

This Instrument Prepared By,
Record, and Return to:

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Tallahassee, Florida 32308

**DECLARATION OF CONDOMINIUM
OF
EMBASSY HOUSE, A CONDOMINIUM**

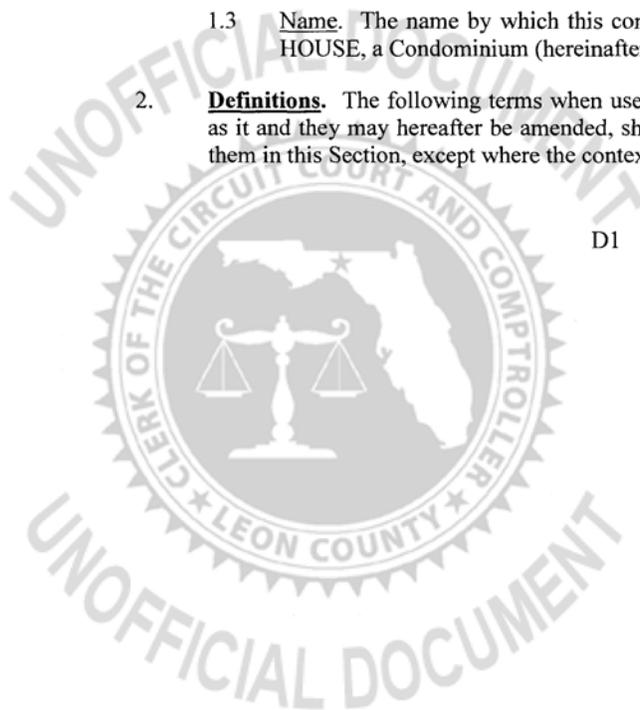
Embassy House, LLC, a Florida limited liability company (hereinafter called the "Developer"), does hereby declare as follows:

1. **Introduction and Submission.**

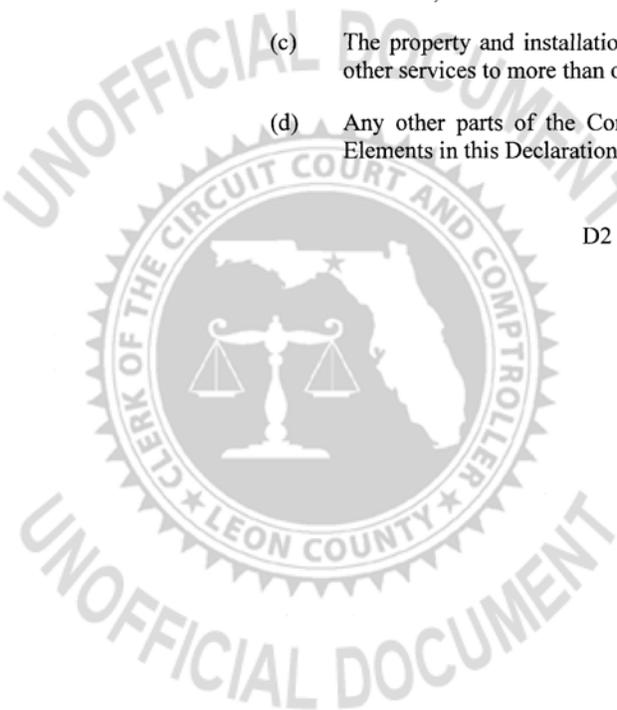
- 1.1 **The Land.** The Developer owns the fee title to that certain land located in the City of Tallahassee, Leon County, Florida, as more particularly described in **Exhibit "1"** annexed hereto and made a part hereof (the "Land").
- 1.2 **Submission Statement.** The Developer hereby submits the Land and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, now or hereafter situated on or within the Land - but excluding all public and private (e.g., cable television) utility installations therein or thereon - to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium (hereinafter defined) or be subject to the jurisdiction of the Association (hereinafter defined), the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided.
- 1.3 **Name.** The name by which this condominium is to be identified is EMBASSY HOUSE, 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:

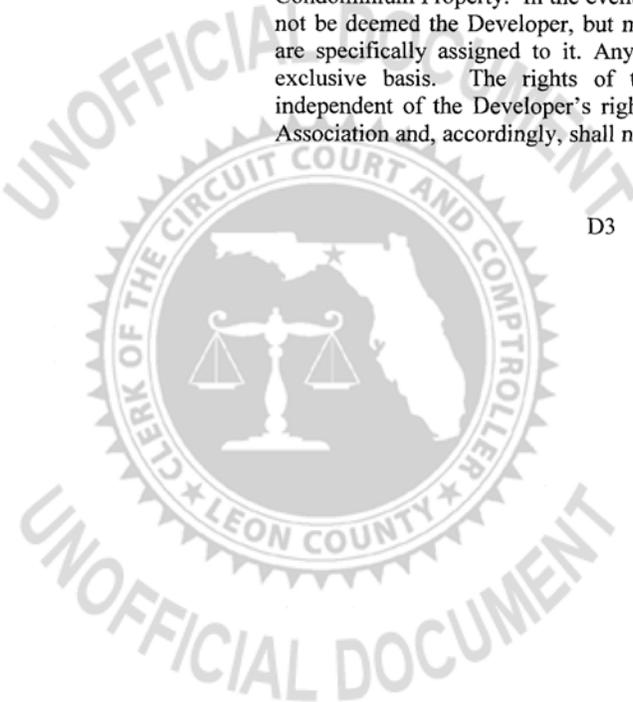
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- 2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as amended from time to time.
- 2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association appended hereto as **Exhibit "2"** and made a part hereof, as amended from time to time.
- 2.3 "Assessment" means a share of the funds which are required for the payment of Common Expenses which from time to time is assessed against the Unit Owners.
- 2.4 "Association" or "Condominium Association" means Embassy House Condominium Association, Inc., a Florida corporation not-for-profit, the sole entity responsible for the operation of the Condominium, in accordance with the terms of this Declaration and the Act.
- 2.5 "Association Property" means the 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, from time to time, of the Association which is responsible for the administration of the Association.
- 2.7 "Building" and "Buildings" means the structure(s) located or to be located on the Condominium Property in which the Units, Common Elements and Limited Common Elements are located.
- 2.8 "By-Laws" mean the By-Laws of the Association, appended hereto as **Exhibit "3"** and made a part hereof, as amended from time to time.
- 2.9 "Common Elements" means and includes the portions of the Condominium Property which are not included in the Units, including, without limitation, the pool and clubhouse, as well as the following items:
- (a) Easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of Utility Services and/or heating, cooling, ventilation or other services to Units or to the Common Elements, together with related property and installations;
 - (b) An easement of support in every portion of a Unit which contributes to the support of a Building, other Units and/or any part of the Common Elements;
 - (c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements; and
 - (d) Any other parts of the Condominium Property designated as Common Elements in this Declaration or the Act.



- 2.10 "Common Expenses" means all expenses properly incurred by the Association in performance of its duties for the Condominium, including, but not limited to: (1) expenses of maintenance, operation, protection, repair or replacement of the Common Elements and Association Property; (2) expenses declared to be Common Expenses by the provisions of this Declaration or by the Articles, By-Laws or the Act; and (3) the costs of carrying out the powers and duties of the Association. Common Expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, security services, and pest control services to the Common Elements, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or property of the Condominium, and the cost of a master antenna television system, duly franchised cable television service, broadband, telecommunications, satellite and/or internet services obtained pursuant to a bulk contract. Common Expenses shall not include any separate obligations of individual Unit Owners.
- 2.11 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.
- 2.12 "Condominium Parcel" means a Unit, together with the undivided share in the Common Elements which is appurtenant to said Unit and when the context permits, the term includes all other appurtenances to the Unit.
- 2.13 "Condominium Property" means the Land, Improvements and personal property described in subsection 1.2 hereof, subject to the limitations thereof and exclusions therefrom that are subjected to condominium ownership under this Declaration, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.
- 2.14 "County" means the County of Leon, State of Florida.
- 2.15 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as the same may be amended from time to time.
- 2.16 "Developer" means Embassy House, LLC, a Florida limited liability company, its successors and such of its assigns as to which the rights of the Developer hereunder are specifically assigned by an instrument executed and recorded by the Developer. The Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium Property. 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 non-exclusive basis. The rights of the 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 transfer of control of the Association.

- 2.17 “Division” means the State of Florida Division of Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation.
- 2.18 “Improvements” mean all structures and artificial changes to the natural environment (exclusive of landscaping) located or are to be constructed on the Land, including, but not limited to, the Buildings.
- 2.19 “Institutional First Mortgagee” means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, agency of the United States Government, mortgage banker, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any other lender generally recognized as an institutional-type 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 by which greater than one-half (1/2) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are encumbered.
- 2.20 “Limited Common Elements” means those Common Elements of which the uses are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.21 “Primary Institutional First Mortgagee” means the Institutional First Mortgagee which owns, at any time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee. Notwithstanding the foregoing, Capital City Bank (“Capital City”) is hereby designated the Primary Institutional First Mortgagee until such time as the recorded Mortgage in favor of Capital City is satisfied of record in the Public Records of Leon County, Florida.
- 2.22 INTENTIONALLY DELETED
- 2.23 INTENTIONALLY DELTED
- 2.24 “Special Assessment” means any assessment levied against Unit Owners other than the Assessment required by a budget adopted annually.
- 2.25 “Unit” means a part of the Condominium Property which is subject to exclusive ownership and is used or intended to be used for residential purposes.
- 2.26 “Unit Owner” or “Owner of a Unit” or “Owner” means a record owner of legal title to a Condominium Parcel.



2.27 "Utility Service" means and is intended to include, but is not limited to, electric power, gas, telephone, hot and cold water, heating, air conditioning ventilation systems, garbage and sewage disposal.

3. **Description of Condominium.**

3.1 **Identification of Units.** The Land has constructed thereon 4 residential structures containing a total of 48 residential Units. Each Unit is identified by a separate numerical and up or down designation. The designation of each Unit is set forth on **Exhibit "4"** attached hereto and made a part hereof. **Exhibit "4"** consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Buildings in which the Units are located, and a plot plan thereof. Said **Exhibit "4"**, together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided for 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) other appurtenances as may be provided by this Declaration. The construction of the Buildings which constitute the Condominium has been completed as of the time of the filing of this Declaration.

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

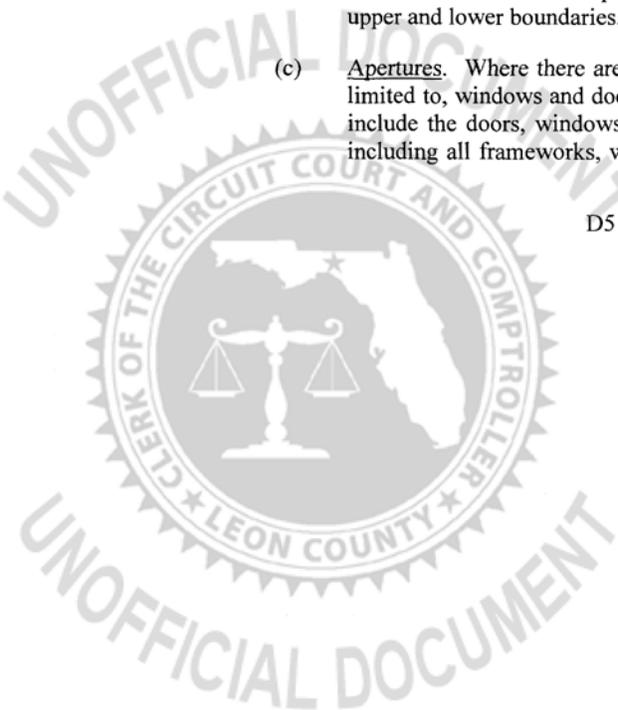
(a) **Upper and Lower Boundaries.** The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

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

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

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

(c) **Apertures.** Where there are apertures in any boundary, including but not limited to, windows and doors, the Unit's boundaries shall be extended to include the doors, windows 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 material, and all framing and casings therefore; provided, however, that the exterior surface of doors facing Common Elements shall not be included in the boundaries of the Unit and shall therefore be Common Elements.

- (d) Exceptions. In cases not specifically covered above, or in any case of a conflict or ambiguity, the survey of the Units set forth as **Exhibit "4"** hereto shall control in determining the boundaries of a Unit, except that the provisions of subsection 3.2(c) above shall control, unless specifically depicted and labeled otherwise on such survey.

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) Miscellaneous Areas, Equipment. Any area upon which is located equipment or fixtures (including air conditioning compressors) which are for the exclusive use of any particular Unit or Units and the equipment or fixtures themselves shall be Limited Common Elements of such Unit(s).
- (b) Patios, Balconies, Terraces, and Lanais appurtenant to Units. Any patio, balcony, terrace and/or lanai (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s). The Association shall be responsible for the maintenance of the structural and mechanical elements of any such Limited Common Elements, with the costs of same being a part of the Common Expenses. Each Owner shall, however, be responsible for the general cleaning, plant care and upkeep of the appearance of the area(s) and, for the repair and replacement of any floor coverings placed or installed on any patio, balcony terrace and/or lanai. Notwithstanding anything contained herein to the contrary, in order to assure a uniform appearance within the Recreation facilities, the Association shall be responsible for the repair and maintenance of the lanais within the Recreation facilities, including, without limitation, any floor coverings thereon, with the costs thereof being Common Expenses. A Unit Owner using a patio, balcony, terrace and/or lanai or making or causing to be made any additions, alterations or improvements thereto 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 Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom.
- (c) Parking Spaces. The Developer, in its sole discretion, reserves the right to designate and assign, with or without consideration, all automobile parking spaces situated on the Condominium Property, as shown on

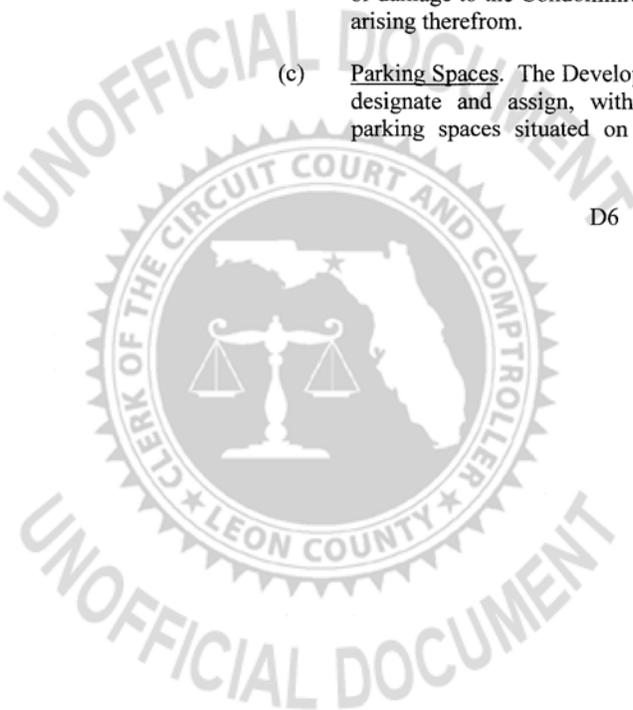
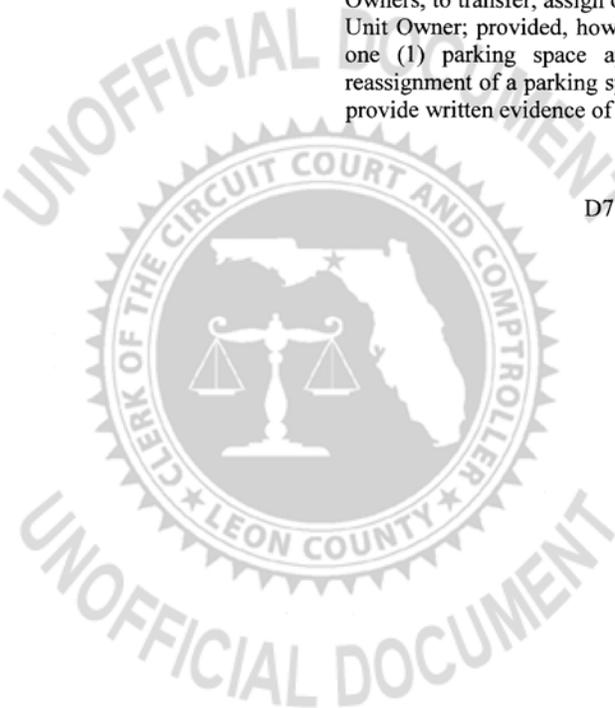


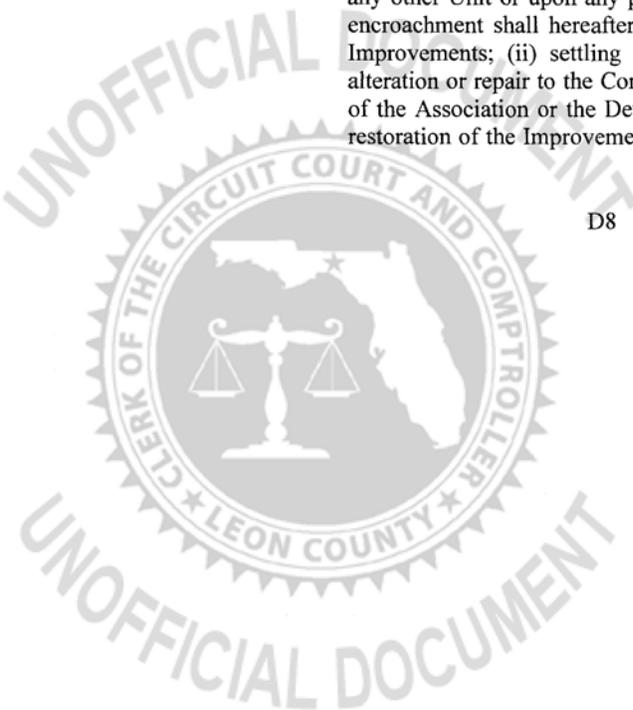
Exhibit "4" hereof, as Limited Common Elements for the exclusive use by Unit Owners of specified Units as long as it holds any Unit for sale in the ordinary course of business. Thereafter, any remaining parking spaces not delegated or assigned by Developer shall be deemed to be Common Elements under the control of the Association. After assignment to a Unit, each parking space shall pass as Limited Common Elements of the Unit to which it is assigned. No Unit Owner shall have or acquire any fee simple title to the assigned parking space at any time. To the extent available, the Developer may assign or sublease additional parking spaces to Unit Owners. Upon payment by the Unit Owners of such price as Developer deems appropriate, in its absolute discretion, the Developer shall assign or sublease an additional space or spaces to a Unit and once so assigned or subleased, said space or spaces shall become a Limited Common Element appurtenant to such Unit. All such assignments of parking spaces shall be made by a non-recordable instrument in writing ("Parking Space Designation"). The Developer will cause the Association to record each such Parking Space Designation in the records of the Association and the Unit Owner to which such use has been delegated shall have the exclusive right to the use thereof. Any Unit Owner acquiring an additional parking space shall be required to pay a monthly fee for use of the additional parking spaces. Parking Space Designations shall be executed by Developer alone, the President of the Association alone, or by any two (2) officers of the Association. There shall be no recordation in the County of the transfer of a parking space. No assignment or transfer of title in any manner whatsoever to use a parking space constituting Limited Common Elements may be made or accomplished separately from the passing of title to the Unit to which it is appurtenant, except that the same may be separately assigned by the Developer to the Condominium Association and thereafter maintained as part of the Common Elements or reassigned by the Condominium Association, in its sole discretion, to another Unit Owner as a Limited Common Element. The Association shall assess all Unit Owners for the maintenance of any parking spaces maintained as part of Common Elements for Unit Owners, their tenants and guests, based on each Unit Owner's percentage share of Common Expenses pursuant to the budget. For good cause, or when compelled by state statute or city or county ordinance or pursuant to the Declaration, the Association shall have the right and authority to reassign parking spaces from time to time upon written notice to the affected Unit Owners. Notwithstanding the foregoing, a Unit Owner who has acquired additional parking spaces from the Developer or Association shall have the right, at any time after the Developer has assigned all additional automobile parking spaces to Unit Owners, to transfer, assign or sublease any of its parking spaces to another Unit Owner; provided, however, that each Unit shall have a minimum of one (1) parking space appurtenant thereto at all times. Upon a reassignment of a parking space by an Owner, such Owner shall promptly provide written evidence of same to the Association.



- (d) Conveyance of a Unit. All Limited Common Elements appurtenant to that Unit shall be conveyed as part of that Unit unless alternative means of conveyance are specifically provided for in this Declaration.

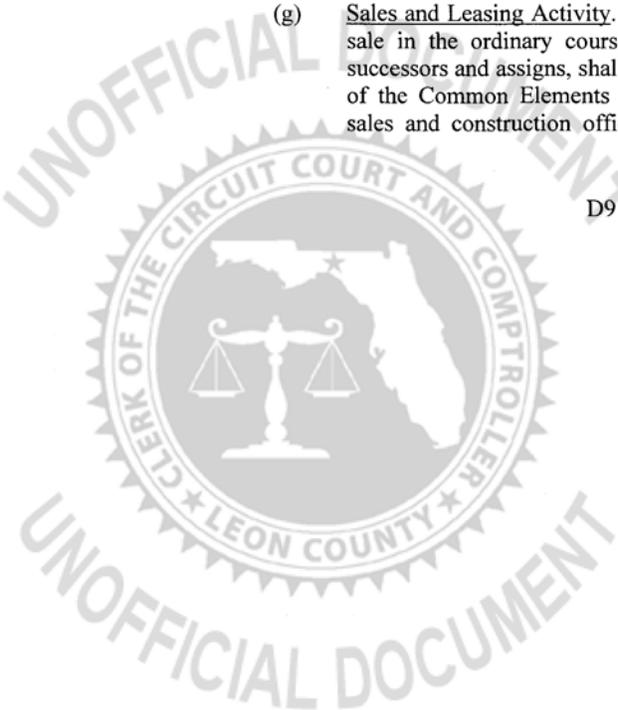
3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act and any easements affecting the Condominium Property and recorded in the Public Records of the County):

- (a) Support. Each Unit, Building and the 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 and the Common Elements.
- (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 drainage in order to serve the Condominium and each Unit. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Association shall have an irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any of the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and security systems, service and drainage facilities which are Common Elements and any other Common Elements contained in the Unit or elsewhere in the Condominium Property, or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) day's notice, which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted.
- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit (or Limited Common Element appurtenant thereto); (b) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or the Developer, as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after



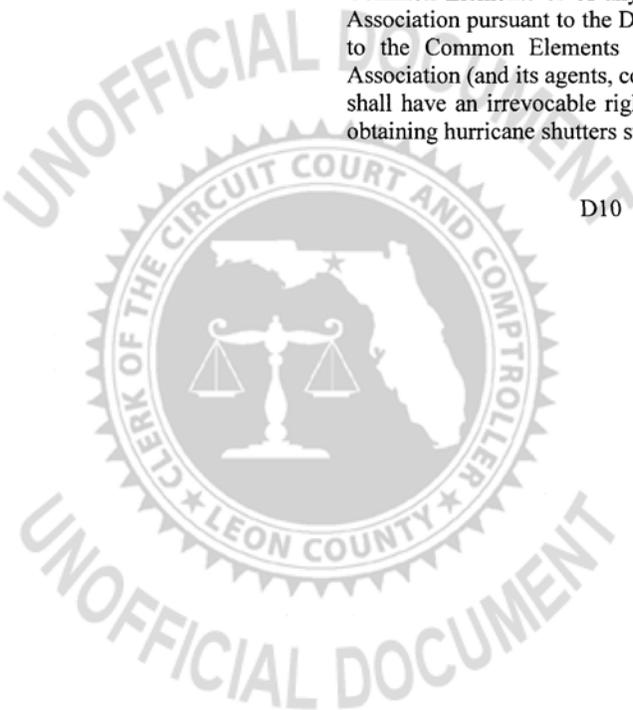
damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.

- (d) Ingress and Egress. A non-exclusive easement for ingress and egress in favor of each Unit Owner and resident, and his or her guests, lessees and invitees, and mortgagees, shall exist for pedestrian traffic on, over, through and across, sidewalks, accessways, streets, paths, walks, hallways, and other portions of the Common Elements (not including Limited Common Elements) and Association Property as from time to time may be intended and designated for such purpose and use and as may be necessary to provide reasonable access to the public ways; and for vehicular traffic on, over, through and across, and parking on, such portions of the Common Elements as from time to time may be paved and intended for such purpose and use and as may be necessary to provide reasonable access to the public ways. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (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; Maintenance. The Developer (including its affiliates, and its or their designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any addition or renovation thereto, or any Improvements or Units located or to be located thereon, and to repair, replace and maintain, without any obligation, the Condominium Property or any part thereof when the Association fails to do so.
- (f) Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors and employees) to perform roof repairs and/or replacements, repairs, maintenance, and/or alterations of rooftop mechanical equipment, to perform window washing and/or other exterior maintenance and/or painting of the Building.
- (g) Sales and Leasing Activity. For as long as the Developer offers units for sale in the ordinary course of business, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property as model Units and sales and construction offices, to show model Units and the Common



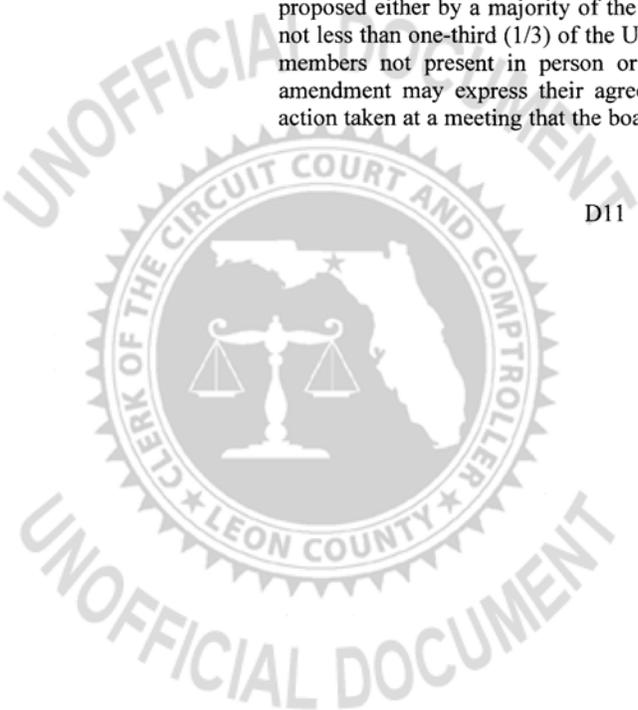
Elements to prospective purchasers and tenants of Units, to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease, to be exempt from any restrictions on the type of vehicle allowed to park on Condominium Property if the vehicle is engaged in any activity relating to construction, maintenance, or marketing of Units, and to take any and all actions which, in the Developer's opinion, may be helpful for selling or leasing Units or for promoting the Condominium and its operations generally.

- (h) Additional Easements. The Developer, for so long as it holds Units for sale in the ordinary course of business, and the Association, on their behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association 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 or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion 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 dwelling purposes. In addition, the Board of Directors has the authority, without the joinder of any Unit Owner, to grant, modify, or move any easement if the easement constitutes part of or crosses the Common Elements or Association Property.
- (i) Easement For Services. The Association and its agents, contractors, designees, employees, successors and assigns shall have (i) a non-exclusive easement for access and use of all the Common Elements, including, but not limited to, those customarily used for pedestrian and vehicular traffic and also including driveways, parking ramps, walkways, halls and corridors, balconies, terraces, janitorial closets, mechanical/electrical rooms, trash rooms, and storage rooms for the purpose of cleaning, repairing, maintaining and improving the Building; and (ii) an irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units. In addition, the Association (and its agents, contractors, designees, successors and assigns) shall have an irrevocable right of access to each Unit for the purpose of obtaining hurricane shutters stored therein and for the purpose of installing



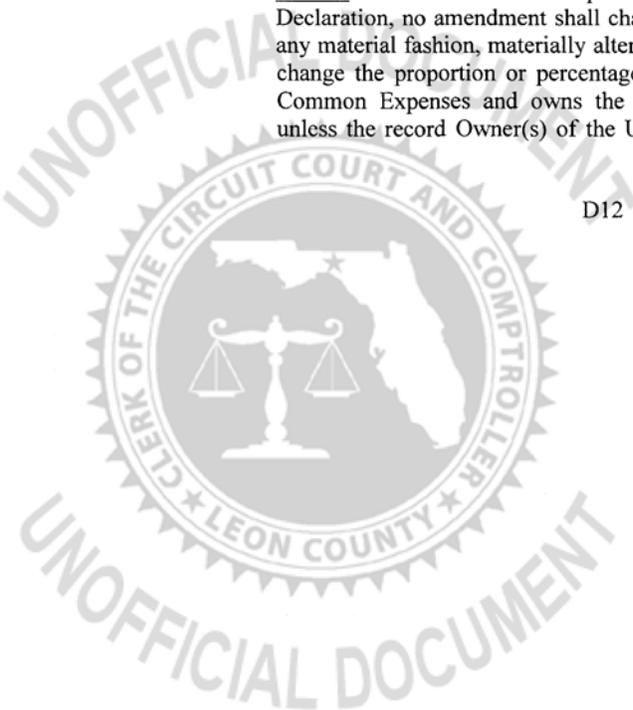
such hurricane shutters in accordance with the provisions of Section 7.4 hereof, if applicable.

4. **Restraint Upon Separation and Partition of Common Elements.** The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall be permitted, 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 **Fractional Ownership and Shares.** The undivided fractional ownership interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses appurtenant to each Unit are set forth in **Exhibit "5"** attached hereto and made a part hereof, shall be based upon an equal fractional basis, which in the aggregate, equals the whole.
 - 5.2 **Voting.** Each Unit Owner shall be a member of the Association and shall be entitled to one (1) vote in the Association as to matters on which a vote by Owners is required as provided for in the Condominium documents and the Act. If a Unit Owner owns more than one Unit, Unit Owner shall be entitled to one vote for each Unit owned.
 - 5.3 **Voting by an Entity or Multiple Owners.** If a Unit is owned by an entity or more than one individual, the properly designated officers, principals, or partners of the entity or the multiple owners shall designate a voting representative by providing written notice of the name of the individual designated to vote to the Secretary of the Association.
6. **Amendments.** Except as elsewhere provided herein, amendments 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 of the Association or by not less than one-third (1/3) of the Unit Owners of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their agreement or disagreement in writing with any action taken at a meeting that the board member did not attend, but the agreement



or disagreement may not be used for purposes of creating a quorum and may not be used as a vote for or against the action taken. Except as elsewhere provided, approvals must be by an affirmative vote of (a) Unit Owners of not less than 66-2/3% of the Units in the Condominium and by not less than 66-2/3% of the Board of Directors of the Association; or (b) Unit Owners of not less than 75% of the Units in the Condominium.

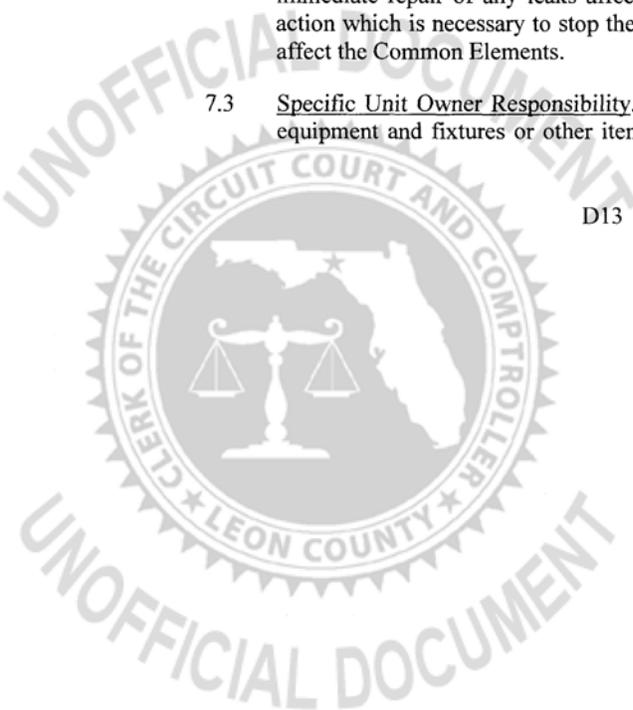
- 6.2 Amendments Prior to Turnover. During the period of Developer control, the Declaration, Articles of Incorporation or the By-Laws of the Association may be amended to correct an omission or error, or to effect any other amendment by obtaining approval of a majority of the voting interests of the Board of Directors of the Association except that this procedure for amendment may not be used if such an amendment would change the configuration or size of any unit in any material fashion, material alter or modify the appurtenances to the unit, or change the proportion or percentage by which unit owners share common expenses and own common surplus unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless at least a majority of the record owners of all other units approve the amendment
- 6.3 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 of the Association, which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision ... for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.
- 6.4 Proviso. Unless otherwise provided specifically to the contrary in this Declaration, 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, unless the record Owner(s) of the Unit(s) so affected, and all record owners of



liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by not less than 66-2/3% of the voting interests of Unit Owners in the Condominium. No amendment may be adopted which would terminate, limit, eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the prior written consent of said Developer and mortgagees in each instance; nor shall an amendment make any change in the Sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless 66-2/3% of the Institutional First Mortgagees shall join in the amendment. Whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld or delayed. The provisions of subsections 3.4(h), 3.4(i), 6.4, 8.2(b), 8.4, 15.16, 21 and 22.13 of this Declaration may not be amended in any manner without the prior written consent of Developer, whose consent may be withheld in Developer's sole discretion.

7. **Maintenance and Repairs.**

- 7.1 **Units.** All maintenance, repairs and replacements of, in or to any Unit, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance, repair and replacement of hurricane screens and shutters, windows, window coverings, interior nonstructural walls, the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. Such maintenance and repair obligation shall include, but not be limited to, the immediate repair of any leaks affecting the Unit and any further action which is necessary to stop the growth of mold and/or mildew which might affect the Unit.
- 7.2 **Common Elements and Association Property.** Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements shall be performed by the Association 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 by specific Unit Owners, in which case such cost shall be paid solely by such Unit Owners. Such maintenance and repair obligation shall include, but not be limited to, the immediate repair of any leaks affecting the Common Elements and any further action which is necessary to stop the growth of mold and/or mildew which might affect the Common Elements.
- 7.3 **Specific Unit Owner Responsibility.** The obligation to maintain and repair any equipment and fixtures or other items of personal property which are contained

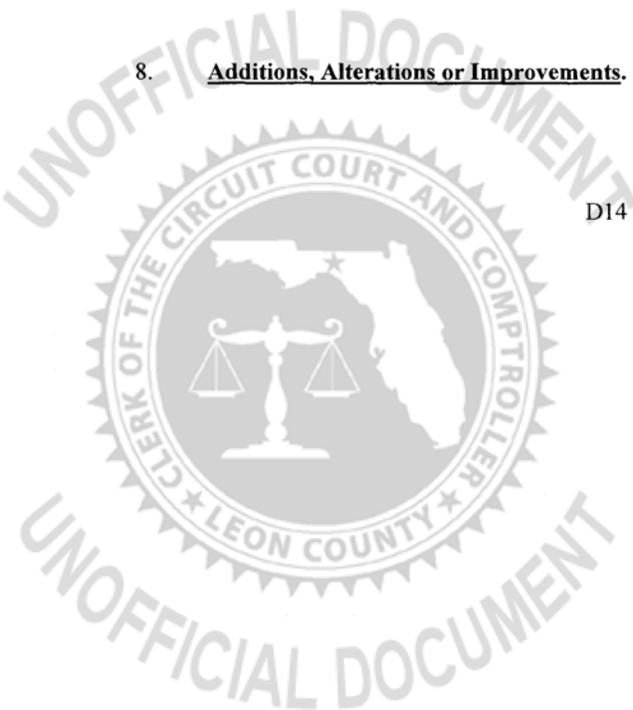


within a particular Unit or Units (and Limited Common Elements appurtenant thereto) shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Unit. To the extent any Limited Common Element affects more than one unit, responsibility therefore shall be shared equally by the Owner's of the affected Units.

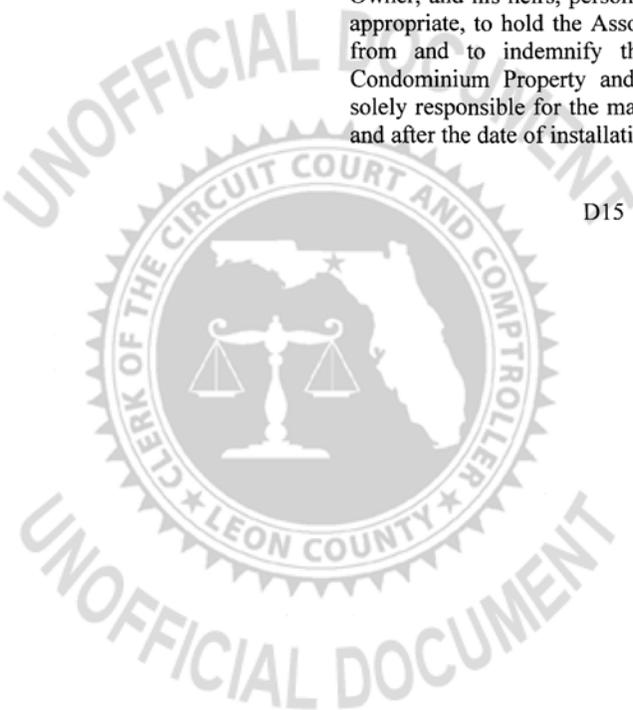
- 7.4 Hurricane Shutters. The Association shall establish specifications pertaining to hurricane shutters, from time-to-time, to comply with applicable building codes. The Association shall also establish criteria regarding permitted color, styles and material of shutters. Any changes to the hurricane shutters shall be approved, in writing, by the Association before any installation thereof. If hurricane shutters which do not conform with the specifications of the Association are installed, the offending Unit Owner shall remove and replace those hurricane shutters with conforming hurricane shutters at the Unit Owner's sole expense. If hurricane shutters are installed, such shutters shall become part of a Unit and shall not constitute a Common Element, Limited Common Element or Association Property. No hurricane shutters shall be installed unless and until a storm watch or storm warning is announced by the National Weather Center or other recognized weather forecaster. The Association shall notify Unit Owners by posting a notice on the Condominium Property when it is permissible to install hurricane shutters. The Association shall have the right but no obligation to enter into an agreement for services to install hurricane shutters on the Units and all such expenses shall be deemed part of the Common Expenses. Any Unit Owner who plans to be absent during all or any portion of the hurricane season must prepare his or her Unit for severe weather by removing all furniture, potted plants, or other movable objects, if any, from exterior surfaces of the Unit and Limited Common Elements appurtenant thereto. Any Unit Owners absent during all or any portion of the hurricane season shall also make his or her Unit accessible to the Association for the purpose of the Association obtaining the hurricane shutters from storage and for the purpose of the Association installing the hurricane shutters on the Unit, if the Association so elects. The Unit Owner shall also prepare his or her Unit prior to departure by designating a responsible firm or individual to care for his or her Unit should a hurricane or other major weather event threaten the Unit or should the Unit suffer hurricane damage. Any such firm or individual designated to care for a Unit shall be subject to the approval of the Association. The Association may require that the contact information for such firm or individual be provided to the Association prior to the Unit Owner's departure.

8. Additions, Alterations or Improvements.

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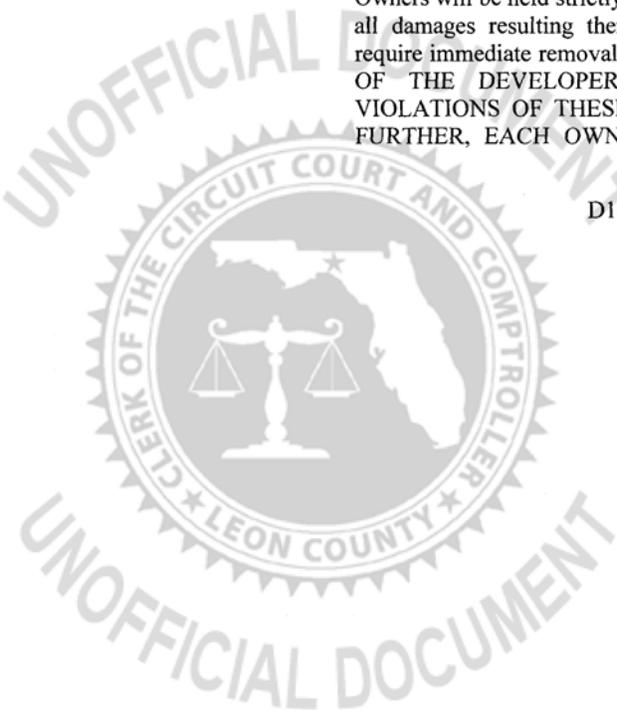


- 8.1 By the Association. Whenever in the judgment of the Board of Directors, the Common Elements or the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of 10% of the then annual budget of the Association, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements or the Association Property, or any part of either, costing in the aggregate no more than 10% of the then annual budget of the Association may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses or by Special Assessment.
- 8.2 By the Unit Owner.
- (a) Consents and Permits. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, or any Limited Common Element, without the prior written consent of the Board of Directors. The Board of Directors shall have the obligation to answer, in writing, any written request by such a Unit Owner for approval of such an addition, alteration or improvement within sixty (60) 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 of Director's consent. The Board of Directors may condition the approval in any manner, including without limitation, retaining approval rights of the contractor to perform the work. No Unit Owner shall make any addition, alteration or improvement in or to the interior of the Unit without obtaining all appropriate governmental permits which are necessary for such work and provided that such alteration, addition or improvement will not adversely affect the structural integrity of the Buildings or cause any damage to or adversely affect the Common Elements, Limited Common Elements or other Units and/or the Condominium Property. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof as may be required



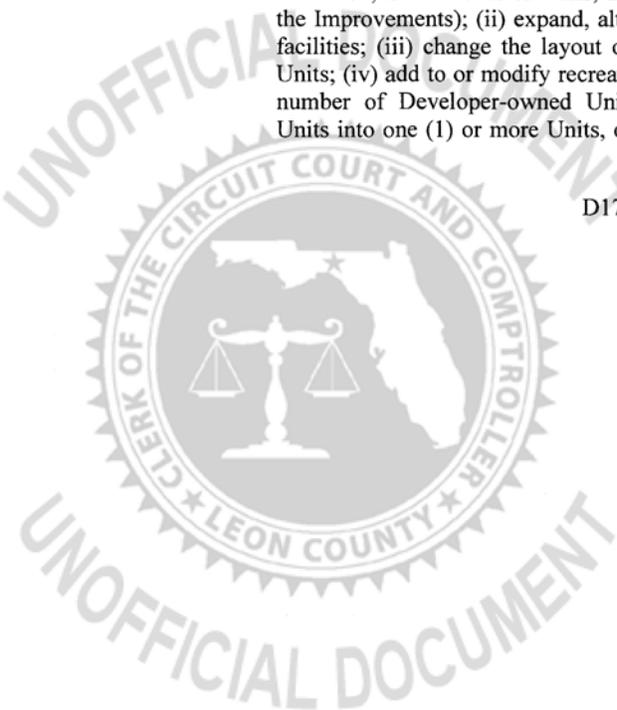
by the Association. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys 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 nonfeasance 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 same, agrees not to seek damages from the Developer and/or 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 such Owner (including the successors and assigns) having plans reviewed hereunder agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or 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.

- (b) Weight and Sound Restrictions. Unless installed by the Developer or otherwise first approved by the Board of Directors, hard and/or heavy surface floor coverings, such as tile, marble, wood and the like must be submitted to and approved, in writing, by the Board of Directors, which approval may be conditioned upon the use of appropriate soundproofing materials under such floor coverings, and must meet applicable structural requirements. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board of Directors, and be compatible with the overall structural design of the Buildings. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. The Board will have the right to specify the exact material to be installed on balconies and the Board reserves the right to restrict any or all floor coverings on balconies of Units. These use guidelines are consistent with good design practices for waterproofing and structural design. Owners will be held strictly liable for violation 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. FURTHER, EACH OWNER, BY ACCEPTANCE OF A DEED OR



OTHER CONVEYANCE OF THEIR UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND TRANSMISSION IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY UNITS AND/OR MECHANICAL EQUIPMENT CAN OFTEN BE HEARD IN ANOTHER UNIT. 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 UNIT OWNER HEREBY WAIVES AND EXPRESSLY RELEASES ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND TRANSMISSION.

- (c) Construction by Unit Owner. Any Unit Owner making additions, alterations or improvements as provided in this Section 8.2 shall commence any such additions, alterations or improvements within three (3) months after approval by the Board of Directors and shall diligently proceed to complete such work no later than three (3) months after commencement, unless such time period is extended by the Board of Directors. In the event that the Unit Owner proceeds with any alterations, additions or improvements without the approval of the Board of Directors, then upon written notice from the Association, the Unit Owner shall remove any non-conforming improvements promptly upon receipt of such notice, at the sole cost and expense of the Unit Owner. In the event that the Unit Owner fails to remove such non-conforming alterations in accordance with the notice received from the Association, the Association shall have the right to enter the Unit and remove such non-conforming alterations and all costs and expenses so incurred by the Association shall be promptly paid by the Unit Owner who has undertaken such non-conforming alterations, or if such expenses have been paid by the Association, the Unit Owner shall reimburse the Association within ten (10) days after receipt of an invoice for such work. Any unpaid expenses due the Association shall be added to any Assessments due from the non-conforming Unit Owner.
- 8.3 By the Developer. The foregoing restrictions of this Section 8 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, (i) to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements); (ii) expand, alter or add to all or any part of the recreational facilities; (iii) change the layout or number of rooms in any Developer-owned Units; (iv) add to or modify recreational facilities; and (v) change the size and/or number of Developer-owned Units by combining separate Developer-owned Units into one (1) or more Units, or otherwise (the foregoing combining may be

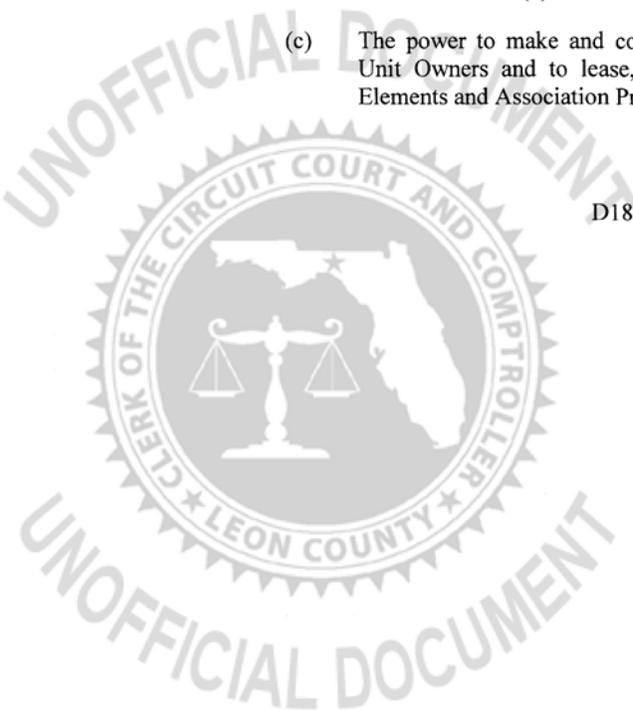


either horizontal or vertical combining of units); provided, however, there shall be no change to the configuration or size of any Unit in any material fashion, material alteration or modification of the appurtenances to any Unit or change to the percentage interest in the Common Elements and share of Common Surplus and Common Expenses of any Unit unless the record owner of the affected Unit(s) and all record owners of mortgages or other liens on the affected Unit(s) shall join in the execution of the amendment and unless a majority of the record owners of all other Units approve the amendment. If the Developer shall make any changes in Units, as provided in this subsection, such changes shall be reflected by an amendment to this Declaration with a survey attached reflecting such authorized alteration of Units, and said amendment need only be executed and acknowledged by the Developer and any holders of institutional mortgages encumbering the said altered Units unless otherwise required by the preceding sentence or by Section 718.110(4), Florida Statutes. The survey shall be certified in the manner required by the Act.

9. **Operation of the Condominium by the Association; Powers and Duties.**

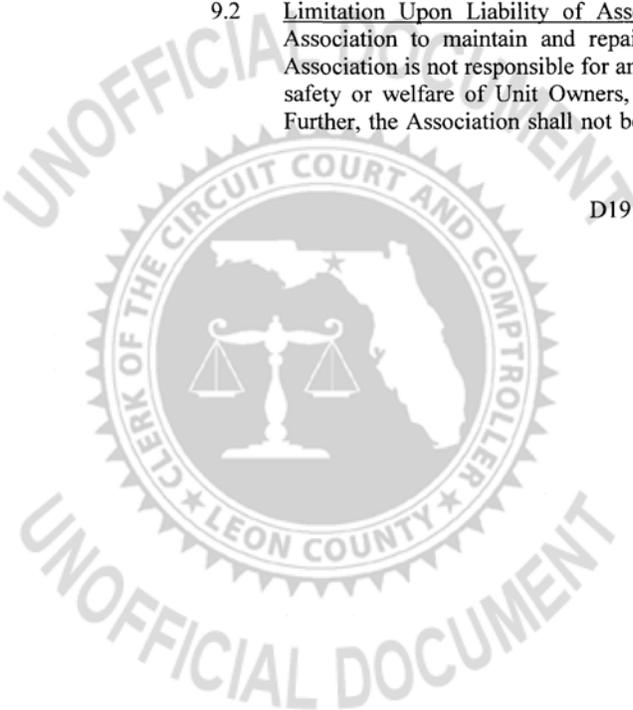
9.1 **Powers and Duties.** The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and By-Laws of the Association (respectively, **Exhibits "2" and "3"** annexed hereto and made a part hereof), as amended from time to time. In addition, the Association shall have (i) all the common law and statutory powers of a corporation not for profit and for profit under the laws of Florida that are not in conflict with the provisions of the Articles, the Declaration, the By-Laws or the Act; (ii) the powers and duties set forth in the Act, and (iii) 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 from time to time during reasonable hours when necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or at any time as necessary to prevent damage to the Common Elements or to a Unit or Units.
- (b) The power to acquire title to property or to otherwise hold, convey, lease and mortgage Association Property for the use and benefit of its members upon a vote of 75% of all the voting interests of the Units. The Association shall have the right to grant, modify or move easements which are a part of or cross Association Property as long as the easement created in subsection 3.4(h) is not modified.
- (c) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property.



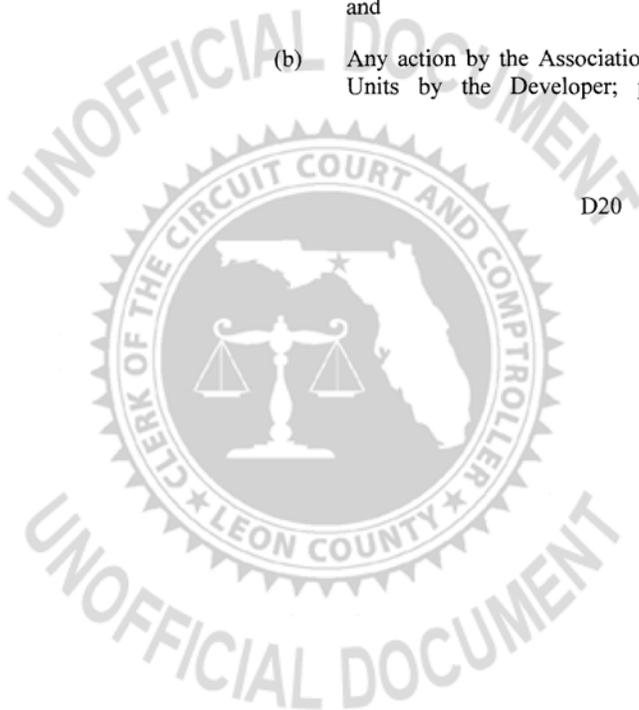
- (d) The duty to maintain accounting records according to good accounting practices, which shall be open for inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- (e) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, and the enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Articles, the By-Laws, and this Declaration and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (f) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, provided further that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.
- (g) The power to adopt and amend Rules and Regulations concerning the details of the operation and use of the Units and the Condominium Property.
- (h) The power to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit Owner by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.

9.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association is not responsible for and is not the insurer or guarantor of the health, safety or welfare of Unit Owners, their families, guests, agents or contractors. Further, the Association shall not be liable to Unit Owners for injury or damage,



other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property to be maintained and repaired by the Association, or caused by the elements, other Unit Owners or third parties. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners. The Association shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability 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.

- 9.3 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.
- 9.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 9.5 Acts of the Association. Unless the approval or action of Unit Owners and/or a certain specific percentage of the Board of Directors of the Association is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, Rules and Regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.
- 9.6 Effect on Developer. If the Developer holds any Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer:
- (a) Assessment of the Developer as a Unit Owner for capital improvements until the date of expiration of the Guarantee Period (hereinafter defined); and
 - (b) Any action by the Association that would be detrimental to the sales of Units by the Developer; provided, however, that an increase in



Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.

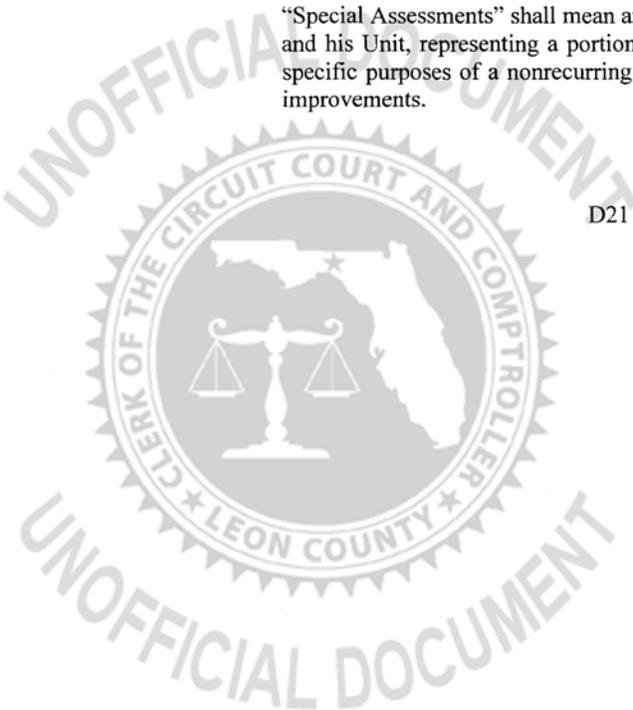
10. **Determination of Common Expenses and Fixing of Assessments Therefor.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of a reserve for (if required by law) the operation, maintenance, repair and replacement of the Common Elements, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, Rules and Regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws.

11. **Collection of Assessments.**

- 11.1 **Liability for Assessments.** A Unit Owner, regardless of how title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while that person is the Unit Owner. In addition, a Unit Owner shall be jointly and severally liable with the previous owner for all unpaid Assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the Owner may have to recover from the previous owner the amounts paid by the Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

- 11.2 **Special and Capital Improvement Assessments.** 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:

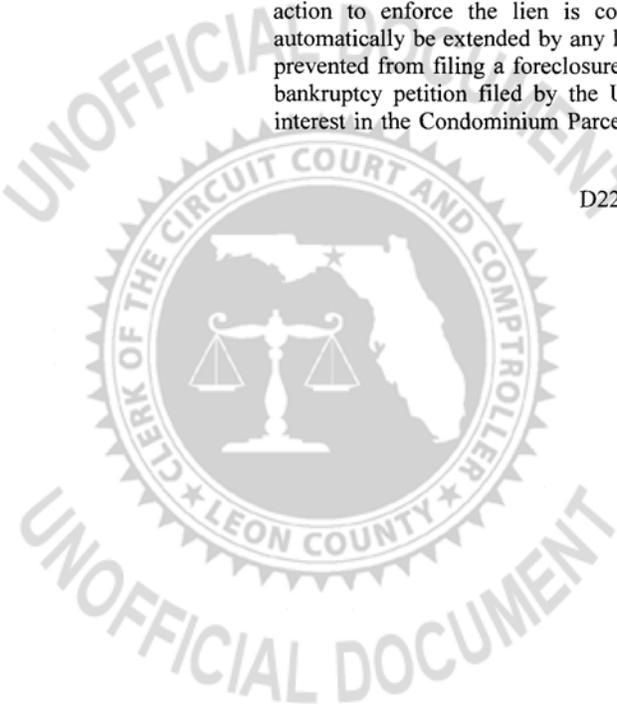
"Special Assessments" shall mean and refer to an Assessment against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.



“Capital Improvement Assessments” shall mean and refer to an Assessment against each Owner and his or her 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 or Association Property.

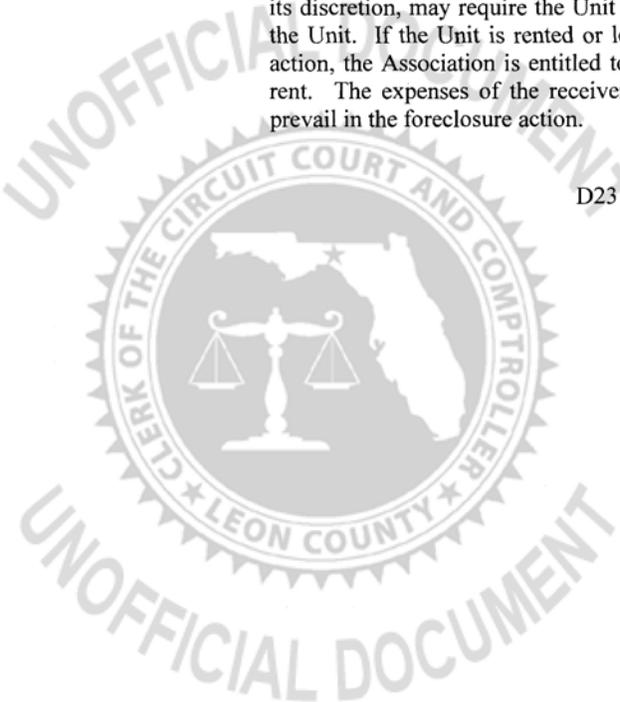
Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed ten percent (10%) of the then estimated operating budget of the Association, the Board must obtain approval of a majority of the voting interests represented at a meeting at which a quorum is attained.

- 11.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the day when they are due shall bear interest at the highest lawful rate from the date due until paid. In addition to the above stated interest, the Association shall charge an administrative late fee in an amount not to exceed the highest amount provided for in the Act (as amended from time to time) on Assessments and installments thereof not paid when due. All payments upon account shall be first applied to interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorneys’ fees incurred in collection and then to the delinquent Assessment. The foregoing method of applying payments shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The Association has a lien on each Condominium Parcel for any unpaid Assessments or installments thereof, with interest, late fees and for reasonable attorneys’ fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien whether suit be brought or not. The lien is effective from and shall relate back to the recording of this Declaration. However, as to Institutional First Mortgagees holding a first mortgage of record, the lien is effective from and after the recording of a claim of lien in the Public Records of the County in which the Condominium Parcel is located, stating the description of the Condominium Parcel, the name of the record Owner, name and address of the Association, the amount due and the due dates. The claim of lien must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such claim of lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended by any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Unit Owner or any other person claiming an interest in the Condominium Parcel. The claim of lien shall secure (whether or



not stated therein) all unpaid Assessments, interest thereon, and costs and attorney's 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 attorney's fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid Assessments. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner, the Association may declare the Assessment installments for the remainder of the budget year to be accelerated (or if acceleration to such extent is prohibited by the Act, then the Association may declare Assessments to the maximum extent permitted under the Act to be accelerated) and such amount shall thereupon be due and payable on the date the claim of lien is filed. Such accelerated Assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed. In the event 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.

- 11.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by personal delivery of the notice 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 and the court shall proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 11.5 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court, in its discretion, may require the Unit Owner to pay a reasonable rental amount for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

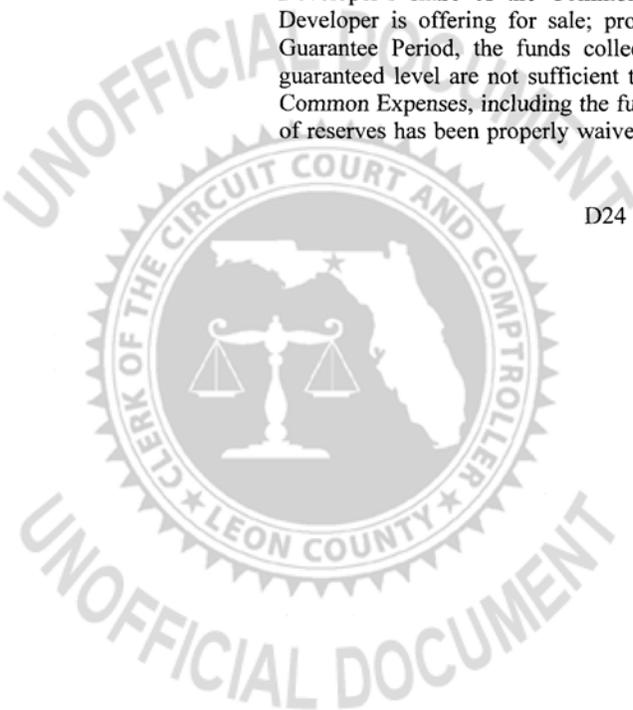


11.6 Institutional First Mortgagee. An Institutional First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. The liability of an Institutional First Mortgagee, or its successor or assignees, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's acquisition of title is limited to the lesser of:

- (a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
- (b) One percent (1%) of the original mortgage debt.

If any unpaid share of Common Expenses or Assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are Common Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns. An Institutional First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure or deed in lieu of foreclosure may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. As to a Unit acquired by foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the Institutional First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, 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 that Institutional First Mortgagee.

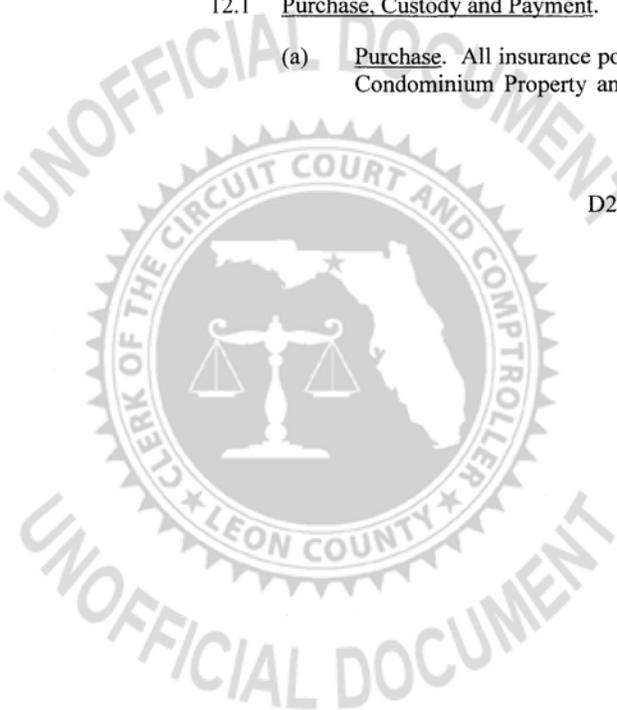
11.7 Guarantee of Assessments by Developer. Developer guarantees to each Unit Owner that for the period commencing on the date of recording of the Declaration until one (1) month following the date on which the closing on the purchase and sale of the first Unit in the Condominium occurs (the "Guarantee Period"), the monthly Assessment for Common Expenses for a Unit will not exceed the monthly Assessment amount for that particular Unit as expressly stated in the prospectus for the Condominium for Units sold by the Developer. During the Guarantee Period, the Developer shall be excused from the payment of the Developer's share of the Common Expenses for Units Developer owns and Developer is offering for sale; provided, however, if, at any time during the Guarantee Period, the funds collected from Unit Owner Assessments at the guaranteed level are not sufficient to provide payment, on a timely basis, of all Common Expenses, including the full funding of the reserves, unless the funding of reserves has been properly waived, the Developer shall advance money to the



Association at the time such payments are due so as to eliminate any deficit in the funds. For purposes of this subsection, income to the 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. The Developer shall have the option of extending the Guarantee Period by twenty-four (24) or more extensions of one (1) month each, in Developer's sole discretion, on the same terms, or paying the share of Common Expenses and Assessments attributable to the Units it is then offering for sale. No funds receivable from Unit purchasers or Unit Owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for Common Expenses as provided in this Declaration and disclosed in the Estimated Operating Budget of the Association, shall be used for the payment of Common Expenses during any period in which the Developer is excused from payment of Assessments. 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 (hereinafter defined), the cost necessary to effect restoration shall be assessed against all Unit Owners owning Units on the date of such Extraordinary Financial Event, 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.

- 11.8 Certificate of Unpaid Assessments. Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments and other moneys owed to the Association by the Unit Owner with respect to his or her Unit have been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 11.9 Installments. Regular Assessments may be collected monthly or quarterly, in advance, at the option of the Association from time to time. Initially, Assessments will be collected monthly.
12. **Insurance.** Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 12.1 Purchase, Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property and Association Property shall be purchased by

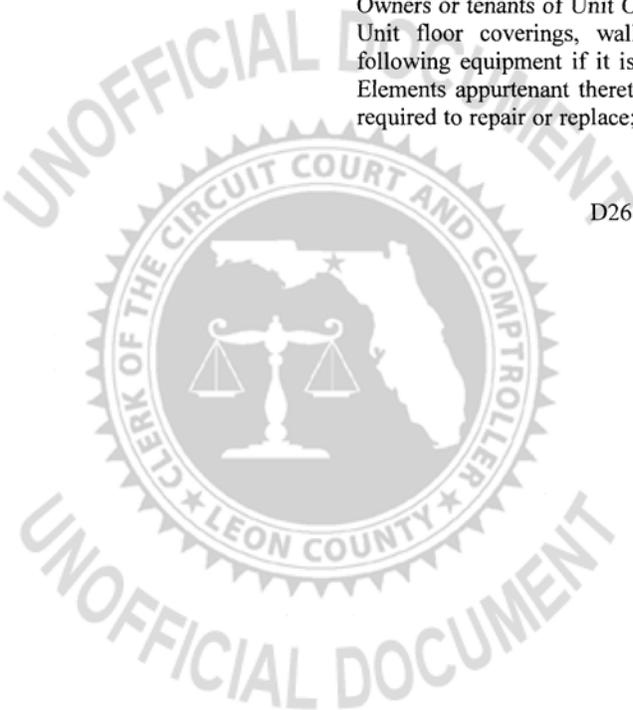


the Association and shall be issued by an insurance company authorized to do business in Florida.

- (b) Mortgagees. No policy or insurance coverage shall impair the security of the Primary Institutional First Mortgagee without its consent.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
- (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, hereinafter defined in Section 12.11, (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 respective Units (or within any Limited Common Elements appurtenant thereto), including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

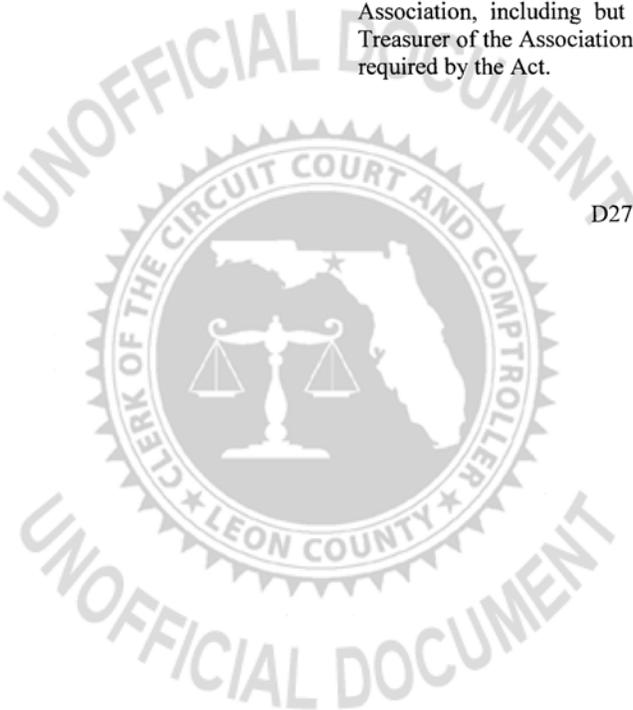
12.2 Coverage. The Association shall use its best efforts to maintain insurance covering the following:

- (a) Casualty. The Building (including the Limited Common Elements and the Common Elements) and all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), but excluding all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and also excluding hurricane shutters, Unit floor coverings, wall coverings, or ceiling coverings and the following equipment if it is located within a Unit (or Limited Common Elements appurtenant thereto) and such equipment as the Unit Owner is required to repair or replace; electrical fixtures, appliances, air conditioner



or heating equipment, water heaters, built-in cabinets, personal property, fixture, appliance or equipment permitted to be excluded from the Condominium's insurance policy pursuant to the Act, as same may be amended or renumbered from time to time and all Improvements located on the Common Elements from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or owned by the Association (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:

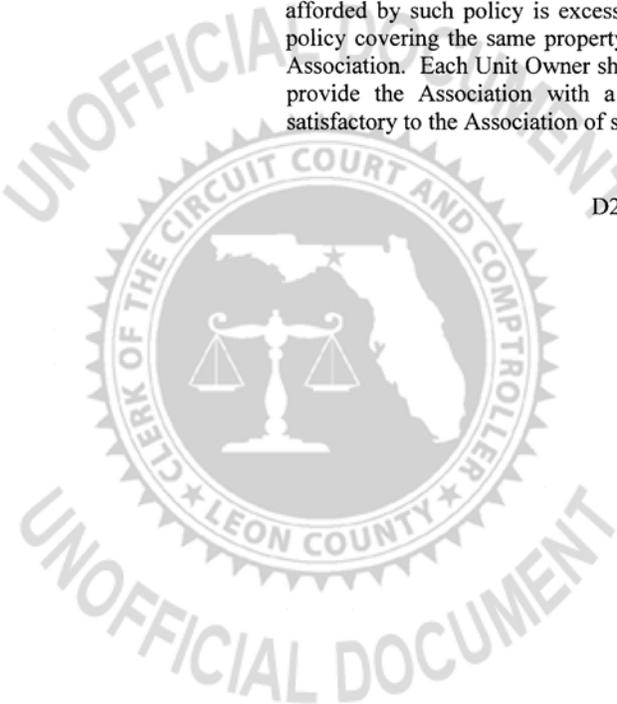
- (i) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and
 - (ii) Such Other Risk as from time to time are customarily covered with respect to Building and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$100,000 property damage for each accident or occurrence, 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. The Association shall obtain workers' compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance. The Association shall obtain flood insurance if required by the Primary Institutional First Mortgagee or if the Association so elects.
- (e) Fidelity Insurance. The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association, including but not limited to the President, Secretary and Treasurer of the Association, in an amount not less than the minimum sum required by 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. The Board of Directors of the Association shall obtain such other policies of insurance as the Board may 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) pay only a fraction of any loss in the event of co-insurance 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.

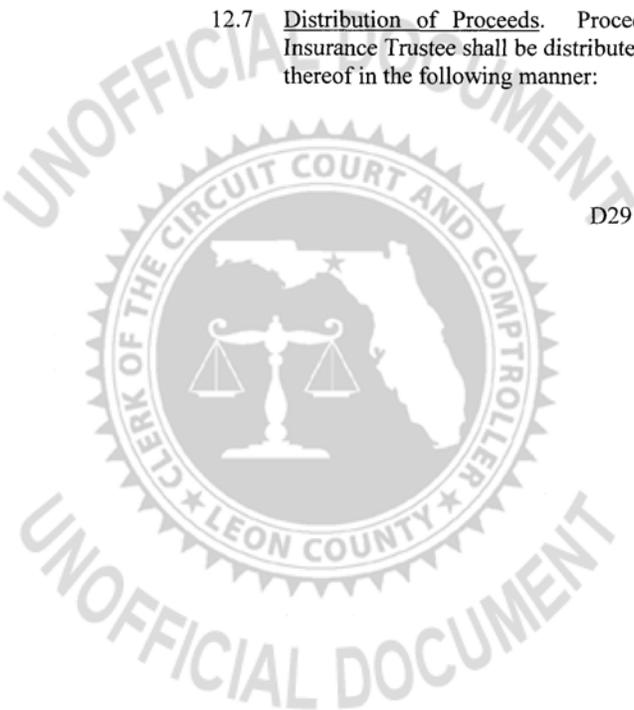
- 12.3 Additional Provisions. All policies of insurance shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance 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.
- 12.4 Premiums. Premiums (or allocable shares thereof) upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 12.5 Unit Owner Coverage. Each Unit Owner shall obtain and maintain at all times, individual casualty and general liability policies insuring the property lying within the boundaries of their Unit and for their personal liability arising in the use of their own Unit and other areas of the Common Elements for which they have exclusive use. Each Unit Owners' insurance policy shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property, without the rights of subrogation against the Association. Each Unit Owner shall, upon the written request of the Association, provide the Association with a copy of a binder, a policy or other proof satisfactory to the Association of said insurance coverage.



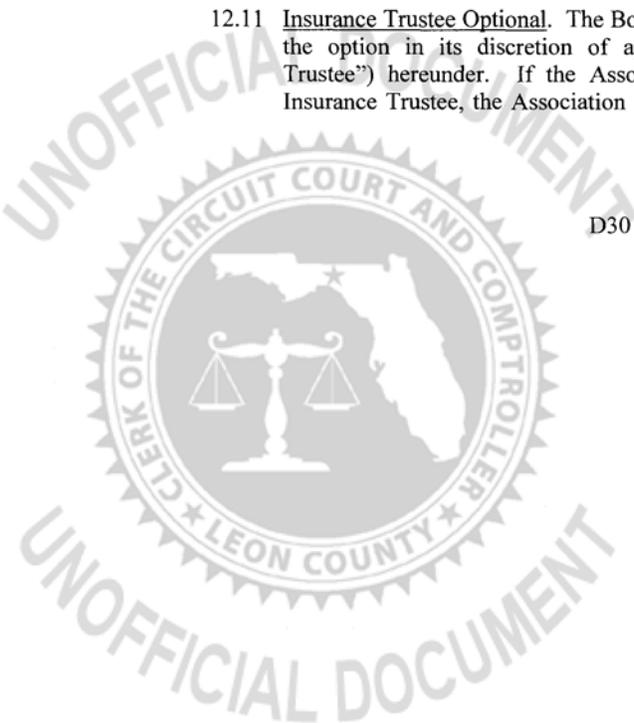
12.6 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association or to the Insurance Trustee (if one exists) which may, but need not, be designated by the Board of Directors. References herein to the Insurance Trustee shall be deemed to apply to the Board of Directors if it elects to serve such functions pursuant to subsection 12.11 hereof. 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 such 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 and/or Limited Common Elements appurtenant thereto, 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 are collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
- (c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

12.7 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 Trustee. All expenses of the Insurance Trustee shall be first paid or provision for such payment 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 subsection 12.6 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.
- 12.8 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 12.9 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 Limited Common Elements appurtenant thereto), nor casualty or theft loss to the contents of an Owner's Unit or Limited Common Elements appurtenant thereto. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all risks not covered by insurance carried by the Association.
- 12.10 Benefit of Mortgagees. Certain provisions in this Section 12 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 12.11 Insurance Trustee Optional. The Board of Directors of the Association shall have the option in its discretion of appointing an insurance trustee ("Insurance Trustee") hereunder. If the Association fails or elects not to appoint such Insurance Trustee, the Association will perform directly all obligations imposed



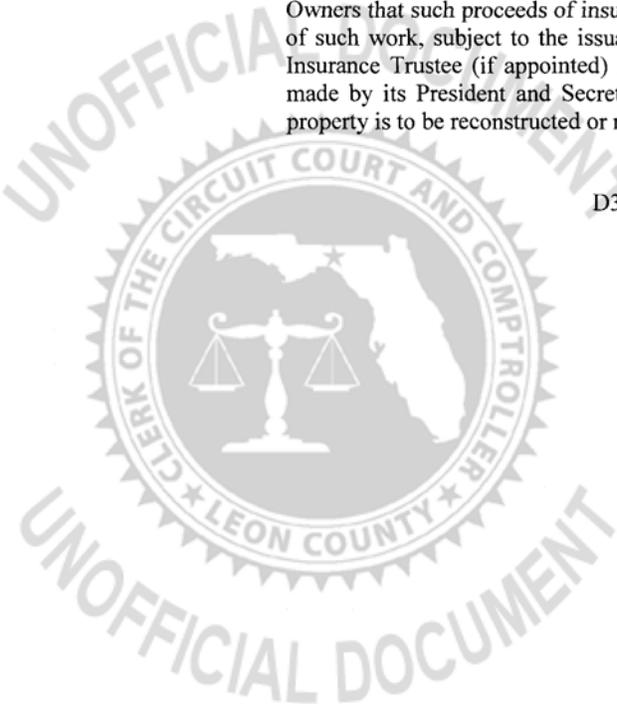
upon such Insurance Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

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

13.1 **Determination to Reconstruct or Repair.** Subject to the immediately following sub-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 or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and at least 51% 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 divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

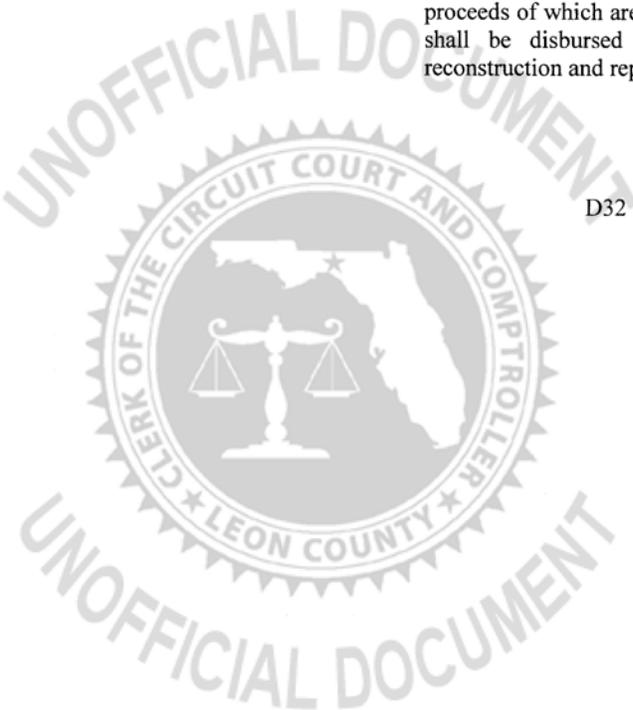
Whenever in this section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction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



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

13.3 Special Responsibilities.

- (a) 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.
- (b) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.



- (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$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 owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and shall 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 the part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee (if appointed) shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee (if appointed), nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the

