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MIAMI-DADE COUNTY, FLORIDA

This instrument prepared by,
and after recording return to:
Howard J. Vogel, Esq.
BERMAN RENNERT VOGEL & MANDLER, P.A.
100 S.E. Second Street, Suite 2900
Miami, Florida 33131-2130

**DECLARATION OF CONDOMINIUM
OF
THE PRESERVE, A CONDOMINIUM**

Preserve Associates, LLC, a Florida limited liability company, hereby declares:

1. Introduction and Submission.

1.1 The Land. The Developer owns the fee simple title to certain land located in Miami-Dade County, Florida, as more particularly described in **Exhibit "1"** annexed hereto (the "Land"). In no event shall the Land or any of the Units be within or a part of any type of "Multi-condominium", as defined below.

1.2 Submission Statement. The Developer hereby submits the Land and, except as otherwise expressly indicated in Exhibit "1" annexed hereto, all improvements erected or to be erected thereon and therein (but excluding all public or private utility installations, e.g., cable television and/or other receiving or transmitting lines, antennae-or equipment therein or thereon) to the condominium form of ownership and use in the manner provided for in the Act, as hereafter defined. Without limiting any of the foregoing, except as otherwise expressly indicated in Exhibit "1" annexed hereto, no property located outside of the Land shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Act or any rules or regulations promulgated pursuant thereto

1.3 Name. The name by which this condominium is to be identified is **THE PRESERVE, A CONDOMINIUM** (hereinafter called the "Condominium").

2. Definitions.

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

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- 2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter amended.
- 2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.3 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time are assessed against a Unit Owner.
- 2.4 "Association" or "Condominium Association" means THE PRESERVE TOWN HOMES CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, the entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.6 "Board" or "Board of Directors" means the board of directors and the members of the board of directors, from time to time, of the Association.
- 2.7 "Buildings" means the structures containing one or more Units and other improvements within the Condominium.
- 2.8 "By-Laws" means the By-Laws of the Association, as amended from time to time.
- 2.9 "Charge" means the funds required for the payment of expenses, other than Common Expenses, which from time to time are charged against a Unit Owner (but not necessarily against all Unit Owners).
- 2.10 "Committee" means a group of members of the Board or Unit Owners, or members of the Board and Unit Owners, appointed by the Board, or by a member of the Board, to make recommendations to the Board or to take action on behalf of the Board.
- 2.11 "Common Elements" means and includes:
- (a) The portions of the Condominium Property which are not a part of or included within the Units;
 - (b) Non-exclusive easements through or surrounding the Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and to the Common Elements;

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- (c) An easement of support in every portion of a Unit which contributes to the support of the Units;
- (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements; and
- (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.

2.12 "Common Expenses" means all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Condominium Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a Common Expense by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include: (i) all expenses incurred by the Association for the maintenance, repair or replacement of those portions of the Units for which it is responsible pursuant to Section 7.1 of this Declaration; (ii) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (iii) if applicable, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract; (iv) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications and surveillance and restricted access systems which are reasonably related to the general benefit of the Unit Owners; (v) Limited Common Expenses; and (vi) any unpaid Assessments extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof. Common Expenses shall not include any other separate obligations of individual Unit Owners.

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

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

2.15 "Condominium Property" means the Land, Improvements and other property described in Section 1.2. hereof, subject to the limitations thereof and exclusions therefrom, together with the Stacked Units and these and other Improvements now or hereafter constructed thereon.

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- 2.16 "County" means the County of Miami-Dade, State of Florida.
- 2.17 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as the same may be amended from time to time.
- 2.18 "Developer" means Preserve Associates, L.L.C., a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer hereunder may be specifically assigned. Developer may assign all or any portion of its rights hereunder, or all or any portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. In the event the holder of any mortgage executed by the Developer, or any subsidiary or affiliate of the holder, obtains title to all or any portion of the Condominium Property by foreclosure, or deed in lieu thereof, or other conveyance, such holder, or subsidiary or affiliate of the holder, shall become the Developer only if it so elects by written notice to the Board, except as otherwise provided by the Act or the rules promulgated thereunder, but regardless of such election the holder, or subsidiary or affiliate of the holder, shall have the right to assign any of the rights of the Developer as provided herein to any third party who acquires title to all or a portion of the Condominium Property from the holder, or subsidiary or affiliate of the holder. In any event, any subsequent Developer shall not be liable for any defaults or obligations incurred by any prior Developer, except as same are expressly assumed by the subsequent Developer. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the control of the Association.
- 2.19 "Dispute", for purposes of Section 18.4, means any disagreement between two or more parties that involves: (a) the authority of the Board under any law, rule or regulation or under this Declaration, the Articles or the By-Laws to: (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit; or (ii) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law, rule or regulation or this Declaration, the Articles or By-Laws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves: title to any Unit, Limited Common Elements or Common Elements; the interpretation or enforcement of any warranty; the levy of a fee or Assessment, or the collection of an Assessment levied against a party; the eviction or other removal of a tenant from a Unit; alleged

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breaches of fiduciary duty by one or more directors of the Association; or claims for damages to a Unit based upon an alleged failure of the Association to maintain the Common Elements or Condominium Property.

- 2.20 "Division" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.21 "Electronic Transmission" means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers.
- 2.22 "Improvements" shall mean all structures and artificial changes to the natural environment (inclusive of landscaping) located on or within the Units, and in the Condominium Property, including, but not limited to, the Units.
- 2.23 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.24 "Life Safety Systems" means those emergency lighting, audio and visual signals, security systems and sprinkler and smoke detection systems which may have been installed in the Units, both within and without the Units, pursuant to the requirements of the applicable governmental authority having jurisdiction over same. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, shall be Common Elements.
- 2.25 "Limited Common Elements" means those Common Elements, the exclusive use and enjoyment of which is reserved to the Owners and occupants of a certain Unit or Units to the exclusion of the Owners and occupants of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common

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Elements unless the context would prohibit or unless otherwise expressly provided.

- 2.26 "Multi-condominium" means a real estate development containing two or more condominiums, all of which are operated by the same association.
- 2.27 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, first mortgages on Units securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.28 "Turnover" means the date the Developer no longer has the right to elect or appoint a majority of the Board of Directors at which time the Unit Owners shall assume control of the Association.
- 2.29 "Unit" or "Units" means those portions of the Condominium Property which are subject to exclusive ownership.
- 2.30 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.

3. **Description of Condominium**

- 3.1 **Identification of Units.** Each Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on Exhibit "1" attached hereto. Exhibit "1" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Units, and a plot plan thereof. Said Exhibit "1", together with this Declaration, is sufficient in detail to identify the Common Elements, Limited Common Elements and each of the Units and their relative locations and dimensions. There shall pass with the Units as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus as set forth herein; (b) the exclusive right to use such portion of the Common Elements and Limited Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) any other appurtenances as may be provided by this Declaration.
- 3.2 **Unit Boundaries.** Each Unit shall include that part of the Building that lies within the following boundaries:
- (a) **Upper and Lower Boundaries.** The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

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- (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.
 - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.
 - (iii) Interior Divisions. Except as provided in subsections (i) and (ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the floors of a multi-floor Unit, or nonstructural interior walls shall be considered a boundary of the Unit.
 - (iv) Boundaries Further Defined. The boundaries of the Unit shall not include all of those spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and those surfaces above the undecorated and/or inner surfaces of the ceilings of each Unit and, further, shall not include those spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of all interior bearing walls and/or bearing partitions and, further, shall exclude all pipes, ducts, wires, conduit, Community Systems and other facilities running through any interior wall or partition for utility services to other Units and/or for Common Elements. No part of the interior non-boundary walls within a Unit shall be considered a boundary of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the

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walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials;
- (d) Exceptions and Conflicts. In the case of any conflict between the boundaries of the Unit as above described and the dimensions of the Unit shown on Exhibit "1," the above provisions describing the boundary of a Unit shall control, it being the intention of this Declaration that the actual as-built boundaries of the Unit as above described shall control over any erroneous dimensions contained in Exhibit "1" attached hereto, and in the event it shall appear that any dimension shown on Exhibit "1" attached hereto is erroneous the Developer (so long as it is offering any Unit for sale in the ordinary course of business) or the President of the Association (after the Developer is no longer offering any Units for sale in the ordinary course of business) shall have the right to unilaterally amend the Declaration to correct such survey, and any such amendment shall not require the joinder of any Unit Owner or mortgagee so long as the purpose of the amendment is merely to correct an error and correctly describe the boundaries of a Unit. In the case of Unit boundaries not adequately described as provided above, the survey of the Units contained in Exhibit "1" shall control in determining the boundaries of a Unit. In the case of any conflict between this Declaration describing the boundaries of any Unit, and in the language contained on Exhibit "1" describing the boundaries of a Unit, the language of this Declaration shall control.

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

- (a) Driveways, Balconies, and Terraces. A driveway, balcony or terrace, which is designated in Exhibit 1 to this Declaration as a Limited Common Element of a particular Unit, shall be an appurtenance to such Unit, which shall be afforded direct and exclusive access to such Limited Common Elements, to the exclusion of others. The Association shall be responsible for the maintenance, repair, and replacement of all such Limited Common Elements, with the owner of the Unit to which they are appurtenant being responsible for the general appearance of such areas, as well as the insurance of all contents thereon. The approval

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requirements set forth in Section 9.1 of this Declaration shall be applicable to any proposed improvements to such Limited Common Elements. Notwithstanding the foregoing, the Association shall be responsible for the maintenance, repair and replacement of all Limited Common Elements which are driveways or landscaped areas.

- (b) Miscellaneous Areas, Equipment. Any fixtures or equipment (e.g., an air conditioning compressor or hot water heater) serving a Unit or Units exclusively, and any area (e.g., a closet or ground slab) upon/within which such fixtures or equipment are located, which are located within or outside the Unit(s), shall be Limited Common Elements of such Unit(s). The Owner of the Unit to which any such Limited Common Element is appurtenant shall be responsible for the maintenance of the structural and mechanical elements of all such Limited Common Elements.
- (c) Vehicle Parking Spaces. The Common Elements include parking areas for vehicles. The Developer, for so long as it owns any Unit, and thereafter the Association, may assign any parking space for the exclusive use of a Unit, which assignment shall be part of the official records of the Association but shall not be recorded, unless required under the Act to effectuate a valid assignment. For so long as the Developer holds any Unit for sale in the ordinary course of business, the Developer shall be entitled to receive compensation in exchange for assignments of parking spaces and, thereafter, the Association shall be entitled to receive compensation therefor. Any parking space so assigned will be a Limited Common Element of the Unit it is assigned to. No Unit Owner or resident of any Unit, and none of their guests and invitees, shall park in a parking space assigned to another Unit without the permission of the applicable Unit Owner. While the maintenance of each space so assigned, if any, shall be the responsibility of the Association, the insurance of all contents therein shall be the sole responsibility of the Owner of the Unit to which it is assigned.

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

- (a) Support. Each of the Units, and the other Improvements shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements, and any other structure or Improvement which abuts any Unit, or other Improvement or Common Element.
- (b) Utility and Other Services; Drainage. Non-exclusive easements are reserved under, through and over the Condominium Property as

may be required from time to time for utility, cable television, communications and security systems, and other services, and for drainage, overhanging roofs, troughs and gutters, downspouts and surface water run-off (hereafter collectively the "utility or other service or drainage facilities") in order to serve the Condominium. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other service or drainage facilities or the use of these easements. The Association or its agents shall have an irrevocable right of access to each Unit, and other Improvements, and to the Limited Common Elements to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, air conditioning compressors and hot water heaters, service and drainage facilities, and to Common Elements contained in the Unit, or elsewhere in the Condominium Property, and to remove any improvements interfering with or impairing such facilities or easements herein reserved; such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit and Limited Common Elements.

- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit or Improvement (or Limited Common Element appurtenant thereto); (b) any Unit (or Limited Common Element appurtenant thereto or Improvement thereon) encroaches upon any other Unit or Improvement thereon or upon any portion of the Common Elements; (c) any Common Elements encroach upon any other portion of the Condominium Property; or (d) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or the Developer, as appropriate; (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; or (v) any non-purposeful or non-negligent act of a Unit Owner, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as any such Improvements, shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and occupant, their guests and invitees, shall exist (i) for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use and (ii) for vehicular and pedestrian traffic over, through and

across such portions of the Common Elements as from time to time may be paved and intended for such purposes; and (iii) for vehicular traffic over, through and across any adjacent driveways to the extent necessary for ingress and egress to and from the Unit and the garage located thereon, if any. None of the easements specified in this subparagraph shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

- (e) Construction and Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, and for repair, replacement and maintenance or warranty purposes where the Association fails to do so or where the Developer, in its sole discretion, determines that it is required to do so.
- (f) Sales, Marketing and Development Activities. As long as Developer owns any portion of the property subject to this Declaration, Developer, its designees, successors and assigns, shall have (i) the right to use any Units and Improvements owned or leased by Developer, and any other part of the Common Elements or Association Property, for guest accommodations, models and sales and construction offices, to show model Units and the Common Elements to prospective purchasers and lessees of Units, and to use Units as guest villas, in the Condominium, and to erect on the Units and Improvements, Condominium Property and Association Property signs and other promotional materials to advertise Units for sale or lease, and (ii) such easements over, upon, across and under the Condominium Property as may be reasonably required in connection with the development, construction, decoration, marketing, sale or leasing of any Unit or Improvement within the Condominium Property.
- (g) Association Easements. The Association and its agents, employees, contractors and assigns shall have easements to enter onto the Condominium Property and Association Property for the purpose of performing such functions as are permitted or required to be performed by any such associations, including, but not limited to, maintenance, controlled-access activities, if any, fire hose access and enforcement of architectural control and other

restrictions. The easements reserved in favor of the Association and its agents, employees, contractors and assigns, shall include access easements through all Units, and other Improvements on the Units, and Limited Common Elements to perform such maintenance the Association may be required to perform,.

- (h) Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to any other structure located within the Condominium Property, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines, pipes, and equipment serving the adjacent structure which are necessarily or conveniently located within the Condominium Property (provided that the use of this easement shall not unreasonably interfere with the structure, operation or use of the Condominium Property).
- (i) Additional Easements. The Developer, for so long as a majority of the Board has been elected or appointed by the Developer, and the Association, through the Board, acting on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and/or the Association, as applicable, as its attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications, service or drainage easements, hurricane shutters (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or to relocate any such existing easements or drainage facilities, including, without limitation, easements and facilities for drainage and surface water run-off, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Units and the Improvements, or any portions thereof, or for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for purposes.
- (j) Community Systems. The Developer hereby reserves and retains to itself, its successors, assigns, contractors, designees and nominees: (a) a perpetual easement over, under, through and across the Condominium Property for the placement, installation, servicing, maintenance, repair, replacement and removal of any and all "Community Systems", as defined in Section 27 of this

Declaration, (b) the right to connect the Community Systems, or any parts thereof, to whatever receiving source the owner of the Community Systems deems appropriate, including, without limitation, companies licensed to provide CATV service in the County, for which service Developer shall have the right to charge any users a reasonable fee (which shall not exceed any maximum allowable charge provided for in the Ordinances of the County) and to utilize such receiving or intermediary transmission source(s) as Developer may in its sole discretion deem appropriate; (c) the right to enter the Units, upon reasonable notice to the Unit Owner, for the purpose of maintaining, inspecting, repairing removing or replacing any portion of any of the Community Systems of which it (or one of its successors, assigns, designees or nominees) has retained ownership, and (d) the exclusive right to provide (or cause to be provided), to the fullest extent permitted under applicable law, as amended from time to time, mandatory or non-mandatory services to Units through the Community Systems, or any parts thereof (and related, ancillary services to Units, including, but not limited to, access, control and safety services) at charges not to exceed those normally paid for like services to residents of single-family homes or condominium units within the general vicinity of the Condominium Property, and to retain or assign all such charges. The cost of any master systems, or duly franchised service provided in connection therewith, which is obtained pursuant to a bulk contract, or any costs designated as "Common Expenses" in a written contract between the provider of such services and the Board of Directors, shall be deemed Common Expenses. Notwithstanding anything to the contrary contained herein, nothing herein shall limit or impair the right of Unit Owners to cancel any easement with respect to the Community Systems in accordance with the Act.

- (k) Party Walls. Each wall built by the Developer as part of the initial construction of the Improvements and placed on the property line dividing individual Units shall constitute a party wall; and each Unit Owner owning an adjoining Unit shall own that portion of the party wall which has been erected upon his Unit with a cross easement for support in the remaining portion of the party wall in favor of the adjoining Unit.

Pursuant to Section 7.1 of this Declaration, the Association shall be responsible for the normal maintenance, repair, and replacement of party walls. An easement is hereby granted by each Owner to the Association to permit the Association, and its authorized representatives, the right of ingress and egress in, through, and upon each Unit for purposes of performing such repairs, maintenance, and replacement in a workmanlike manner. All such

entries shall be at a reasonable and convenient time for the Unit Owner, except in the event of an emergency, in which event such entries may be made when necessary.

No Unit Owner sharing a party wall with an adjoining Unit Owner shall possess the right to cut windows or other openings in the party wall, or make alterations, additions, or structural changes in the party wall without the prior written consent of the Association.

4. **Restraint Upon Separation and Partition of Common Elements.** The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to the Units shall remain undivided, and no action may be brought for partition of the Common Elements, the Condominium Property, or any part thereof, except as provided herein with respect to termination of the Condominium.
5. **Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.**
 - 5.1 **Percentage Ownership and Shares.** The undivided percentage in the Common Elements and Common Surplus, and the share of the Common Expenses, appurtenant to each Unit, is as set forth on Exhibit "2" attached hereto, and is based upon the approximate square footage of each Unit as compared with the total square footage of all of the other Units in the Condominium.
 - 5.2 **Voting.** Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and the Articles of Incorporation. Each Unit Owner shall be a member of the Association.
6. **Amendments.** Except as elsewhere provided herein, amendments to this Declaration may be effected as follows:
 - 6.1 **By the Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Except as may be elsewhere provided, approvals must be by an affirmative vote representing in excess of 66 2/3% of the voting interests of Unit Owners. Notwithstanding the foregoing, or anything to the

contrary in the Articles or By-Laws, the restrictions and other provisions pertaining to leases, which are set forth in Section 17.2 of this Declaration, and in Rule 2 of the Rules and Regulations attached to the By-Laws, may only be amended upon an affirmative vote of 75% of the Voting Interests of the Unit Owners. Directors not present in person at the meeting considering the amendment may vote by telephone conference, while Unit Owners not present at such a meeting may vote by proxy, provided that such proxy is delivered to the Secretary of the Association at or prior to the meeting.

- 6.2 By the Board. Except as elsewhere provided herein or by the Act, the Board of Directors, upon the unanimous vote of all the directors, shall have the right, without the consent of the Unit Owners, to make the following amendments to this Declaration: (i) amendments made to conform to the requirements of any Institutional First Mortgagee so that such mortgagee will make, insure, or guarantee first mortgage loans on the Units, (ii) amendments required by any governmental authority, or (iii) amendments made to conform with the provisions of this Declaration to any provisions of the Act or any rule promulgated thereunder, or any other applicable statute or regulation now or hereafter adopted or amended, provided however that no such amendment shall be effective to impose any additional liability or obligation on the Developer.
- 6.3 Material Amendments. No amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the proportion or percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereof, join in the execution of the amendment, and unless a majority of the total voting interests approve the Amendment.
- 6.4 Material Alterations or Substantial Additions. The Association shall not make any material alterations or substantial additions to the Common Elements or to real property which is Association Property, without the approval of a majority of the voting interests of the Unit Owners. The installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or substantial addition to the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.
- 6.5 Mortgagee's Consent. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of 66-2/3 of such mortgagees in each

instance. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.

6.6 By the Developer. Notwithstanding anything herein contained to the contrary, as long as a majority of the Directors of the Association have been elected or appointed by the Developer, this Declaration, the Articles of Incorporation or the By-Laws may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, including (without limitation), those changes to Developer-owned Units permitted in Section 10 of this Declaration, but expressly excluding an amendment: (i) to permit time-share estates (which must be approved, if at all, by all Unit Owners and mortgagees on Units); or (ii) to effect a "Material Amendment" (as defined in Section 6.3 above) or (iii) to effect changes or amendments prohibited to be made by the Developer or by the Association pursuant to the Act. As long as the Developer holds any Units for sale in the ordinary course of business, no amendment to this Declaration, the Articles or the By-Laws may be adopted by the Association, the Board or any other party which would eliminate, modify, alter, prejudice, abridge or otherwise adversely affect, in any manner, any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance which may be withheld in its sole and unfettered discretion.

6.7 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors, which shall include recording information identifying this Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of this Declaration is effective when the applicable certificate is properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words inserted in the text shall be underlined; and deleted words shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision _____ for present

text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

7. **Maintenance and Repairs.**

7.1 **Units.** All maintenance, repairs and replacements of, in or to any Unit and the Improvements thereon, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, any skylights, the interior sides of the entrance doors, garage doors and all other doors within or affording access to a Unit, any awnings, canopies, hurricane shutters, patio and deck surfaces, planters, enclosed landscaped areas, electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit, including, without limitation, fixtures and/or their connections required to provide water, light, power, telephone, television, transmission, sewage and sanitary service to the Unit, as well as other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. All property to be maintained, repaired and/or replaced by a Unit Owner shall be maintained at all times in a condition which does not and will not adversely affect any other Unit Owner, or any other portion of the Condominium Property.

7.2 **Common Elements.** Except to the extent (i) expressly provided to the contrary herein, (i.e., as to Limited Common Elements) or (ii) proceeds of insurance are made available therefore, all maintenance, repairs and replacements in or to the Common Elements (other than Limited Common Elements as provided above) and all Association Property shall be performed by the Association, including, without limitation, roofs, gutters and downspouts, fences, exterior walls, exterior doors and garage doors, party walls, unenclosed landscaped areas, Driveways, exterior front entry driveway lights and house numbers, irrigation systems, conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in a Unit and which service part or parts of the Condominium other than the Unit within which such facilities are contained, and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners.

7.3 **Specific Unit Owner Responsibility.** In addition to those items listed in Section 7.1 hereinabove, the obligation to maintain and repair the following specific items shall be the responsibility of the Unit Owners, individually, and not the Association, without regard to whether such items

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are included within the boundaries of the Units or are Limited Common Elements:

- (a) Where a Limited Common Element consists of a balcony, terrace, patio, driveway or yard, the Unit Owner who has the right to the exclusive use of said balcony, terrace, patio driveway or yard shall be responsible for the maintenance, care and preservation of the finished surfaces of floors within said areas, if any, and the fixed and/or sliding glass door(s) in the entrance way(s) or other portions of said area, if any, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs, if any, as well as for the general maintenance and appearance of such areas, and the insurance of all contents thereon. Notwithstanding the foregoing, the Association shall be responsible for the maintenance, repair and replacement of all pavers or other surfaces installed within driveway areas.
- (b) Except as provided in Section 3.3, any additions, alterations or improvements to Units, or Limited Common Elements shall be subject to the consents and approvals required in Section 9.

7.4 Reporting to the Association. No Unit Owner shall operate, maintain, repair or replace any portion of the Condominium Property to be operated, maintained, repaired and/ or replaced by the Association, or the Association Property, without first obtaining written approval from the Association. Each Unit Owner shall promptly report to the Association or any applicable management company any defects or need for repairs, maintenance, or replacements, the responsibility for which is that of the Association.

7.5 Authorization to Enter. Whenever it is necessary to enter any Unit for the purpose of performing any maintenance, repair or replacement of any Common Elements or any other Unit or Improvement, or for making emergency repairs necessary to prevent damage to any Common Elements or to any other Unit or Improvement, the Owner or occupant of the Unit shall permit the Association or persons authorized by it to enter the Unit for such purposes, provided that such entry may be made only at reasonable times and with reasonable advance notice, except that in the case of an emergency no advance notice will be required. Any damage resulting from any such entry shall be a Common Expense, except where such entry is required in order to repair a Unit, in which event the Unit Owner will be responsible for such damage.

7.6 Damage Responsibility. Each Unit Owner and resident shall be liable for any damage to the Common Elements, or to any Limited Common Elements, or to its Unit or to any other Unit or Improvements, caused by the Unit Owner or by any resident of his Unit, or by any guest or invitee

thereof, or caused by fire, leaking water, or other cause emanating from such Unit or Improvements, to the extent the cost of repairing any such damage is not paid by insurance obtained by the Association. Any maintenance, repair or replacement which was necessitated by the failure of a Unit Owner or by any of its family, tenants, guests or invitees, to abide by their obligations hereunder, or was caused by the willful or negligent act of a Unit Owner, its family, tenants, guests or invitees, shall be effected by the Association at said Unit Owner's sole expense and a Special Assessment, pursuant to Section 13.2(a) hereof, therefor shall be made against its Unit; and (b) if the Association determines the Unit Owner has failed to abide by its obligations hereunder, and, to the extent necessary to prevent damage to the Common Elements or to any Unit, the Association may, but shall not be obligated to, perform any maintenance, repair or replacement to any portions of a Unit or the Improvements thereon for which the Unit Owner is responsible, at said Unit Owner's sole expense, and a Special Assessment therefor shall be made against such Unit.

- 7.7 Common Elements and Association Property. Except to the extent (i) expressly provided to the contrary herein, or (ii) where proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than those Limited Common Elements to be maintained by the Unit Owners as provided above) and Association Property shall be performed by the Association and the cost and expense thereof shall be assessed to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be a Special Assessment against such units pursuant to Section 13.2(a) hereof. No Unit Owner shall operate, maintain, repair or replace any portion of the Condominium Property to be operated, maintained, repaired and/or replaced by the Association, or the Association Property, without first obtaining written approval from the Association. Each Unit Owner shall promptly report to the Association, or to any applicable management company, any defects or need for repair, maintenance, or replacements, the responsibility for which is that of the Association.
- 7.8 Exception for Casualty Damage. Notwithstanding anything in this Section 7 to the contrary, in the event any portion of a Unit, Limited Common Element or Common Element required to be maintained by the Association is damaged or destroyed by fire, hurricane or other casualty covered by property insurance which the applicable Unit Owner maintains and which actually covers such damage or destruction, the Association may require the Unit Owner to be responsible for payment of the costs incurred by the Association in repairing and restoring any such damage.

8. **Additions, Improvements or Alterations by the Association.** Whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or the Improvements to be maintained by the Association pursuant to Section 7.2 hereinabove, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of \$100,000 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Unit Owners represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements or Association Property, or the Improvements to be maintained by the Association pursuant to Section 7.2 hereinabove, shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this Section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

9. **Additions, Alterations or Improvements.**

9.1 **By Unit Owners/Consent of the Board of Directors.** No Unit Owner shall make any addition, alteration or improvement in or to his Unit or to any Improvement thereon, or to any Limited Common Element, the Common Elements or to the Association Property, which alters the exterior appearance thereof, including, but not limited to, the installation of landscaping, patios, walls, fences or any other Improvements which could in any way affect the structural, electrical, plumbing or mechanical systems of the Units, or which otherwise requires the approval of the Association pursuant to Section 17 of this Declaration, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of any such addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked, unless the work is not completed within one (1) year from the date of such approval. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Board of Directors, or any officer, agent or Committee thereof, the Developer and all other Unit Owners, harmless from and to

indemnify them for, any liability or damage to the Condominium Property and expenses arising therefrom.

Without limiting the generality of the foregoing, any Unit Owner proposing to install any such improvements within a Unit or the Limited Common Elements shall, if required by the Board of Directors, submit to it a summary of the liability insurance coverage to be obtained for such improvement. From and after the time the installation of the Improvement is commenced, and if required by the Board of Directors, the Unit Owner and his heirs, successors and assigns shall at all times maintain such insurance coverage under the same terms and in the same amounts as those originally approved by the Board of Directors. Without limiting the generality of Section 11.2 hereof, neither the Association, the Board of Directors, any Committee, member, director, officer, agent or employee thereof, the Developer or manager nor any of their respective directors, officers, Committees, employees, contractors, agents or affiliates, shall be liable for any injury or damage caused by any defects, unsafe conditions or other matters arising from the use (be it authorized or unauthorized) of the afore-described improvements, notwithstanding any approvals given by any of the aforesaid parties as to the installation of such improvements. In the event that the foregoing sentence is ultimately held to be unenforceable or otherwise not effective, the Unit Owner, his lessees and/or successors in title shall indemnify and hold harmless the Association, its Board of Directors, and the Developer, and all of their respective directors, committee members, officers, employees, contractors, agents and affiliates, for and from all manners of action, claims, judgments, and other liabilities in any way whatsoever connected with any such improvements contemplated herein. The foregoing insurance and indemnity provisions shall also apply to each Owner and occupant of the applicable Unit other than the Developer even if any such improvement is installed by the Developer.

The Board of Directors shall, from time to time, establish specifications for hurricane shutters and other hurricane protection which comply with the applicable building codes, and shall establish permitted color(s), style(s), dimension(s), material(s) and installation requirements for hurricane shutters and other hurricane protection. Subject to the provisions hereof, the Association shall approve the installation or replacement of hurricane shutters and other hurricane protection conforming with the Board's specifications.

The Association may condition any such proposed improvement upon, among other things: (i) a reasonable damage deposit being posted with the Association, by the party authorizing work to be done, for protection against damage which may result to the Common Elements or other Units; and/or (ii) a certificate of liability and worker's compensation insurance

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being provided to the Association, naming the Association as an insured thereunder, as to each party to perform such work.

9.2 Improvements, Additions or Alterations by Developer. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 9 shall not apply to Developer-owned Units and Improvements. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit or Improvements owned by it and any Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), or both of them; and (b) expand, alter or add to all or any part of the recreational facilities. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.2 shall be adopted in accordance with Section 16.7 and Section 10 of this Declaration. To the extent that an amendment hereunder changes the configuration or size of any Unit (although being kept as two separate legal Units), including, without limitation, in any material fashion, materially alters or modifies the appurtenances to the Unit or changes the proportion by which the Owner of the Unit owns the Common Surplus, such an amendment shall require the consent of the record owner of the Unit, all record owners of liens on the affected Unit, as well as a majority of total voting interests in the Association, unless it is required by any governmental entity.

9.3 Life Safety Systems. Neither any Unit Owner nor the Association shall make any additions, alterations or improvements to the Life Safety Systems without the prior consent of the appropriate governmental authority. No lock, padlock, bar, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency signage shall not be altered or removed by any Unit Owner or by the Association without the Association obtaining the consent of the applicable governmental authority having jurisdiction over same. All means of egress must permit unobstructed travel at all times. No barrier including, but not limited to personal property, shall impede the free movement ingress and egress.

10. Changes in Developer-Owned Units. Without limiting the generality of the provisions of Section 9.2 above, and anything to the contrary in the Declaration notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms to the Units in any Developer-owned Units; (iii) change the size of Developer-owned Units, by combining separate Developer-

owned Units into a single apartment (although being kept as two separate legal Units), or otherwise; and (iv) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that the Owners of such Units consent thereto and that any such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Section 6.6, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of the same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 6.3 above. Without limiting the generality of Section 6.6 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer. To the extent that an amendment hereunder changes the configuration or size of any Unit in any material fashion, materially alters or modifies the appurtenances to the Unit or changes the proportion or percentage by which the Owner of the parcel shares the Common Expenses or owns the Common Surplus, such an amendment shall require the consent of the record owner of the Unit, all record owners of liens on the affected Unit, as well as a majority of total voting interests, unless required by any governmental entity.

11. **Operation of the Condominium by the Association.**

11.1 **Powers and Duties.** The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and By-Laws (respectively **Exhibits "3" and "4"** annexed hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit and the Improvements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements, Limited Common Elements or any portions of a

Unit to be maintained by the Association, or at any time and by force, if necessary, to prevent damage or to make emergency repairs to the Common Elements, the Association Property or to a Unit or Units.

- (b) The power to make and collect Assessments, Charges and other levies against Unit Owners and to require, administer, lease, maintain, repair and replace the Common Elements and Association Property.
- (c) The duty to maintain accounting records pursuant to accepted accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- (d) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may or may not be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments and Charges, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in this Declaration, the Articles, By-laws, rules and regulations and the Act, including, but not limited to, the making of Assessments, promulgation of rules and regulations and execution of contracts on behalf of the Association.
- (e) Subject to the provisions of Section 7.8, the power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing.
- (f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property.
- (g) The power to charge a fee for the exclusive use of any Common Elements (other than Limited Common Elements) or Association Property to any Unit Owner being granted, by the Association, a right to such exclusive use.

- (h) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, subject to Section 7.8 hereof. Real property shall be acquired upon a majority vote of the Board of Directors; provided that the requirements of Section 7.8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the proviso regarding the debt incurred) shall also apply to the acquisition of real property; provided, further, however, that the acquisition of a Unit as a result of a foreclosure of the lien for Assessments or Charges (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit without requiring the consent of Unit Owners.
- (i) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the By-Laws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as may be expressly limited or restricted therein.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or otherwise, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration to the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

- 11.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair required hereunder, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9.1 hereof. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Association nor any of its officers, directors, committees, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence or any other misfeasance, malfeasance or non-

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feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to his Unit, agrees not to seek damages from the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing (nor shall its review of any plans be deemed approval of) any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses and liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, theft, personal injury, death or other liability, including (without limitation) any liability for any damaged or stolen vehicles or other personal property left therein or elsewhere within the Common Elements, or on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

- 11.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit.
- 11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required as to any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration, the Articles, the By-Laws or under applicable law.
- 11.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors, is specifically required in this Declaration, the Articles or By-Laws, applicable rules and regulations or applicable law, all approvals or actions permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder,

such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

11.6 Effect on Developer. Notwithstanding anything herein to the contrary, if the Developer holds one or more Units for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of Developer:

- (a) Assessment of the Developer as a Unit Owner for capital improvements; or
- (b) Any action by the Association that would be detrimental to the sale of Units by the Developer; however, an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sale of Units.

12. Determination of Common Expenses and Fixing of Assessments Therefor.

The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, adopted from time to time, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if and to the extent required by, and not waived in accordance with, applicable law or established by the Association), the operation, maintenance, repair and replacement of the Condominium Property and/or Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall designate, subject to change, to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.

13. Collection of Assessments.

13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while he is the Unit Owner. The grantee shall be 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 conveyance, without prejudice to any right the grantee may have to recover from the grantor any amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

13.2 Special and Capital Improvement Assessments and Charges. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

- (a) "Special Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements or representing funds otherwise required by the Association and not produced by the regular Assessments received by the Owners.
- (b) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital Improvements located or to be located within the Common Elements, Limited Common Elements or Association Property.
- (c) Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessment or Capital Improvements Assessments, in the aggregate in any year, exceed \$125,000.00 or cause the total Assessments levied to exceed 115% of the Assessments for the preceding calendar year, the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum is attained.

13.3 Default in Payment of Assessments for Common Expenses and Charges. Assessments and Charges, and installments thereof, not paid within ten (10) days from the first day of the period in which they become due shall bear interest at the rate of eighteen percent (18%) per annum, or the highest rate permitted by law, whichever is less. The Association may also charge an administrative late fee, in addition to such interest, in an amount not to exceed the highest amount provided for in the Act (as it may be amended from time to time). The Association has a lien on each Condominium Parcel to secure the payment of Assessments and Charges thereon, together with interest and reasonable attorney's fees and costs

Incurred by the Association incident to the collection of the Assessments or Charges or enforcement of the lien. Except as otherwise provided in the Act, and as set forth below, the lien for Assessments is effective from, and shall relate back to the recording of this Declaration. However, as to first mortgages of record, the lien for Assessments is effective from and after recording of a claim of lien in the Public Records of Miami-Dade County, Florida. Notwithstanding anything herein to the contrary, Charges shall not be Common Expenses, shall not be collectible as Assessments, and shall not be secured by the Association's lien rights arising pursuant to the Act. The Association's lien for Charges is created solely pursuant to this Declaration and is effective only from and after the recording of a claim of lien by the Association. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Unit, the name of the record Unit Owner, the name and address of the Association, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amounts as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall be effective longer than one (1) year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The one year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, Charges, interest thereon, if permitted under applicable law, and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. A claim of lien shall 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 in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments or Charges in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments and Charges without waiving any claim of lien.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the balance of the Assessment installments for the current budget year to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the period for which Assessments were accelerated, the Unit Owner or the Association, as appropriate, shall be obligated to pay or

reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 13.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments or Charges. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry, the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 13.5 First Mortgagees. Any first mortgagee or its successors or assignees who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure or otherwise, is liable for all Assessments which come due while it is the Unit Owner and is jointly and severally liable with the previous Unit Owner for all unpaid Assessments which came due up to the time of the transfer of title. This liability is without prejudice to any rights the first mortgagee or any such other party may have to recover any such sums it may have paid to the Association from the previous Unit Owner. Notwithstanding the foregoing, in no event shall any such first mortgagee or its successors or assigns be liable for more than the Unit's unpaid Assessments which accrued or come due during the six (6) months immediately preceding its acquisition of title to the Unit, and for which payment in full has not been received by the Association, or by one percent (1%) of the original mortgage debt, whichever amount is less. The provisions of this paragraph shall not apply unless the first mortgagee or its successors or assigns joins the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee. The person acquiring title shall pay the amount owed to the Association within thirty (30) days after the transfer of title. Failure to pay the amount owed to the Association when due shall entitle the Association to record a claim of lien against the Unit and proceed in the same manner as provided in this Section for unpaid assessments. The foregoing limitation of liability shall apply to any purchase at a foreclosure sale of a first mortgage regardless of whether

the purchaser is the holder of the foreclosed mortgage. A first mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Assessments coming due during the period of such ownership.

- 13.6 Developer's Liability for Assessments. During the period from the date of recording of this Declaration until the earlier of (i) six (6) months following the closing of the first Unit in the Condominium, or (ii) the date on which control of the Association is transferred to Unit Owners other than the Developer, or (iii) the date the Developer no longer owns any Units in the Condominium (the "Guaranty Period"), the Developer shall not be obligated to pay the share of the Common Expenses and Assessments of the Condominium Association attributable to Units it is offering for sale, provided that the regular monthly Assessments for Common Expenses of the Condominium Association imposed on each Unit Owner other than the Developer shall not increase during such period over the amounts set forth in the attached Exhibit "5", subject only to the occurrence of an Extraordinary Financial Event, as set forth below; and provided further that the Developer shall be obligated to pay any amount of Common Expenses of the Condominium Association actually incurred during such period and not produced by the Assessments at the guaranteed level receivable from other Unit Owners. For purposes of this Section, income to the Condominium Association other than Assessments (as defined herein and in the Act) shall not be taken into account when determining the deficits to be funded by the Developer. During the Guaranty Period, and any extension thereof, the Developer will not be required to make payments for Assessments attributable to Units owned by the Developer, including but not limited to assessments for reserves, if any, but, instead, will be obligated to pay any amount of Common Expenses incurred during that period and not produced by the Assessments at the guaranteed level receivable from other Unit Owners. The foregoing provisions are pursuant to Florida Statutes Section 718.116(9)(a)(2), F.S. After the initial Guaranty Period, the Developer shall have the option, but not the obligation, to extend the guaranty for up to three (3) additional three-month periods commencing at the expiration of the initial Guaranty Period. No funds receivable from Unit purchasers or Owners payable to the Association or collected by the Developer on behalf of the Condominium Association, other than regular periodic Assessments for Common Expenses, as provided in this Declaration and disclosed in the Estimated Operating Budget referred to above, shall be used for the payment of Common Expenses prior to the Guaranty Expiration Date. This restriction shall apply to funds, including, but not limited to, capital contributions or start-up funds collected from Unit purchasers at closing. Notwithstanding the above, and as provided in Section 718.116(9)(a)(2) of the Act, in the event of an Extraordinary Financial Event (as hereinafter defined), the costs necessary to effect restoration shall be assessed against all Unit Owners owning Units on the

date of such natural disaster or Act of God, and their successors and assigns, including the Developer (with respect to Units owned by the Developer). As used in this subsection, an "Extraordinary Financial Event" shall mean a casualty loss affecting the Condominium resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a) of the Act.

- 13.7 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments, Charges and other monies owed to the Association by the Unit Owner with respect to his Unit have been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 13.8 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, Assessments will be collected monthly.
- 13.9 Application of Payments. Any payments received by the Association from a delinquent Unit Owner for Assessments 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. Any payments received by the Association from a delinquent Unit Owner for Charges 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 Charge. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.
14. Insurance. Insurance covering the Condominium Property shall be governed by the following provisions:
- 14.1 Purchase Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to any modifications which may be reasonably required by the Primary Institutional First Mortgagee.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for the Unit Owners covered by the

policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.

- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, or for their personal liability and living expenses and for any other risks not otherwise insured in accordance herewith.

14.2 Coverage. The Association shall use commercially reasonable efforts to maintain insurance covering the following:

- (a) Casualty. The Condominium Property and all Association Property shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policy shall cover, among other things, all Common Elements and all of the Units within the Condominium including, but not limited to, partition walls, doors, windows, and stairways. Such policy shall not include hurricane shutters, unit floor coverings, wall coverings, ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, built-in cabinets, personal property or any other Improvements located outside of the Unit which are required to be maintained, repaired or replaced by the Unit Owners. Such policy may also exclude any other property permitted to be excluded from the Condominium's insurance policy pursuant to the Act, as amended from time to time and may contain reasonable deductible provisions as determined by the Board of Directors. Such coverage shall afford protection against loss or damage by fire and other hazards

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covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Condominium in construction, location and use, including, but not limited to, vandalism and malicious mischief.

- (b) Liability. Comprehensive general public liability and automobile liability insurance, if applicable, covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.
- (c) Workers' Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance covering the Common Elements, Association Property and Units if required by the Primary Institutional First Mortgagee or FNMA/FHLMC, or if the Association so elects.
- (e) Fidelity Insurance if required by the Act or FNMA/FHLMC, covering all persons who control or disburse Association funds, such insurance to be in an amount not less than (i) the maximum funds that will be in the custody of the Condominium Association or its management agent at any one time or (ii) such amounts as may be required, from time to time, under the Act.
- (f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (g) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability

for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association, if required by FNMA/FHLMC, shall have the following endorsements: (i) agreed amount and inflation guard; and (ii) steam boiler coverage (providing at least \$50,000 coverage for each accident at each location), if applicable.

- 14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without endeavoring to provide at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such a manner as the Board of Directors deems appropriate.
- 14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may, but need not, be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. References herein to the Insurance Trustee shall be deemed to apply to the Board of Directors if it fails, or determines not to appoint an Insurance Trustee as provided in Section 14.9 below. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit

of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.
- (b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any, is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
- (c) Mortgagees. No mortgagee shall have any right to determine or to participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

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

- (a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.

- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 above, and distributed first, to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages; second, to the Association for any due and unpaid Assessments or Charges; and third, the balance, if any, to the beneficial owners.
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.
- 14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claim.
- 14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, or casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for all insurance as to all such risks and as to any other risks not covered by insurance carried by the Association, including insurance for personal belongings located on Limited Common Elements.
- 14.9 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.10 Appointment of Insurance Trustee. The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint an Insurance Trustee, the Association will perform directly all obligations imposed upon the Insurance Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s), Limited Common Elements or Common Elements, such property shall be presumed to be Common Elements.

15. **Reconstruction or Repair After Fire or Other Casualty.**

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

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

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) or the Association notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) or the Association notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work, provided however, that the Board may, in its sole discretion, grant written extensions for such periods as the

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Board determines. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

- 15.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors or the Association and then applicable building and other codes, and, if the damaged property which is to be altered is the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units, Improvements and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.
- 15.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.
- (a) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (i) Association - Lesser Damage. If the amount of the estimated cost of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be

disbursed in the manner provided below for the reconstruction and repair of major damage.

- (ii) Association - Major Damage. If the amount of the estimated cost of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Unit Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of the distribution to an Owner which is not in excess of Assessments and Charges paid by such Owner

into the construction fund shall not be made payable jointly to any mortgagee.

- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments and Charges shall be deposited by the Association with the Insurance Trustee, or to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, or whether a disbursement is to be made from the construction fund, or to determine whether surplus funds to be distributed are less than the Assessments and Charges paid by Owners, or to determine the payees or the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

15.4 Assessments and Charges. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments or Charges shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and Charges on account of damage to the Optional Property, shall be in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

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

16. Condemnation.

16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners

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shall deposit the awards with the Insurance Trustee; and in the event of a failure to do so, in the discretion of the Board of Directors, a Special Assessment shall be made against a defaulting Unit Owner in the amount of his award, or the amount of such award shall be set off against any sums hereafter made payable to that Owner.

- 16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, a taking by eminent domain also shall be a casualty.
- 16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 15 specifically provided.
- 16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit, as applicable, and the remaining portion of Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit and any Improvements thereon shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium.
- (a) Restoration of Unit. The Unit or Improvements thereon shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged against the Owner of the Unit.
 - (b) Distribution of Surplus. The balance of the award with respect to the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Unit Owner and such mortgagees.
 - (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction

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by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

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

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

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

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Charges and Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions with respect to a specific Unit, or other Improvements exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements. Any awards attributable to more than one Unit shall be divided among the affected Unit Owners in proportion to the damage or impairment suffered by each such Unit Owner, as determined by the Association in its sole discretion.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

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

- (i) add the total of all percentages of all Units of continuing Unit Owners prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof (the "Percentage Balance"); and
- (ii) divide the percentage of each Unit of a continuing Unit Owner prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof, by the Percentage Balance.

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

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

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

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they exist prior to the adjustments to such shares effected pursuant hereto by reason of taking.

- 16.6 **Taking of Common Elements.** Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Unit Owner and the mortgagees of the Unit.
- 16.7 **Amendment of Declaration.** The changes in Units, in the Common Elements and in the ownership of the Common Elements and shares in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of the Board of Directors.
17. **Occupancy and Use Restrictions.** In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units and these and other Improvements thereon, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:
- 17.1 **Occupancy.** Except as otherwise herein expressly provided, the Units shall be used for residential purposes only. No business, profession or trade of any type shall be conducted on any portion of the Units. Further, this prohibition shall not be applicable to the Developer with respect to its development of the Condominium Property, its construction, repair, decorating, administration, sale, rental or lease of Units, or its use of Units as models, V.I.P. or guest villas, or for sales offices or management services. Nothing herein shall be construed to prohibit ownership of a Unit by a corporation, domestic or foreign, provided that the residential nature of the Units is not disturbed.

Occupancy in Units, except for temporary occupancy by visiting guests, shall not exceed two (2) persons per bedroom and one (1) person per den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms, family rooms, country kitchens and the like). The provisions of this Section 17.1 shall not be applicable to Units used by the Developer for model units, V.I.P. villas, sales offices or management or other services.

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Unless otherwise determined by the Board of Directors, and except as otherwise provided in Section 17.2, a person(s) occupying a Unit for more than one (1) month without the Unit Owner or a member of his family being present shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this Section (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to lessees. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Declaration and the Board of Directors shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

- 17.2 Leases. Leasing of Units shall be subject to the prior written approval of the Association. Every lease of a Unit shall specifically require a deposit from the prospective tenant in an amount not to exceed one (1) month's rent (the "Deposit"), to be held in an escrow account maintained by the Association, provided, however, that the Deposit shall not be required for any Unit which is rented or leased directly by or to the Developer. No Lease shall be for a term of less than six (6) months and a Unit Owner may not lease its Unit more than once in any one (1) year period, regardless of the lease term. The foregoing requirement shall not apply to a Unit rented or leased directly by or to the Developer. Every lease shall provide (or, if it does not, shall be automatically deemed to provide) that: (i) a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto), and with any and all rules and regulations adopted by the Association from time to time (before or after the execution of the lease); (ii) and that a tenant may not, under any circumstances, sublet the Unit (or any portion thereof) to any other person or permit occupancy by any other person. Additionally, copies of all written leases shall be submitted to the Association and tenants must register with the Association prior to moving in. The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Elements from the acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant and a Special Assessment may be levied against the Unit therefore.

All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease.

- 17.3 Children. Children shall be permitted to reside in the Units, subject to the provisions of Section 17.1 above, and applicable rules and regulations which may be adopted by the Association from time to time.
- 17.4 Pets. Except as hereafter provided, no animals, wildlife, livestock, reptiles, or poultry of any kind, shall be raised, bred, or kept on any portion of the

Condominium Property. There may not be more than two (2) household pets maintained within any Unit and the Limited Common Elements appurtenant thereto, to be limited to dogs or cats (or other household pets as defined and specifically permitted by the Association), which shall not be kept, bred or maintained for any commercial purpose and shall not become a nuisance or annoyance to neighbors. Those pets which, in the sole discretion of the Association endanger health, have the propensity for dangerous or vicious behavior (such as pit bulldogs), make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or to the owner of any other portion of the Condominium Property shall be removed upon request of the Board. Unit Owners must pick up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be kept on a leash of a length that affords reasonable control over the pet at all times, or must be carried, when outside the Unit. No pet may be kept on a balcony or terrace when its owner is not in the Unit. Without limiting the generality of Section 19 hereof, any violation of the provisions of this Section 17.4 shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. This Section 17.4 shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that it does not become a nuisance or annoyance to neighbors.

- 17.5 Use of Common Elements and Association Property. The Common Elements and other Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of the Units. The Common Elements shall not be obstructed, littered, defaced, or misused in any manner. In no event shall any Unit Owner or occupant place, or permit the placement of, any item which obstructs, or otherwise impedes access to, any portion of the Condominium Property which are either designated or used as access areas.
- 17.6 Nuisances. No portion of the Units, Limited Common Elements or Common Elements shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious or unsightly to the eye; nor shall any substance, thing, or material be kept on any portion of the Units or the Limited Common Elements appurtenant thereto that will emit foul or obnoxious odors or cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding properties. No obnoxious or offensive activity shall be carried on in any Units, Limited Common Elements, Common Elements or other portions of the Condominium Property, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any Owner. The Board of Directors shall have the right to determine if any

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equipment, fixture, improvement, materials or activity producing such noise or odor constitutes a nuisance. In particular, during the hours from 11:00 p.m. through 8:00 a.m., no Unit Owner shall play (or permit to be played in its Unit, or in the Limited Common Elements or Common Elements) any musical instrument, phonograph, television, radio or the like in a way that unreasonably disturbs or annoys other Unit Owners or occupants. Additionally, there shall not be maintained therein any plants, animals, devices or things of any sort whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the Units, or any other portions of the Condominium Property. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted within the Condominium Property. No activity specifically permitted by this Declaration shall be deemed a nuisance.

- 17.7 Outside Items. No rubbish, garbage, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Common Elements or Limited Common Elements, except within designated trash receptacles. No linens, clothing, household fabrics, curtains, rugs, or laundry of any kind shall be hung, shaken, dried or aired from any windows, doors, balconies, terraces or other portions of the Condominium Property. No articles shall be placed on balconies, patios or similar areas. The foregoing shall not prevent placing and using patio-type furniture, planters and other items in such areas if the same are normally and customarily used for a residential balcony, patio or terrace area. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Board of Directors shall be final and dispositive.
- 17.8 Firearms. The discharge of firearms and fireworks within the Condominium is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.
- 17.9 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or the By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 17.9. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.

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- 17.10 Alterations. Without limiting the generality of Section 9.1 hereof, but subject to the provisions of Section 11 hereof, no Unit Owner shall cause or allow improvements or changes to his Unit, or to any Limited Common Elements, Common Elements, or Association Property, which alters the exterior appearance thereof, or which could in any way affect the structural, electrical, plumbing or mechanical systems of the Units, without obtaining the prior written consent of the Association (in the manner specified in Section 9.1 hereof). No spas, hot tubs, whirlpools or similar improvements shall be permitted on any patio or balcony, without obtaining the prior written consent of the Association (in the manner specified in Section 9.1 hereof).
- 17.11 Flooring Restrictions. The installation of hard and/or heavy surface floor coverings such as tile, marble, wood, and the like, in the lower floors of Units which are located immediately above other Units, must be approved in writing by the Board of Directors. The foregoing approval and Impact Isolation Class rating requirements shall not apply to the installation of any such hard and/or heavy surface floor coverings in bathrooms, and kitchens of such Units. The color and exact materials to be used on terrace and balcony floor coverings must also be approved in writing by the Board of Directors. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Units. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. Applicable warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements. A waterproofing system is to be placed on the concrete surface of the balcony prior to the installation of the setting bed and tile. This waterproofing system must be as recommended by the manufacturer of the tile setting material and the installation must follow the waterproofing manufacturer's written recommendations. **The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from sound transmission.**
- 17.12 Exterior Improvements. No Unit Owner shall modify or otherwise alter the driveway portions of the Limited Common Elements, or install any walls, fences, structures or other improvements in any portion of the Limited Common Elements, or change the exterior colors of any Units or the Limited Common Elements appurtenant thereto without the prior written consent of the Association (in the manner specified in Section 9.1 hereof).
- 17.13 Signs. No sign, poster, display, billboard or other advertising device of any kind including, without limitation, "FOR SALE", "FOR RENT", security

service or construction signs shall be displayed to the public view on any portion of the Units, Limited Common Elements or Common Elements, without the prior written consent of the Association, except (a) signs, regardless of size, used by the Developer, its successors or assigns or a party developing or marketing any portion of the properties subject to this Declaration, including signs used for construction or repairs, advertising, marketing, promotion, sales or leasing activities, (b) signs installed as part of the initial construction of the Units or other Improvements and replacements of such signs (similar or otherwise) and (c) bulletin boards, entrance, directional, informational and similar signs used by the Association.

- 17.14 Lighting. All exterior lights and exterior electrical outlets must be approved in accordance with Section 9 of this Declaration.
- 17.15 Exterior Sculpture and Similar Items. Exterior sculptures, flags, and similar items must be approved in accordance with Section 9 of this Declaration. Notwithstanding the foregoing, any Unit Owner may respectfully display one (1) portable, removable American flag, and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, any Unit Owner may respectfully display portable, removable official flags, not larger than four and one-half feet by six feet (4'6" x 6') that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.
- 17.16 Air Conditioning Units. No window or wall mounted air conditioning units may be installed in any Unit.
- 17.17 Outside Antenna and Similar Installations. No radio station or short-wave operations of any kind shall operate from any Unit, Limited Common Elements or Common Elements. Except to the extent permitted under applicable laws, no exterior satellite dish, or other transmitting or receiving apparatus, radio antenna, television antenna or other antenna of any type shall be erected or maintained on the Common Elements, Limited Common Elements, or Units, without the prior written consent of the Association. Notwithstanding the foregoing, upon obtaining the prior written consent of the Association, satellite dishes, and other devices permitted under applicable law, may be installed within the Units or within any Limited Common Elements appurtenant thereto, provided, however, that in no event shall any such device be installed in or on any other portion of the Condominium Property. To the extent permissible under applicable law, the Association may enact Rules and Regulations, requiring that any such devices which may be permitted under applicable law are comparable in size, weight and appearance, are installed and maintained in a manner designed to protect the safety of the Units and its occupants and satisfy any standards established by the Association for architectural appearance purposes.

- 17.18 Play Equipment, Strollers, Etc. Bicycles, tricycles, scooters, skateboards, and other play equipment, baby strollers and similar items shall not at any time be left in the driveways, yards, or other Common Elements or Limited Common Elements (including balconies, terraces and patios).
- 17.19 Window and Door Treatments. No reflective film, tinting or window coverings shall be installed on any windows or glass doors, except as necessary to replace or restore tinting of glass surfaces as originally installed, unless approved by the Association in accordance with Section 9.1 of this Declaration. Curtains, drapes and other window coverings (including their linings) which face on exterior windows or glass doors of Units, or are visible from the exterior of the Units, shall be white or off-white in color, unless otherwise specifically approved by the Board of Directors. No aluminum foil may be placed in any window or glass door of a Unit, and no reflective substance may be placed on any glass in a Unit, except for any substance previously approved by the Board of Directors for energy conservation or hurricane protection purposes. No unsightly materials may be placed on any window or glass door or shall be visible through such window or glass door. Any screen door must be of a uniform type approved by the Association.
- 17.20 Hurricane Protection. No type of hurricane protection may be installed in or around the Units and the Limited Common Elements appurtenant thereto, other than hurricane shutters or other hurricane protection approved by the Association, which shall be installed or affixed in a manner approved by the Association. Upon issuance of an official hurricane warning, each Unit Owner shall take all actions necessary to prepare his/her Unit for any such hurricane, which shall include (i) removing all objects from driveways, yards, balconies and terraces which will not be secured or otherwise protected, and (ii) complying with all rules and regulations which may have been adopted by the Association from time to time. No hurricane or storm shutters or other hurricane protection shall be permanently installed on any structure in a Unit or in the Limited Common Elements or Common Elements, unless first approved in accordance with Section 9 hereof.
- 17.21 Unit Maintenance. Each Unit Owner must undertake or must designate a responsible firm or individual to undertake his general maintenance responsibilities, which responsibilities shall include, at a minimum, maintaining the exterior appearance of the Unit and the Limited Common Elements, safeguarding the Unit and the Limited Common Elements to prepare for hurricane or tropical storm watches and warnings by, among other things, removing any unfixed items on balconies and terraces, and repairing the Unit and the Limited Common Elements in the event of any damage therefrom. An Owner may designate a firm or individual to perform such functions for the Owner, but such designation shall not relieve the Owner of any responsibility hereunder. The name(s) and

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addresses of such firm or individual must be furnished to the Association. The designation of such firm or individual shall be subject to the approval of the Association.

- 17.22 Hazardous Substances. No flammable, combustible or explosive fluids, chemicals or other substances may be kept in any Unit, Limited Common Elements or Common Elements, except such as are generally used for normal household purposes. No electric, gas, charcoal barbecue or other cooking devices, or outside cooking, is permitted on any balcony.
- 17.23 Parking and Prohibited Vehicles. Parking shall be permitted only in designated parking areas within the Condominium Property. No vehicle, including those parked in parking spaces abutting corner units, shall be parked so as to obstruct or otherwise impede ingress or egress to any driveways or roadways. Parking in the Condominium shall be restricted to private automobiles and passenger-type vans, jeeps and pick-up trucks and sport utility vehicles not exceeding one-half ton, motorcycles and motor scooters (all of which are collectively referred to herein as "vehicles"). No person shall park, store or keep on any portion of the Condominium Property any large type commercial type vehicle (for example, dump truck, motor home, trailer, cement mixer truck, oil or gas truck, delivery truck), nor may any person keep any other vehicle on the Condominium Property which is deemed to be a nuisance by the Board. No trailer, camper, motor home or recreational vehicle shall be used as a residence, either temporarily or permanently, or parked on the Condominium Property. The Board shall have the authority to prohibit any vehicle, including any motorcycle or motor scooter, which it determines constitutes a nuisance due to its noise level, particularly where such vehicle is operated in the early morning or late evening hours. No vehicle is permitted on the Condominium Property which leaks oil, brake fluid, transmission fluid or other fluids. No Unit Owner, occupant or other person shall conduct repairs or restorations on any motor vehicle, or other vehicle, or race the engine of any vehicle, upon any portion of the Condominium Property. For so long as the Developer conducts any sales or leasing activities on the Condominium Property, its use of driveways and other parking areas shall not be impeded or restricted. **Unit Owners and occupants shall be responsible for removing their vehicles and other property from their driveways upon the issuance of a tropical storm or hurricane warning.**

The prohibitions on parking contained in this section shall not apply to temporary parking of: (a) commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services; (b) any vehicles of the Declarant, or its affiliates or designees, used for construction, maintenance, repair, decorating, sales or marketing purposes; or (c) service vehicles operated in connection with the Association, or its management companies.

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Subject to applicable laws and ordinances, any vehicle, boat, motorcycle or trailer parked in violation of these or other restrictions contained herein or in the rules and regulations may be towed by the Association at the sole expense of the owner of such vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor shall it be guilty of any criminal act, by reason of such towing.

17.24 Insurance Rates. Nothing shall be done or kept in the Common Elements or within the Units or the Limited Common Elements which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Units, or on the Limited Common Elements or Common Elements, which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

17.25 Documents. Each Owner shall be obligated to deliver the documents received from the Developer, or from any prior Owner, containing this Declaration and any other declarations and documents, and any modifications thereto, to any purchaser or grantee of their Unit.

Notwithstanding the foregoing, in the event of loss or damage to the documents they may be obtained from the Association upon payment of the actual cost for preparing and furnishing the documents to any Owner requesting them.

17.26 Rules and Regulations. As provided in the By-Laws, the Board of Directors may adopt rules and regulations applicable to all portions of the Condominium Property other than the property owned by the Declarant. In the event that such rules or regulations are adopted, they may be enforced in the same manner as the restrictions set forth in this Section and may be modified, added to or revoked, in whole or in part, by the Board of Directors, and as provided in the By-Laws.

17.27 Effect on Developer. The restrictions and limitations set forth in this Section 17.4 shall not apply to the Developer or to Units owned by the Developer, except that the Developer shall be subject to the requirement that prior written approval of the Condominium Association be obtained for leases of Units set forth in Section 17.2, and to the pet restrictions set forth in Section 17.4. The Developer shall also be subject to any restrictions in Section 17.23 on the type of vehicles allowed to park on the Condominium or on any Association Property; however the Developer and its designees shall be exempt from any such restrictions if the vehicle is engaged in any activity relating to construction, decorating, maintenance, sale, rental or marketing of Units.

18. Selling and Mortgaging of Units. The following provisions shall apply:

18.1 Sale or Mortgage of Units. Each Unit Owner shall have the right to sell or mortgage their Unit without restriction.

18.2 No Severance of Ownership. No part of the Limited Common Elements or Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Limited Common Elements and Common Elements whether or not explicitly stated.

18.3 Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant, guest and other invitee of a Unit Owner, shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time, and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

18.4 Mandatory Nonbinding Arbitration and Mediation of Disputes.

Prior to the institution of court litigation, a party to a Dispute shall petition the Division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of \$50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program. The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

- (1) Advance written notice of the specific nature of the Dispute;
- (2) A demand for relief, and a reasonable opportunity to comply or to provide the relief; and
- (3) Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the Dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

Upon receipt, the petition shall be promptly reviewed by the Division to determine the existence of a dispute and compliance with the requirements of paragraph (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are

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filed, the Division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

Upon determination from the Division that a Dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, a copy of the petition shall forthwith be served by the Division upon all respondents.

Either before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the Division. Upon receipt of a request for mediation, the Division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the Dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a Dispute to mediation at any time.

Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the Division under section 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from a list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noted mediation conference, without permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleading filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney's fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the physical presence of the party or its representative having full authority to settle without further consultation, provided that the Association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board ratify and approve such a settlement within five (5) days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless otherwise agreed.

The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

Mediation proceedings must generally be conducted in accordance with Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an

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impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be either binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at a mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney's fees that may be recovered by the prevailing party in any subsequent litigation.

The arbitration shall be conducted according to rules promulgated by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitations. At the request of any party to the arbitration, such arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the Division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the Division or for failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

The arbitration decision shall be presented to the parties in writing. An arbitration decision is final in those Disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for trial de novo is not filed in a court of competent jurisdiction in the County within thirty (30) days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of dispute. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorneys' fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney's fees incurred in the arbitration proceeding as well as the costs and reasonable attorney's fees incurred in preparing for and attending any scheduled mediation. The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs and other reasonable costs, including, attorney's fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney's fees.

Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in the County. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo

has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall recover reasonable attorney's fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

18.5 Negligence and Compliance. A Unit Owner and/or lessee of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected by the Association with respect to such negligence. In the event a Unit Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit and Improvements to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, and to impose a Charge on the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' 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.

19. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the applicable interests in the Common Elements and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor, as if owned in common, in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, or, if authorized

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by a vote of a majority of the Unit Owners, in proportion to the appraised value of each Unit as determined by an appraisal to be obtained by the Board. No payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County. Upon recordation of such certificate, the Association within 30 business days shall notify the Division 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, and shall provide the Division a copy of the recorded termination notice certified by the clerk.

This Section may only be amended with the prior written consent of the Primary Institutional First Mortgagee, which shall not be unreasonably withheld.

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

20.1 **Availability of Association Documents.** The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.

20.2 **Amendments.** No amendment may change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, change the proportion or percentages by which the Unit Owner shares the common expenses and owns the common surplus, or permit timeshare estates to be created in any Unit, unless a Majority of Institutional First Mortgagees approve the amendment, which approval shall not be unreasonably withheld. The approval of a Majority of Institutional First Mortgagees, which shall not be unreasonably withheld, shall also be required if such an approval is required under the rules, regulations or requirements of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

20.3 **Notices.** Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of:

- (a) any condemnation or casualty loss affecting a material portion of the Condominium Property or the affected mortgaged Unit or the Improvements thereon;
- (b) a sixty (60) day delinquency in the payment of the Assessments or any Charges on a mortgaged Unit;

- (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which requires the consent of a specified number of mortgage holders.

20.4 Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of the financial statement of the Association for the immediately preceding fiscal year; and (b) receive notices of and attend Association meetings.

21. Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and shall inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.
22. Access of Developer to Units and to Reports. For as long as Developer remains liable to the Condominium Association, under any warranty, whether statutory, express or implied, for any act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its agents shall have the right, in Developer's sole discretion, and from time to time upon the granting of access thereto by the Condominium Association or a Unit Owner, as the case may be, to enter the Condominium Property for the purpose of inspecting, testing and surveying same, to determine the need for repairs, improvements or replacements, so as to permit Developer to fulfill its obligations under such warranties. Failure of the Condominium Association or of a Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. For as long as the Developer remains liable to the Association under any warranty, whether statutory, express or implied, or for any act or omission of the Developer relative to the development, construction, sale and marketing of the Condominium, the Association shall furnish to the Developer all documentation prepared on behalf of the Association

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concerning the inspection, testing and surveying of the Common Elements or Units and Improvements thereon relative to analyzing such areas for compliance with all such warranties. Failure of the Association or of a Unit Owner to provide such access to reports and/or documentation shall result in the appropriate warranty being nullified and being of no further force or effect.

23. **Notices.** All notices to the Association required or desired hereunder or under the Articles or By-Laws, shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the address of such Owner's Unit, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or to such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

24. **Additional Provisions.**

- 24.1 **Interpretation.** The Board of Directors shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretations shall be binding upon all parties unless wholly unreasonable and an opinion of legal counsel engaged by the Association for such purpose that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 24.2 **Mortgagees.** Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 24.3 **Exhibits.** There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over the provisions hereof.
- 24.4 **Signature of President and Secretary.** Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an

assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

- 24.5 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Articles, the By-Laws or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 24.6 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Articles and By-Laws, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 24.7 Waiver; Modifications. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 24.8 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This Power of Attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 24.9 Litigation/Waiver of Jury Trial. As to any claim arising from or connected with the Developer's construction, development, repair, replacement or maintenance of the Condominium Property, or the Developer's operation of the Association (the "Development Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Development Matters that (i) the party or parties bringing same shall have first given notice to the Developer or other party against whom/ which relief or recovery is sought (the "Defendant") of the specific Development Matters complained of and what actions are necessary to cure or correct same and (ii) the Defendant shall have been given at least forty-five (45)

days (subject to extension by reason of matters beyond the control of the Defendant or because of the nature of the applicable Development Matter(s) and the time necessary to cure or correct same) in which to cure or correct the applicable Development Matter(s) and shall have materially failed to do so. **THE DEVELOPER, THE ASSOCIATION, AND ALL OWNERS AND OTHER PERSONS ACQUIRING ANY RIGHT, TITLE OR INTEREST IN OR TO ANY UNIT, EACH HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM PERTAINING TO ANY DEVELOPMENT MATTERS.** Without limiting the general binding effect of this Declaration, each Owner and other person acquiring any right, title or interest in or to any Unit shall be deemed, by virtue of the acceptance of the conveyance, grant, transfer or assignment thereof, to be fully bound by the provisions of this Section 24.9, as shall the Developer and the Association. Notwithstanding anything contained herein to the contrary, the rights and remedies of each Unit Owner pursuant to Sections 718.111(3), 718.303 and 718.506 of the Act, shall not be limited or abridged.

- 24.10 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 24.11 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 24.12 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, Bylaws, any rules or regulations of the Association or any other document governing or binding the association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium Property and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:
- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;

- (b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, County and/or any other jurisdiction or the prevention of tortious activities; and
- (c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

Each Unit Owner (by virtue of his acceptance of title to his Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed hereby. As used herein, "Association" shall include within its meaning all of the Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns, and any persons designated, from time to time, by the Association or by the Unit Owners to act on their behalf as directors, voting members or otherwise. The provisions hereof shall also inure to the benefit of the Developer, which shall be fully protected hereby.

27. Community Systems.

27.1 Ownership of Community Systems. The Developer reserves unto itself, its successors, assigns, contractors, designees and nominees, ownership of the following systems (including any and all related equipment such as, for example, conduits, wires, amplifiers, antennas, satellite receivers and transmitters, towers and other apparatus, installations and fixtures, including those based on, containing or serving future technological advances not now known): (i) video communications and distribution systems, including, but not limited to, cable television systems (private or franchised, wired or wireless), closed circuit systems, pay t.v. systems, master antenna t.v. (MATV) systems, satellite master antenna television (SMATV) systems, satellite receiving or transmitting systems, and all other multi-channel video distribution systems, and the like which it (or one of its successors, assigns, designees or nominees) installs in part or whole on the Condominium Property (any such system or device and its related equipment being hereinafter referred to as "Video Communications

System"), (ii) communication systems, digital satellite systems and / or other devices which are used, in part or in whole, to provide internet access or related services, internet website communication or the future equivalent which it (or one of its successors, assigns, designees or nominees) installs in part or in whole on the Condominium Property (any such system or device and its related equipment being hereinafter referred to as the "Internet System"); (iii) telecommunications systems or devices, including, but not limited to, telephone, voice, data, information, and the like which it (or one of its successors, assigns, designees or nominees) installs in part or in whole on the Condominium Property (any such system or device and its related equipment being hereinafter referred to as the "Telecommunications System"); (iv) monitoring/alarm systems or devices including, but not limited to, access control devices, and the like which it (or one of its successors, assigns, designees or nominees) installs in part or in whole on the Condominium Property (any such system or device and its related equipment being hereinafter referred to as the "Monitoring System") (the Video Communications System, Internet System, Telecommunications System and Monitoring System, and any and all parts thereof, are referred to collectively, the "Community Systems").

27.2 Right to Transfer Community Systems. Developer shall have the right, but not the obligation, to convey, transfer, sell, lease or assign all or any portion of the Community Systems located within the Property, or all or any portion of the rights, duties or obligations with respect thereto to the Association or any other person or entity (including an Owner, as to any portion of a Community System located on/in his Unit). Without limiting the generality of Section 27.1, if and when any of the aforesaid entities receives such a conveyance, sale transfer or assignment, such entity shall automatically be deemed vested with such rights of Developer with regard thereto as are assigned by Developer in connection therewith; provided, however, that if the Association is the applicable entity, then any Community Systems or portions thereof shall be deemed Common Areas hereunder and the Association's rights, duties and obligations with respect thereto shall be the same as those applicable to other Common Areas unless otherwise provided by Developer. Any conveyance, transfer, sale or assignment made by Developer pursuant to this Section 27.2, (i) may be made with or without consideration, (ii) shall not require the consent or approval of the Association or any Owner and (iii) if made to the Association, shall be deemed to have been automatically accepted (with all rights, duties, obligations and liabilities with respect thereto being deemed to have been automatically assumed). In recognition of the intended increased effectiveness and potentially decreased installation and maintenance costs and user fees arising from the connection of all Units in the Properties to the applicable Community Systems, each Owner and occupant of a Unit shall by virtue of the acceptance of the deed or other right of occupancy thereof, be deemed to have consented to and ratified any and all agreements to which the Association is a party which is

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based upon (in terms of pricing structure or otherwise) a requirement that all Units be so connected. The foregoing shall not, however, prohibit the Association or Community Systems provider from making exceptions to any such 100% use requirement in its reasonable discretion. WITH RESPECT TO COMMUNITY SYSTEMS, ALL PERSONS ARE REFERRED TO SECTION 27.3 HEREOF, WHICH SHALL AT ALL TIMES APPLY TO THIS SECTION.

27.3 Notices and Disclaimers as to Community Systems. The Developer, the Association, or their successors, assigns or franchisees and any applicable cable, telecommunications or other operator (an "Operator"), may enter into contracts for the provision of community services through any Community Systems. Developer, THE ASSOCIATION, OPERATORS AND THEIR FRANCHISEES, DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIED, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH ACCESS CONTROL SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY SERVICED BY THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT DEVELOPER, THE ASSOCIATION OR ANY SUCCESSOR, ASSIGN OR FRANCHISEE OF THE DEVELOPER OR ANY OF THE OTHER AFORESAID ENTITIES AND ANY OPERATOR, ARE NOT INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE PREMISES AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the part of an access control service provider to perform any of its obligations with respect to community services and, therefore, every owner or occupant of property receiving community services through the Community Systems agrees that Developer, the Association or any successor, assign or franchisee thereof and any Operator assumes no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of any community service or failure to respond to an alarm because of (a) any failure of the Owner's community system, (b) any defective or damaged equipment, device, line or circuit, (c) negligence, active or otherwise, of the access control service provider or its officers, agents or employees, or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the access control service provider. Every owner or occupant of property obtaining access control services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees, and family members that if any loss or damage should result from a failure of

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performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the access control service provider or its officers, agents, or employees, the liability, if any, of Developer, the Association, any franchisee of the foregoing and the Operator or their successors or assigns, for loss, damage, injury or death sustained shall be limited to a sum not exceeding Two Hundred Fifty and No/100 (\$250.00) U.S. Dollars, which limitation shall apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise or non-performance by an officer, agent or employee of Developer, the Association or any franchisee, successor or designee of any of same or any Operator. Further, in no event will Developer, the Association, any Operator or any of their franchisees, successors or assigns, be liable for consequential damages, wrongful death, personal injury or commercial loss. In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider(s) of such services. Notwithstanding anything contained herein to the contrary, the rights and remedies of each Unit Owner and the Association pursuant to Sections 718.111(3), 718.115(1)(c), 718.302(1), 718.303 and 718.506 of the Act, are not limited or abridged.

28.

DISCLAIMER OF WARRANTIES.

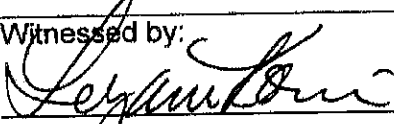
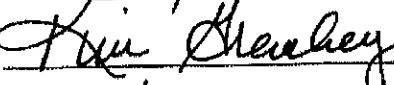
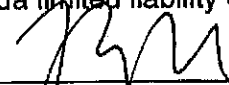
DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, EXCEPT AS MAY BE REQUIRED IN SECTION 718.203 OF THE ACT, TO THE EXTENT APPLICABLE. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND AS TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

ALL UNIT OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY), SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND CLAIMS FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES.

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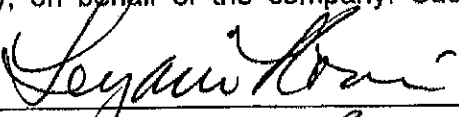
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IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 28 day of JUNE, 2005.

Witnessed by:  Name: <u>LEYANI ROMAN</u>  Name: <u>KIM GREENER</u>	PRESERVE ASSOCIATES, LLC, a Florida limited liability company By:  Print Name: Leon J. Wolfe Title: President Address: 2121 Ponce de Leon Blvd., PH Coral Gables, Florida 33134 (Corporate Seal)
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STATE OF FLORIDA)
) SS:
 COUNTY OF MIAMI-DADE)

The foregoing Declaration was acknowledged before me, this 28th day of June, 2005, by Leon J. Wolfe, as President of PRESERVE ASSOCIATES, LLC, a Florida limited liability company, on behalf of the company. Such person is personally known to me.


 Name: LEYANI ROMAN
 Notary Public, State of Florida
 My Commission Expires:
 Serial Number (if any) DD312446



Leyani Roman
 Commission #DD312446
 Expires: Apr 23, 2008
 Bonded Thru
 Atlantic Bonding Co., Inc.

DECLARATION

DEC sig page and CONDO ASSOC JOINDER

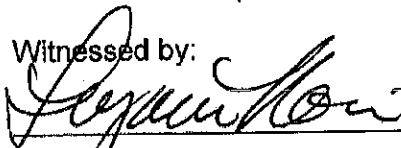
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JOINDER

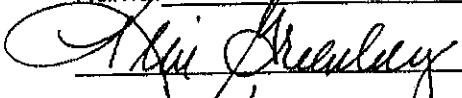
THE PRESERVE TOWN HOMES CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, THE PRESERVE TOWN HOMES CONDOMINIUM ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this 28 day of JUNE, 2005.

Witnessed by:

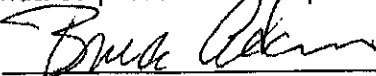


Name: LEYANI ROMAN



Name: KIM GREENBERG

THE PRESERVE TOWN HOMES
CONDOMINIUM ASSOCIATION, INC., a
Florida corporation not-for-profit

By: 

Name: Bruce Adams

Title: President

Address:
2121 Ponce de Leon Blvd., PH
Coral Gables, Florida 33134

(Corporate Seal)

STATE OF FLORIDA)
)SS:
COUNTY OF MIAMI-DADE)

The foregoing joinder was acknowledged before me this 28th day of June, 2005, by Bruce Adams, as President of THE PRESERVE TOWN HOMES CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, on behalf of said corporation. Such person is personally known to me or produced a driver's license as identification.



Leyani Roman
Commission #DD312446
Expires: Apr 23, 2008
Bonded Thru
Atlantic Bonding Co., Inc.



Name: LEYANI ROMAN

Notary Public, State of Florida

My Commission Expires:

Serial Number (if any) DD312446

DECLARATION

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CONSENT OF MORTGAGEE JOINDER

THIS CONSENT is given as of the 29 day of July, 2005, by OCEAN BANK, a Florida banking corporation ("Mortgagee"), being the owner and holder of that certain Future Advance Agreement for Construction, Modification, and Ratification of Mortgage Agreement from PRESERVE ASSOCIATES, LLC, a Florida limited liability company, to OCEAN BANK, a Florida Banking corporation, dated March 15, 2004, recorded March 22, 2004 in Official Records Book 22136, Page 4254, in the original principal amount of \$982,986.00 of the Public Records of Broward County, Florida.

WHEREAS, Mortgagor has requested Mortgagee to consent to the recording of the Declaration of Condominium of THE PRESERVE, a Condominium (the "Declaration").

NOW, THEREFORE, Mortgagee consents to the recordation of the Declaration. Mortgagee makes no warranty or any representation of any kind or nature concerning the Declaration, any of its terms or provisions, or the legal sufficiency thereof, and disavows any such warranty or representation as well as any participation in the development of THE PRESERVE, a Condominium (the "Condominium"), and does not assume and shall not be responsible for any of the obligations or liabilities of the developer contained in the Declaration or the prospectus, (if any) or other documents issued in connection with the promotion of the Condominium. None of the representations contained in the prospectus, (if any) or other documents shall be deemed to have been made by Mortgagee, nor shall they be construed to create any obligation on Mortgagee to any person relying thereon. This consent is limited to the purposes and requirements of Section 718.104, Florida Statutes, and does not affect or impair the rights and remedies of Mortgagee as set forth in the Mortgage or in the Declaration.

Witnessed by:

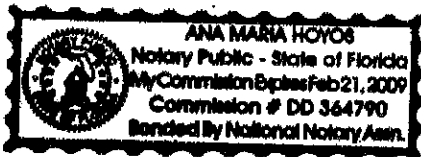
[Signature]
Print Name: Anna M. Francis
[Signature]
Print Name: Elizabeth Padron

OCEAN BANK, a Florida banking corporation *ME*

By: [Signature]
Print Name: Maggie Gonzalez
Title: Sr. Vice Pres.
Address: 780 NW 42 Ave.
Miami FL 33126

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing consent was acknowledged before me this 29 day of July, 2005, by Maggie Gonzalez, as S.V.P. of Ocean Bank, a Florida banking corporation. He/She is personally known to me or produced a driver's license as identification.



[Signature]
Print Name: Ana Maria Hoyos
Notary Public, State of Florida
My Commission Expires: 2/21/2009

DECLARATION

The Preserve, A Condominium

STATE OF FLORIDA

SS

COUNTY OF MIAMI-DADE

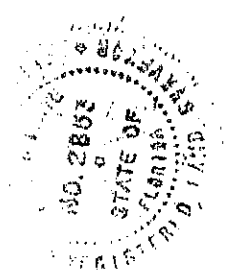
BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgments, personally appeared DANIEL C. FORTIN, by me well known and known to me to be the person hereinafter described, who being by me first duly cautioned and sworn, deposes and says on oath as follows, to wit:

1. That he is duly registered and duly licensed land surveyor authorized to practice under the laws of the State of Florida.
2. Affiant hereby certifies that the CONSTRUCTION OF THE IMPROVEMENTS shown within this Exhibit 1, is substantially complete, so that this Exhibit 1, together with the provisions of the Declaration of Condominium describing the Condominium Property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials.
3. That the elevations shown for each floor are relative to the National Geodetic Vertical Datum of 1929.

FURTHER AFFIANT SAYETH NAUGHT.
FORTIN, LEAVY, SKILES, INC., LB3653

By: 

Daniel C. Fortin, For The Firm
PROFESSIONAL SURVEYOR AND MAPPER LS2853
State of Florida

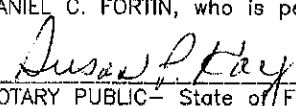


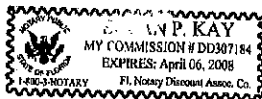
STATE OF FLORIDA

SS

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this August 12, 2005 by DANIEL C. FORTIN, who is personally known to me.


NOTARY PUBLIC - State of Florida



Date Printed: 8/12/05 7:04a
Drawn By: MAP
Cod. No. 031290

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
180 Northeast 168th. Street / North Miami Beach, Florida. 33162
Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date August 12, 2005

Dwg. No. 6005-010

Job. No. 050553

EXHIBIT 1

SHEET 1 OF 66

700P 193

The Preserve, A Condominium

LEGAL DESCRIPTION:

Lots 23, 24, 25, 26, 27, 28, and Lot 29 less the West 150 feet and the North 10 feet thereof, ASBURY PARK, according to the Plat thereof, recorded in Plat Book 4, Page 110, of the Public Records of Miami-Dade County, Florida.

AND

A portion of the alley within ASBURY PARK, according to the Plat thereof, as recorded in Plat Book 4, at Page 110, of the Public Records of Miami-Dade County, Florida. Said portion being the part of the alley lying Easterly of its centerline and adjacent to Lots 27 and 28, being bounded on the North by the Westerly prolongation of the Northerly line of said Lot 28, and bounded on the South by Westerly prolongation of the Southerly line of said Lot 27, Together with that part of the alley lying Westerly of its centerline and adjacent to Lot 26, being bounded on the North by the Westerly prolongation of the Northerly line of Lot 28, and being bounded on the South by Easterly prolongation of the Southerly line of said Lot 26.

Code No. 031280SD DWG BY: MAP
Date Plotted: 8/12/05 7:04a

LEGAL DESCRIPTION

SHEET 2 OF 66

71 of 193

The Preserve, A Condominium

SURVEYOR'S NOTES:

- This site lies in Section 6, Township 53 South, Range 42 East, Miami-Dade County, Florida.
- All documents are recorded in the Public Records of Miami-Dade County, Florida, unless otherwise noted.
- Lands shown hereon were not abstracted for restrictions, easements and/or rights-of-way of records.
- Bearings hereon are referred to an assumed value of N89°04'17"W for the centerline of NE 90th Street and evidenced by two (2) found LB3653 nails & disks.
- Elevations shown hereon are relative to the National Geodetic Vertical Datum of 1929, based on _____ Bench Mark No. _____, Elevation + _____ Located at _____
- Lands shown hereon are located in Federal Flood Zone AE (EL 8) per Community Panel No. 120635 0093 J, dated March 2, 1994 and index map revised July 17, 1995. Based on Federal Emergency Management Agency Flood Insurance Rate Map and are relative to National Geodetic Vertical Datum of 1929.
- Dimensions indicated hereon are field measured by electronic measurement, unless otherwise noted.
- Lands shown hereon containing 252,258 square feet, or 5.791 acres, more or less.
- Precision of closure 1:10,000 - Commercial Class Survey.
- Roof overhang not located unless otherwise shown.
- Underground improvements and/or underground encroachments not shown unless otherwise indicated.
- The underground utilities shown have been located from field survey information and existing drawings. The surveyor makes no guarantee that the underground utilities shown comprise all such utilities in the area, either in service or abandoned. The surveyor further does not warrant that the underground utilities shown are in the exact location indicated although he does certify that they are located as accurately as possible from the information available. The surveyor has not physically located the underground utilities.
- Legal description shown hereon based on information furnished by client.

SURVEYOR'S CERTIFICATION:

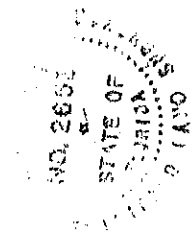
I hereby certify that this "Final As-Built Survey" was made under my responsible charge on June 13, 2005, and meets the Minimum Technical Standards as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB3653

By: _____

Daniel C. Fortin, For The Firm
Surveyor and Mapper, LS2853
State of Florida.



SURVEYOR'S NOTES AND CERTIFICATION

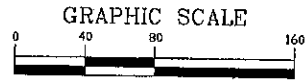
EXHIBIT 1

SHEET 3 OF 66

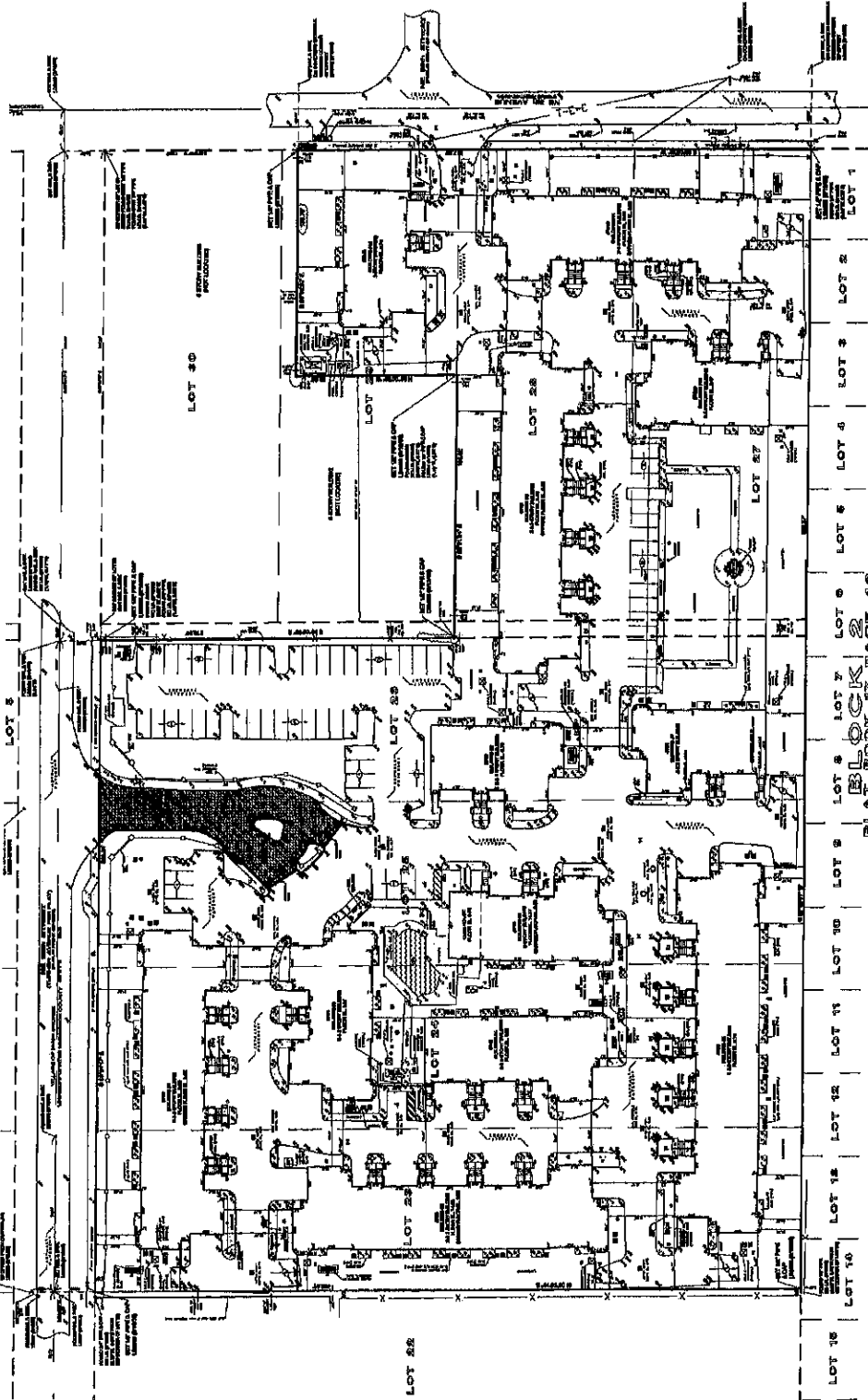
-12 of 193



The Preserve, A Condominium



(IN FEET)
1 inch = 80 ft.



FINAL AS-BUILT SURVEY

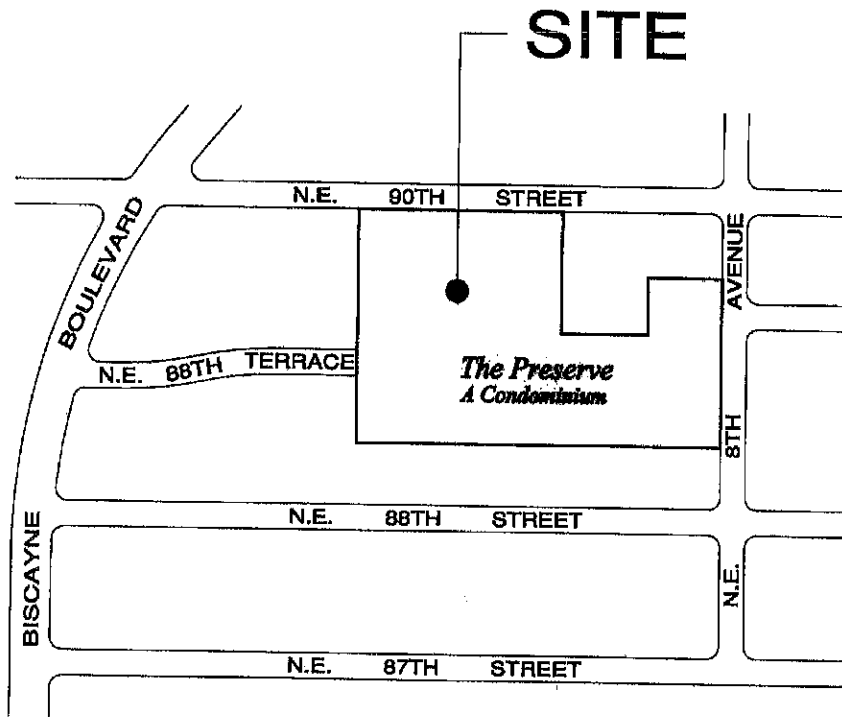
EXHIBIT 1

SHEET 4 OF 66

73 04 193

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*The Preserve,
A Condominium*



LOCATION SKETCH

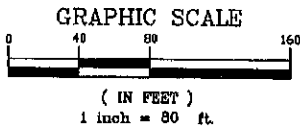
EXHIBIT 1

SHEET 5 OF 66

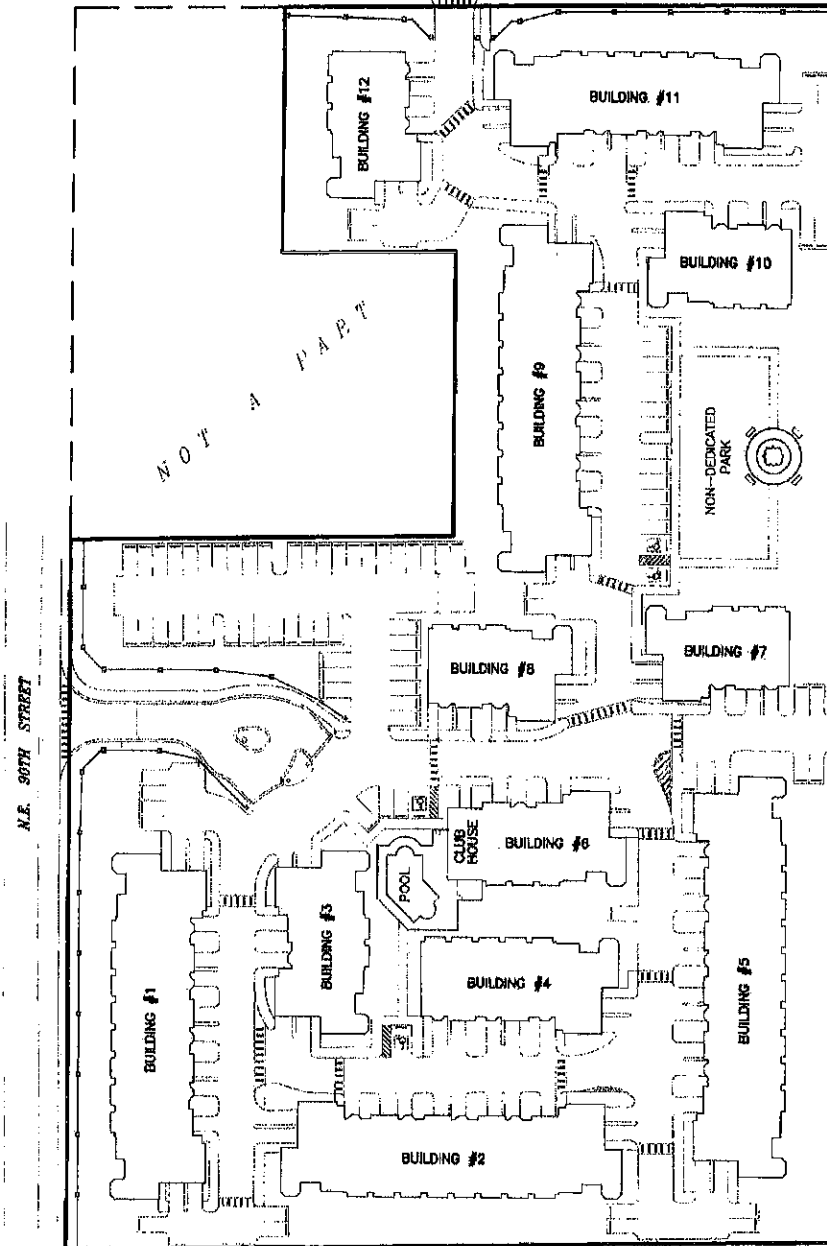
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The Preserve, A Condominium



N.E. 8TH AVENUE



ITEMS DEPICTED ARE EXISTING

Fortin, Leavy, Skiles, Inc.
180 N.E. 168th Street
North Miami Beach, FL 33162



*Parking spaces are Common
Elements and shall become
Limited Common Elements once
assigned to a particular Unit*

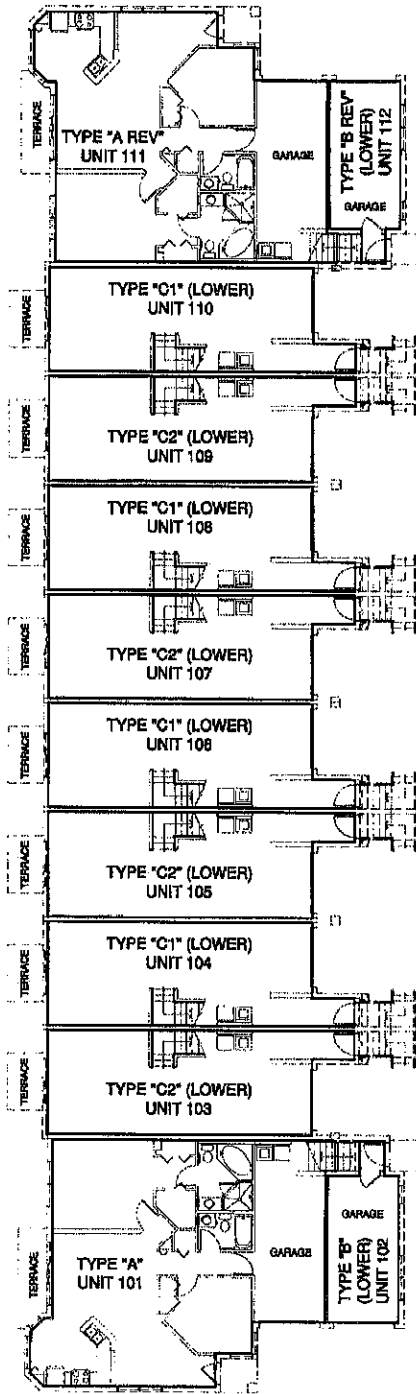
SITE PLAN

EXHIBIT 1

SHEET 6 OF 66

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The Preserve, A Condominium



GRAPHIC SCALE



(IN FEET)
1 inch = 20 ft.

Driveways and A/C Units are Limited Common Elements

LEGEND:

- CONDOMINIUM BOUNDARY
- - - - - COMMON ELEMENT

NOTES:

Each Condominium Unit consists of the space bounded by:

- a.) Upper Boundaries.
The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.
- b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.
- c.) Perimetrical Boundaries.
The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

All areas outside the unit boundaries (which are defined in the notes), including the party walls between the units, are common elements or, if expressly designated as such, limited common elements.

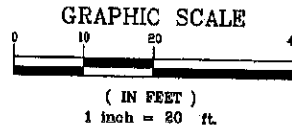
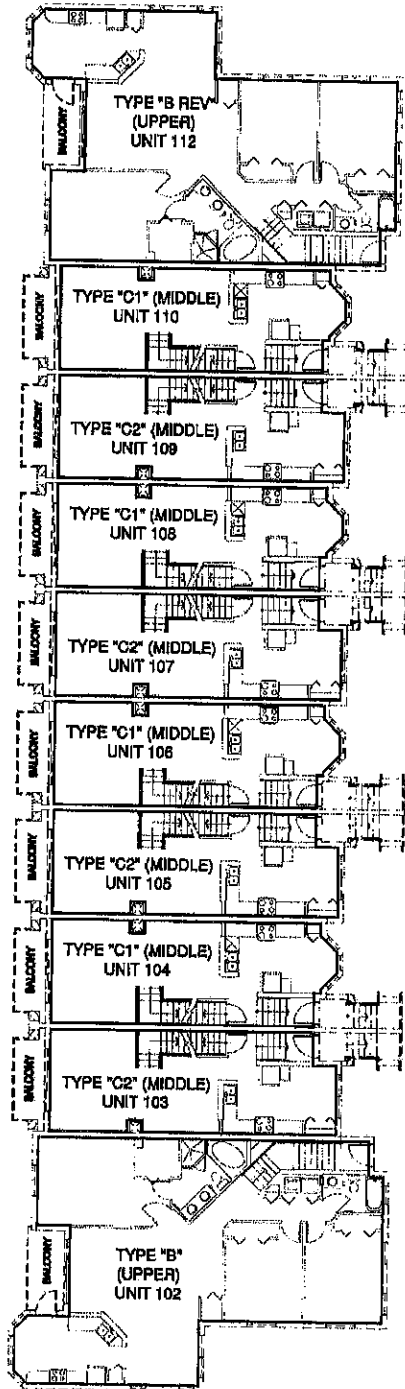
BUILDING #1 1ST LEVEL FLOOR PLAN

EXHIBIT 1

SHEET 7 OF 66

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The Preserve, A Condominium



LEGEND:

- CONDOMINIUM BOUNDARY
- COMMON ELEMENT
- LIMITED COMMON ELEMENTS

NOTES:

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b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.

c.) Perimetrical Boundaries.
The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planer intersections with each other and with the upper and lower boundaries.

All areas outside the unit boundaries (which are defined in the notes), including the party walls between the units, are common elements or, if expressly designated as such, limited common elements.

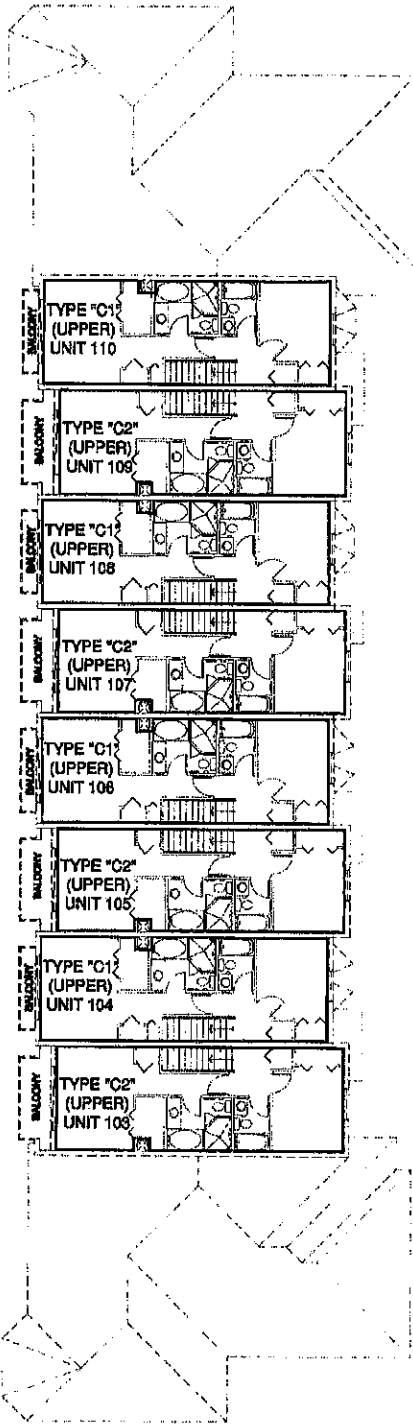
BUILDING #1 2ND LEVEL FLOOR PLAN

EXHIBIT 1

SHEET 8 OF 66

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The Preserve, A Condominium





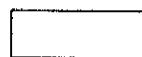
GRAPHIC SCALE



(IN FEET)

1 inch = 20 ft.

LEGEND:

-  CONDOMINIUM BOUNDARY
-  COMMON ELEMENT
-  LIMITED COMMON ELEMENTS

NOTES:

Each Condominium Unit consists of the space bounded by:

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- b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.
- c.) Perimetrical Boundaries.
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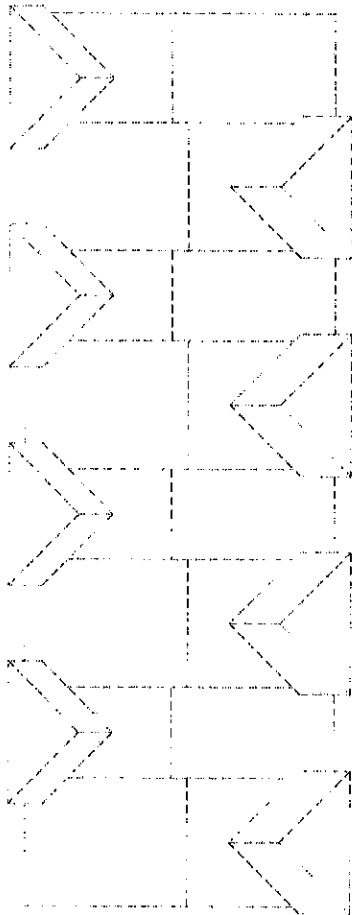
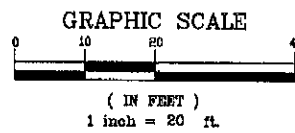
BUILDING #1 3RD LEVEL FLOOR PLAN

EXHIBIT 1

SHEET 9 OF 66

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The Preserve, A Condominium



LEGEND:

----- COMMON ELEMENT

NOTES:

Each Condominium Unit consists of the space bounded by:

a.) Upper Boundaries.
The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.

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The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.

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BUILDING #1 ROOF LEVEL FLOOR PLAN

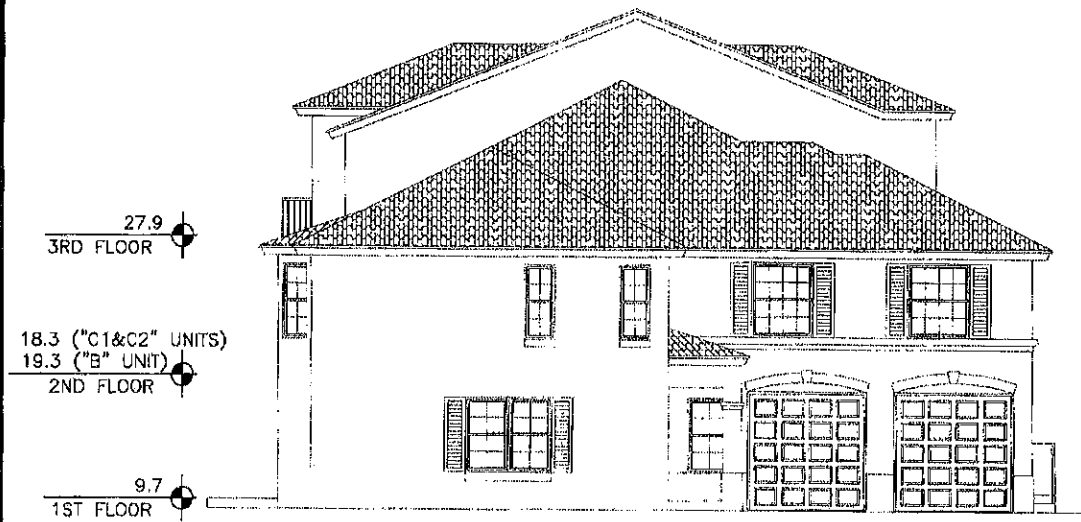
EXHIBIT 1

SHEET 10 OF 66

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Cat No. 051290F DWG BY: MAP Date Printed: 8/12/05 7:04a

*The Preserve,
A Condominium*



ELEVATIONS REFERS TO (N.G.V.D.) NATIONAL GEODETIC VERTICAL DATUM

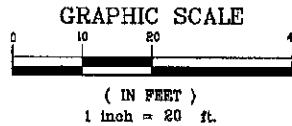
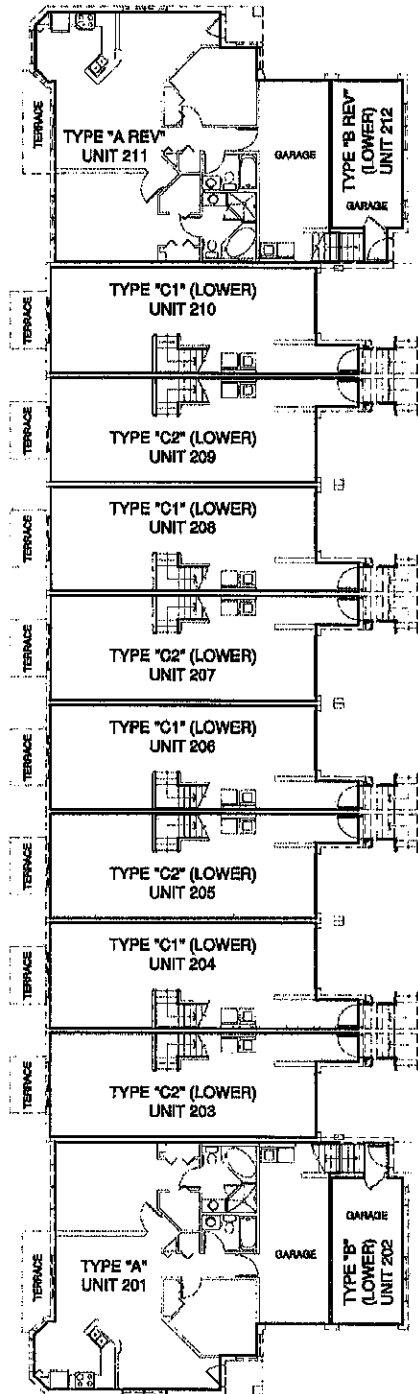
**BUILDING #1
ELEVATIONS**

EXHIBIT 1

SHEET 11 OF 66

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The Preserve, A Condominium



Driveways and A/C Units are Limited Common Elements

LEGEND:

- CONDOMINIUM BOUNDARY
- - - - - COMMON ELEMENT

NOTES:

Each Condominium Unit consists of the space bounded by:

- a.) Upper Boundaries.
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- b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.
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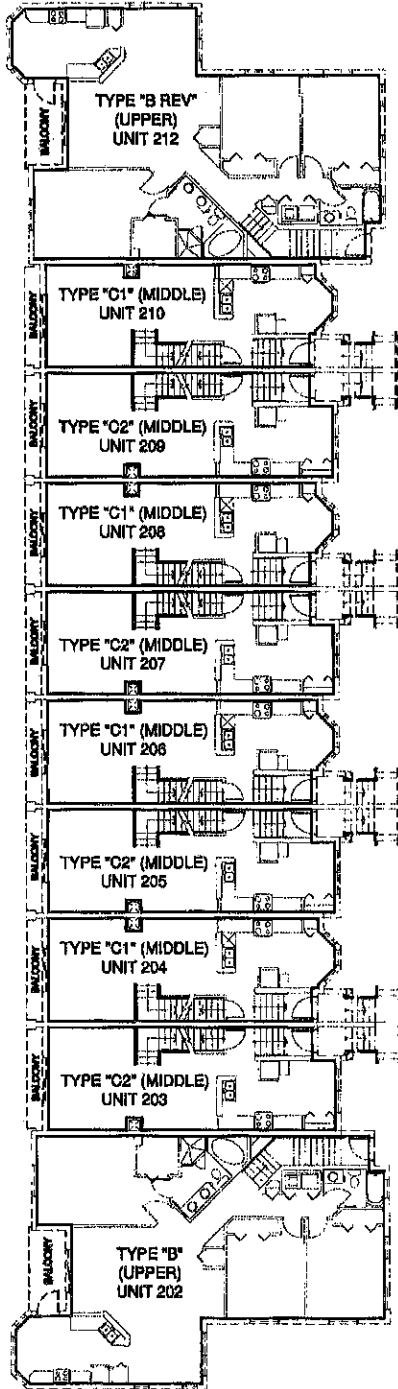
BUILDING #2 1ST LEVEL FLOOR PLAN

EXHIBIT 1

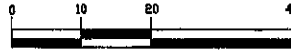
SHEET 12 OF 66

81 nP 193

The Preserve, A Condominium



GRAPHIC SCALE



(IN FEET)

1 inch = 20 ft.

LEGEND:

- CONDOMINIUM BOUNDARY
- - - - COMMON ELEMENT
- LIMITED COMMON ELEMENTS

NOTES:

Each Condominium Unit consists of the space bounded by:

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The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.
- b.) Lower Boundaries.
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- c.) Perimetrical Boundaries.
The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

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BUILDING #2 2ND LEVEL FLOOR PLAN

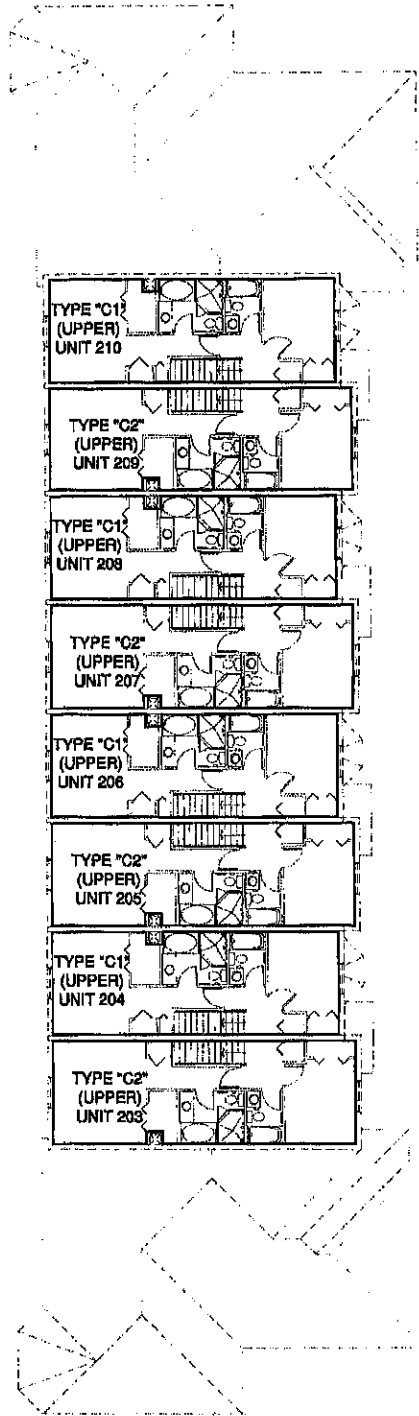
EXHIBIT 1

SHEET 13 OF 66

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Cad No. 031250F DMC BY: MAP Date Printed: 8/12/05 7:04a

The Preserve, A Condominium



GRAPHIC SCALE



(IN FEET)
1 inch = 20 ft.

LEGEND:

- CONDOMINIUM BOUNDARY
- COMMON ELEMENT
- LIMITED COMMON ELEMENTS

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BUILDING #2 3RD LEVEL FLOOR PLAN

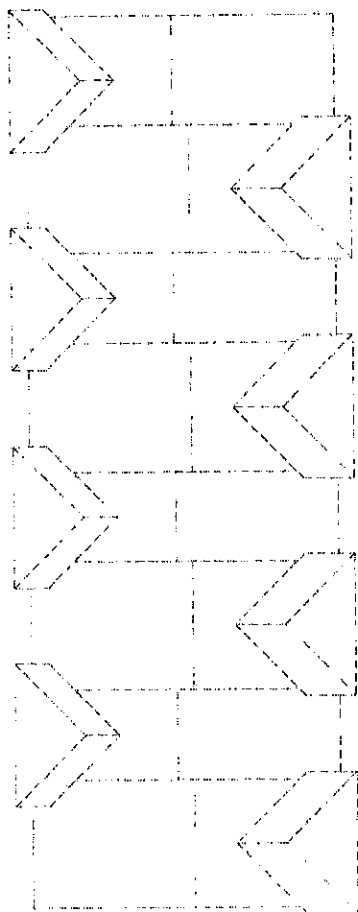
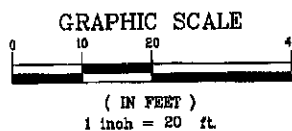
EXHIBIT 1

SHEET 14 OF 66

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Cad No. 031290F DWG Btc. MAP Date Printed: 8/12/05 7:04g

The Preserve, A Condominium



LEGEND:

----- COMMON ELEMENT

NOTES:

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BUILDING #2 ROOF LEVEL FLOOR PLAN

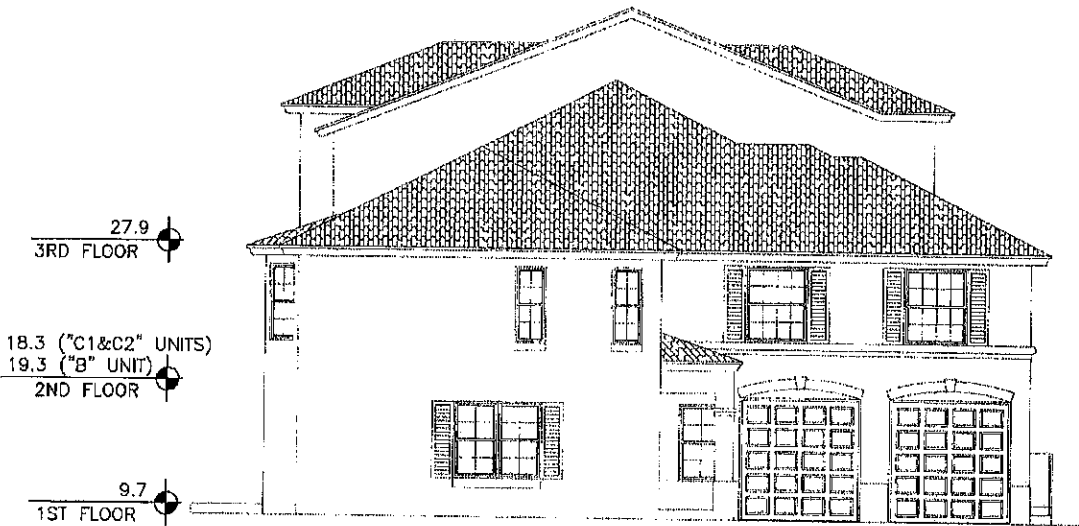
EXHIBIT 1

SHEET 15 OF 66

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Cad No. 031250F DWG BY: MAP Date Printed: 8/12/05 7:34a

*The Preserve,
A Condominium*



Cad No. 031250F DWG BY: MAP Date Printed: 8/12/05 7:04a

ELEVATIONS REFERS TO (N.G.V.D.) NATIONAL GEODETIC VERTICAL DATUM

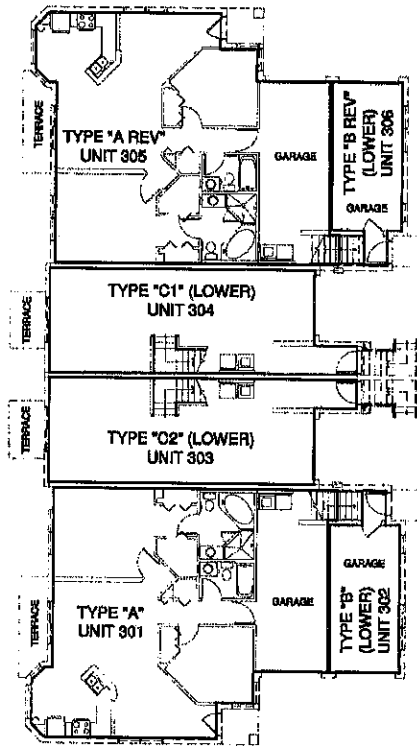
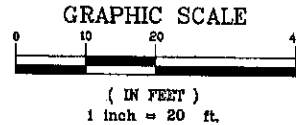
**BUILDING #2
ELEVATIONS**

EXHIBIT 1

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The Preserve, A Condominium



Driveways and A/C Units are Limited Common Elements

LEGEND:

- CONDOMINIUM BOUNDARY
- - - - COMMON ELEMENT

NOTES:

Each Condominium Unit consists of the space bounded by:

a.) Upper Boundaries.
The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.

b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.

c.) Perimetrical Boundaries.
The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

All areas outside the unit boundaries (which are defined in the notes), including the party walls between the units, are common elements or, if expressly designated as such, limited common elements.

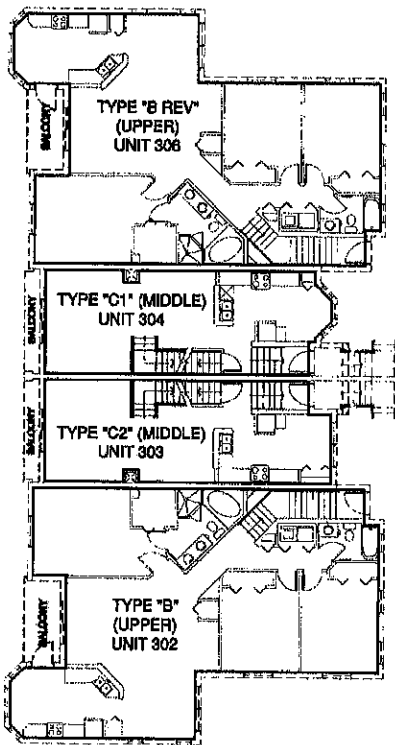
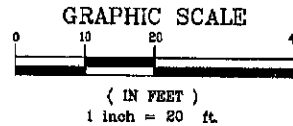
BUILDING #3 1ST LEVEL FLOOR PLAN

EXHIBIT 1

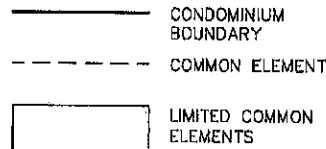
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The Preserve, A Condominium



LEGEND:



NOTES:

Each Condominium Unit consists of the space bounded by:

a.) Upper Boundaries.
The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.

b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.

c.) Perimetrical Boundaries.
The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

All areas outside the unit boundaries (which are defined in the notes), including the party walls between the units, are common elements or, if expressly designated as such, limited common elements.

BUILDING #3 2ND LEVEL FLOOR PLAN

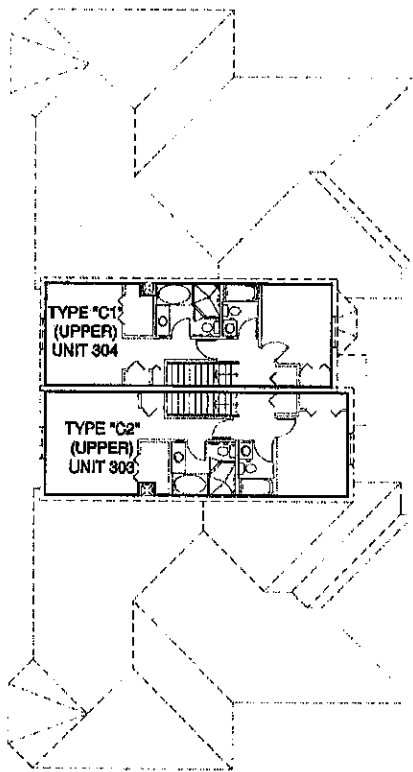
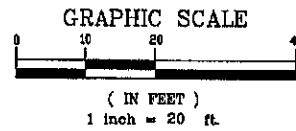
EXHIBIT 1

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The Preserve, A Condominium



LEGEND:

- CONDOMINIUM BOUNDARY
- - - - - COMMON ELEMENT
- ▭ LIMITED COMMON ELEMENTS

NOTES:

Each Condominium Unit consists of the space bounded by:

a.) Upper Boundaries.
The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.

b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.

c.) Perimetrical Boundaries.
The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

All areas outside the unit boundaries (which are defined in the notes), including the party walls between the units, are common elements or, if expressly designated as such, limited common elements.

BUILDING #3 3RD LEVEL FLOOR PLAN

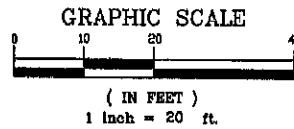
EXHIBIT 1

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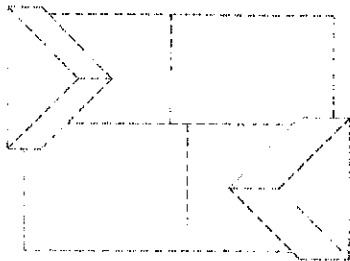
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The Preserve, A Condominium



LEGEND:

----- COMMON ELEMENT



NOTES:

Each Condominium Unit consists of the space bounded by:

- a.) Upper Boundaries.
The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.
 - b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.
 - c.) Perimetrical Boundaries.
The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- All areas outside the unit boundaries (which are defined in the notes), including the party walls between the units, are common elements or, if expressly designated as such, limited common elements.

BUILDING #3 ROOF LEVEL FLOOR PLAN

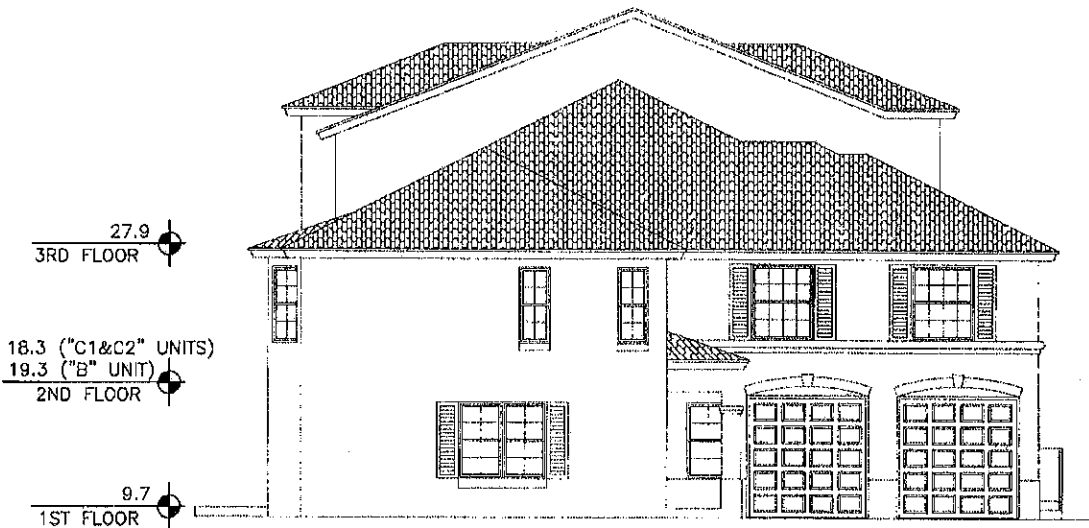
EXHIBIT 1

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A Condominium*



ELEVATIONS REFERS TO (N.G.V.D.) NATIONAL GEODETIC VERTICAL DATUM

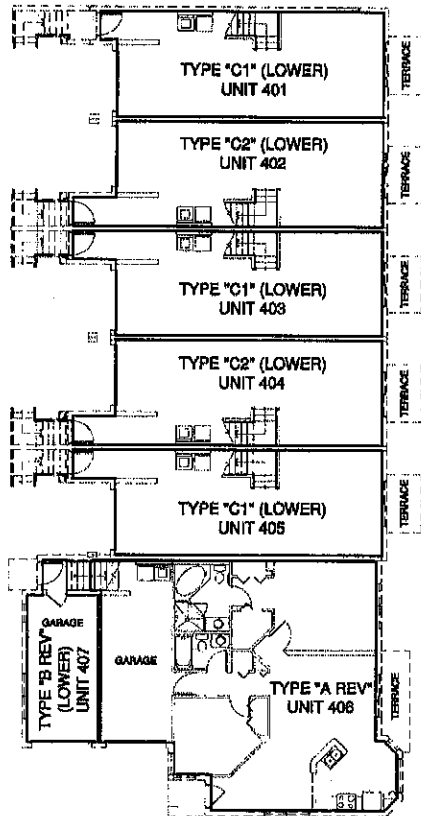
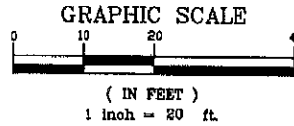
**BUILDING #3
ELEVATIONS**

EXHIBIT 1

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The Preserve, A Condominium



Driveways and A/C Units are Limited Common Elements

LEGEND:

- CONDOMINIUM BOUNDARY
- - - - - COMMON ELEMENT

NOTES:

Each Condominium Unit consists of the space bounded by:

- a.) Upper Boundaries.
The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.
- b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.
- c.) Perimetrical Boundaries.
The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

All areas outside the unit boundaries (which are defined in the notes), including the party walls between the units, are common elements or, if expressly designated as such, limited common elements.

BUILDING #4 1ST LEVEL FLOOR PLAN

EXHIBIT 1

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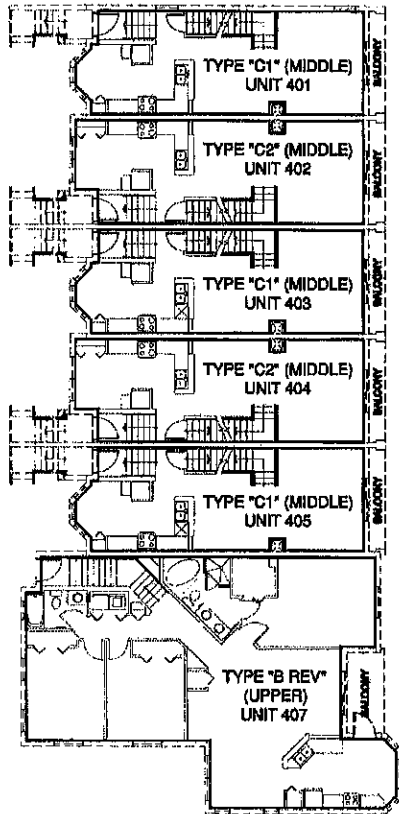
The Preserve, A Condominium



GRAPHIC SCALE



(IN FEET)
1 inch = 20 ft.



LEGEND:

- CONDOMINIUM BOUNDARY
- - - COMMON ELEMENT
- LIMITED COMMON ELEMENTS

NOTES:

Each Condominium Unit consists of the space bounded by:

- a.) Upper Boundaries.
The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top floor of the Unit if the Unit contains more than one floor), provided that in multi-floor Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.
- b.) Lower Boundaries.
The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first floor of the Unit if the Unit is a multi-floor Unit), provided that in multi-floor Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.
- c.) Perimetrical Boundaries.
The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

All areas outside the unit boundaries (which are defined in the notes), including the party walls between the units, are common elements or, if expressly designated as such, limited common elements.

BUILDING #4 2ND LEVEL FLOOR PLAN

EXHIBIT 1

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