5388 / 2604



CFN:2004370154  
OR Book/Page: 5388 / 2605

CONSENT AND JOINDER OF MORTGAGEE IN THE  
DECLARATION OF CONDOMINIUM OF ISLAND POINTE

U.S. Bank National Association, a national banking association, being the owner and holder of that certain Mortgage and Security Agreement recorded in Official Records Book 5210, Page 1683, together with Assignment of Leases, Rents and Contracts recorded in Official Records Book 5210, Page 1713, Collateral Assignment of Condominium Rights and Condominium Unit Sales Contracts recorded in Official Records Book 5210, Page 1721, and UCC-1 Filing Statement recorded in Official Records Book 5210, Page 1730, all of the Public Records of Brevard County, Florida, encumbering lands described in said Mortgage, does hereby consent to and agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of the Declaration of Condominium of Island Pointe, a Condominium, attached hereto to be recorded in the Public Records of Brevard County, Florida.

Signed, sealed and delivered  
in the presence of:

James S. Newgard  
Printed Name: JAMES S. NEWGARD

U.S. Bank National Association, a  
national banking association

Lori Miramontes  
Printed Name: Lori Miramontes

By: Thomas D. Grall  
Name: THOMAS D. GRALL  
Title: Vice President

STATE OF WISCONSIN     )  
  )  
COUNTY OF MILWAUKEE    )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of November, 2004, by Thomas D. Grall of U.S. Bank National Association, a national banking association, on behalf of the association. He/she is personally known to me [ ] or has produced \_\_\_\_\_ as identification [ ].

Linda M. Charleston  
Notary Public  
State of Wisconsin  
My Commission Expires: \_\_\_\_\_  
LINDA M. CHARLESTON  
County of Milwaukee  
My Commission Expires August 5, 2007