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L.D.  
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**DECLARATION OF CONDOMINIUM  
FOR  
THE PRESERVE, A CONDOMINIUM**

RICHARD AKE  
CLERK OF CIRCUIT COURT  
HILLSBOROUGH COUNTY

Sun City Center Corp., a Delaware corporation, doing business as Florida Design Communities, hereby declares:

**Section 1**  
**INTRODUCTION AND SUBMISSION**

- 1.1 **The Land.** The Developer owns the fee title to certain land located in Hillsborough County, Florida, as more particularly described in Exhibit "1" hereto (the "Land").
- 1.2 **Submission Statement.** The Developer hereby submits the Land with all improvements from time to time erected or to be installed 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, subject to the reservations, easements and restrictions of record.
- 1.3 **Name.** The name by which this condominium is to be identified is THE PRESERVE, A CONDOMINIUM (the "Condominium").

ORIGINAL OF EXHIBIT 1 CONSISTING OF THE CONDOMINIUM DRAWINGS IS RECORDED IN CONDOMINIUM BOOK 14, PAGE 30 OF THE PUBLIC RECORDS OF HILLSBOROUGH COUNTY, FLORIDA.

**EXHIBIT A TO THIS PROSPECTUS**

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**Section 2**  
**DEFINITIONS**

For purposes of this Declaration and its exhibits, the following terms shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- 2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof.
- 2.2 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time. The original Articles of Incorporation are attached as Exhibit 2 hereto.
- 2.3 "Assessment" means a share of the funds required for the payment of Common Expenses or other purposes as provided in this Declaration and which from time to time is assessed against the Unit Owner.
- 2.4 "Association" or "Condominium Association" means THE PRESERVE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, the sole entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to, the Association for the use and benefit of its members.
- 2.6 "By-Laws" mean the By-Laws of the Association, as amended from time to time. The original By-Laws are attached as Exhibit 3 hereto.
- 2.7 "Common Elements" mean and include:
  - (a) The portions of the Condominium Property which are not included within the Units.
  - (b) Easements over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Dwellings and the Common Elements.
  - (c) An easement of support in every portion of a Unit which contributes to the support of the Dwelling on the Unit and the Dwelling or other improvements on all other Units, Common Elements or Limited Common Elements.

- (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
  - (e) Any other parts of the Condominium Property designated as Common Elements pursuant to this Declaration or the Act.
- 2.8 "Common Expenses" mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act which shall be charges assessed or imposed against Units in the Condominium by the Association as authorized by the Act. If approved by the Board of Directors, "Common Expenses" shall include the cost of mangrove trimming and the cost of a master television antenna system or duly franchised cable television service obtained pursuant to a bulk contract. For all purposes of this Declaration, "Common Expenses" shall also include all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended.
- 2.9 "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.
- 2.10 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit.
- 2.11 "Condominium Plat" means the condominium drawings required by Section 718.104 of the Act and recorded in the Condominium Book and Page identified on the first page hereof and constituting Exhibit 1 hereto.
- 2.12 "Condominium Property" means the Land and improvements described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- 2.13 "County" means the County of Hillsborough, State of Florida.
- 2.14 "Declaration" or "Declaration of Condominium" means this Instrument, as it may be amended from time to time.
- 2.15 "Developer" means Sun City Center Corp., a Delaware corporation, doing business as Florida Design Communities, its successors and such of its assigns as to which its rights hereunder are assigned by written instrument recorded in the Public Records of the County. Such assignment may be made on an exclusive or non-exclusive basis and

may be an assignment of all or only portions of its rights of Developer hereunder; provided, however, that no such assignment shall make any assignee the "Developer" for purposes hereof unless such assignment is an assignment of all of Developer's rights hereunder and is exclusive, except as to any previously assigned rights.

- 2.16 "Dwelling" means the structure constructed on each Unit and used for residential purposes.
- 2.17 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, credit union, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagee(s) of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.18 "Limited Common Elements" mean those Common Elements, the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as shown on the Condominium Plat or otherwise 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.
- 2.19 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.20 "Unit" or "Condominium Unit" is that portion of the Condominium Property which is subject to exclusive ownership and is referred herein to each of the separate and identified Units delineated in the Condominium Plat. The physical boundaries of each Unit are as delineated in the plat aforescribed and are as more particularly described in Section 3.2 of this Declaration. The term "Unit" is often used synonymously herein with "Condominium Parcel" when meaning the sum total of an Owner's ownership interest in the Condominium.
- 2.21 "Unit Owner" or "Owner of a Unit" or "Owner" means the record owner of legal title to a Condominium Parcel.

**Section 3**  
**DESCRIPTION OF CONDOMINIUM**

- 3.1 **Identification of Units.** The Condominium shall have 39 Units. Each such Unit is identified by a separate numerical designation as shown on the Condominium Plat, which exists as Exhibit 1 hereto consisting of a survey of the Land including the Units, a graphic description of the improvements located thereon, and a plot plan thereof. A reduced-size copy of the Condominium Plat as recorded in the Condominium Book and Page identified on the first page hereof together with a copy of the legal description contained on the Condominium Plat is attached to this Declaration for convenience. The Condominium Plat, 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 the Limited Common Elements for such Unit; (c) membership in the Association with the full voting rights appurtenant thereto; and (d) other appurtenances as may be provided by this Declaration or the Act.
- 3.2 **Unit Boundaries.** Each Unit shall consist of a discrete area of land, designated as a numbered lot on the Condominium Plat. Each Unit lies within the following boundaries:
- (a) **Upper and Lower Boundaries.** The upper and lower boundaries of each Unit shall be determined in the same manner and under the same laws which establish the upper and lower boundaries and rights of an owner of a parcel of real property in fee simple.
  - (b) **Perimetrical Boundaries.** The perimetrical boundaries of each Unit shall be the vertical projections of the two-dimensional and horizontal boundary lines of the Units as depicted on the Condominium Plat. In the event the actual physical location of any Dwelling constructed within a Unit at any time does not precisely coincide with the area depicted on the Condominium Plat, the actual physical location of the Dwelling shall control over locations, dimensions and descriptions reflected on the Condominium Plat. However, if any party wall is not on the boundary delineated on the Condominium Plat, the existing, physical location of said wall shall be conclusively presumed to be the boundary of the two Units sharing such party wall. If a wall overhang or part of a dwelling encroaches onto the Common

Elements, the boundary of the Unit shall be such as to include such structure.

- 3.3 **Limited Common Elements.** To the extent applicable and subject to the provisions of this Declaration, each Unit may have, as Limited Common Elements appurtenant thereto, such portions of the Common Elements as are defined herein and/or shown on the Condominium Plat, including, but not limited to, (a) that portion of the five (5) feet wide Limited Common Element which surrounds each cluster of connected Units and directly touches the boundary of each such Unit, (b) any porches of decks or similar structures which are constructed on the Common Elements connected or adjacent to such Unit and for the use of the respective Unit Owner, and (c) light and electrical fixtures outside the Unit or attached to the exterior of the perimeter wall of the Dwelling. The Limited Common Elements shall be maintained, repaired or replaced by the Association as part of the Common Expenses of the Condominium; provided, however, that (a) each respective Owner may utilize and, if utilized, shall maintain that portion of the five (5) feet wide Limited Common Element on the boundary of such Unit to plant plants or otherwise garden the area unless otherwise specifically provided in this Declaration and exhibits attached hereto, (b) each Unit Owner shall be responsible for the maintenance and care of any wiring or electrical outlets or light fixture(s) and, where applicable, light fixtures affixed to the front exterior wall of a Unit, (c) each Unit Owner shall be responsible for replacing the necessary light bulbs for said light fixture(s) by the same color and bulb wattage, and (d) each Unit Owner shall be responsible for maintaining, repairing and replacing any screening on the porch(es) and/or patio(s) connected or adjacent to the Dwelling. Should any maintenance, repair or replacement of a Limited Common Element which is the responsibility of the Association be caused by the lessees, servants and invitees of a Unit Owner, then such Unit Owner shall be responsible therefor, and the Association shall have the right to levy a fine against the Owner of said Unit.

- 3.4 **Permitted Improvements.** The following improvements shall be permitted to be constructed within and upon each Unit:

- (a) **By Developer.** The Developer shall construct within each Unit a one or two story Dwelling, constituting a complete, integrated, architectural and structural residence that shares a wall with at least one other Dwelling.
- (b) **By Unit Owner.** In the event any of the Units are conveyed by the Developer to Unit Owners without the aforesaid Dwelling having

been constructed therein, those Unit Owners or their successors may add the same at any time thereafter, provided construction of all such improvements shall be performed by reputable contractors in accordance with plans and specifications prepared by licensed architects, which shall be subject to the prior written approval of the majority of the Board of Directors of the Association. The Board shall either grant such approval or deny the same based upon its decision as to whether the improvements shall be aesthetically pleasing and consistent with the design of Dwellings previously constructed within Units of the Condominium.

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

- (a) **Support.** There shall be an easement of support in every portion of a Unit which contributes to the support of the Dwelling on the Unit and the Dwelling or other improvements on all other Units, the Common Elements, and the Limited Common Elements.
- (b) **Party Wall.** All dividing walls which straddle the boundary line between Units and which stand partly upon one Unit and partly upon another, and all walls which serve two or more Units or the permitted improvements located within said Units, shall at all times be considered party walls. An easement is hereby created in favor of each of the Owners of Units within which such party walls shall stand, serve or benefit so that each respective Unit Owner shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for support of the permitted improvements located within said Unit, and for the support of any Dwelling, constructed to replace the same. In addition, each Unit Owner shall have the right to maintain in or on said wall any pipes, ducts or conduits originally located therein or thereon subject to the restrictions hereinafter contained.
  - (i) No Unit Owner nor any successor in interest to any such Owner shall have the right to extend said party wall in any manner, either in length, height or thickness.
  - (ii) In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the Association shall have the

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obligation to repair or build such wall. In the event of damage to or destruction of any party wall, including the foundation thereof, caused by the careless, reckless, or negligent acts of a Unit Owner or his guests, then the Owner of each Unit upon which such wall shall rest, be served or benefitted by shall pay his aliquot portion of the cost of such repair or rebuilding. All such repair or rebuilding shall be done within a reasonable time and in such workmanlike manner with materials comparable to those used in the original wall, and the work shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall.

- (iii) The foregoing provision of this section notwithstanding, the Owner of any Unit, or other interested party, shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any Unit Owner, or other interested party, to contribution from any other Unit Owner under this section shall be appurtenant to the land and shall pass to such Unit Owner's or other person's successors in title.
  - (iv) Each Unit Owner's title to the portion of each party wall within such Unit is subject to a cross easement in favor of the adjoining Unit Owner for joint use of said wall.
- (c) Utility and Other Services: Drainage. Easements are hereby reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his 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.



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The Board of Directors of the Association or its designee shall have a right of access to each Unit to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, hot water heaters, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and, except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).

- (d) **Encroachments.** If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the improvements; (ii) settling or shifting of the improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.
- (e) **Ingress and Egress.** A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

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- (f) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so.
- (g) Sales Activity. For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for model apartments and sales, management and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units and residential Units within the overall Condominium and to erect on the Condominium Property signs and other promotional material to advertise Units (or the other aforesaid residential Units) for sale or lease.
- (h) Easements over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Dwellings and the Common Elements.

### 3.6 Special Easements and Rights to Grant Easements.

- (a) Developer hereby reserves unto itself, its successors and its assigns and grants to the Association with the power to assign, non-exclusive easements over, under and through the Condominium Property for the construction, maintenance and operation of electric, gas or other utility, cable television, security systems, communications, service or other easements pertaining to the construction, maintenance and operation of other equipment, conduits, pipes, lines and similar installations servicing the Condominium Property or other property with the power to relocate any such existing easements in any portion of the Condominium Property and/or Association Property, provided that such easements or the relocation of easements will not prevent or unreasonably interfere with the reasonable use of the Units for residential purposes.
- (b) Developer hereby reserves unto itself, its successors and its assigns and grants to the Association, with the power to assign,

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non-exclusive easements over, under, upon and through the Condominium Property for the purposes of access to, constructing or maintaining improvements upon, providing utility services to or across, or providing drainage to or from the Condominium Property, any other property which may become part of the Condominium Property pursuant to this Declaration, or any other property adjacent to the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

- (c) Developer hereby reserves unto itself, its successors, and its assigns non-exclusive easements over, upon, and through the Condominium Property for vehicular and/or pedestrian traffic by the Developer, its designees, successors, assigns, licensees, lessees, invitees, and guests within the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

#### Section 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 from such Unit 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, cannot be conveyed or encumbered, except together with such Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

#### Section 5

#### **OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS AND SHARE OF COMMON EXPENSES: VOTING RIGHTS**

- 5.1 Ownership Shares. The undivided share in the Common Elements and Common Surplus appurtenant to each Unit, as well as the undivided share of the Common Expenses to be paid with respect to each Unit, shall be computed on an equal fractional basis.

Accordingly, each Unit shall have attributable thereto an undivided share in the Common Expenses and ownership of the Common Elements and the Common Surplus equal to one thirty-ninth (1/39th).

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- 5.2 **Voting.** Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Any two (2) Units which have been combined into one (1) combined Unit shall be deemed to be two (2) Units (as if they had not been so combined) and shall therefore be entitled to two (2) votes to be cast by its Owner. The total number of votes shall be 39, which is equal to the total number of Units in the Condominium.

## Section 6 AMENDMENTS

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

- 6.1 **By The Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the members of the Association. Except as may be elsewhere provided herein, approval of proposed amendments must be by affirmative vote of Unit Owners owning at least 75% of the Units. Unit Owners may vote by limited proxy to amend the declaration.
- 6.2 **By The Developer.** The Developer, during the time it has the right to elect a majority of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association to correct an omission or error, or effect any other amendment, provided that the affected Unit Owners' consent would be necessary if such an amendment would materially alter or modify the appurtenances to a Unit or change the proportion by which the Owners share the Common Expenses and own the Common Surplus. This provision shall not apply if the reason for the amendment is one of the reasons stated in the paragraph regarding Special Amendments described below.
- 6.3 **Unit Boundaries and Floor Plans.** The Developer also reserves the right to alter the boundaries between Units and the floor plans of Dwellings constructed upon Units as long as the Developer owns the Units so altered; provided, however, no such change shall increase the number of Units nor change the proportion by which the Unit Owners share the Common Expenses. If the Developer shall make such changes in Units

permitted in this paragraph, such changes shall be reflected by the amendment of this Declaration with a drawing attached, reflecting such authorized alteration of Units, and said amendment need only be executed and acknowledged by Developer and any holders of institutional mortgages encumbering the said altered Units.

- 6.4 **Special Amendment.** Anything herein to the contrary notwithstanding, Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends the Declaration and any provision therein (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other federal, state or local governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Units; and (iii) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Unit Owner and the Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Developer to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate on December 31, 1995.
- 6.5 **Execution and Recording.** An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County.
- 6.6 **Limitation.** No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer

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without the consent of said Developer in each instance. The provisions of this paragraph may not be amended in any manner.

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

## Section 7 MAINTENANCE AND REPAIRS

- 7.1 Responsibility for the maintenance, repair and replacement of the Condominium Property is as follows:
- (a) **Common Elements:** The Association shall maintain, repair and replace, as part of the Common Expenses, all of the Common Elements as defined herein, except for landscaping items planted by a Unit Owner within that portion of the Limited Common Elements surrounding a Unit as shown on the Condominium Plat which shall be maintained by that Unit Owner.
  - (b) **Units:** The responsibility for maintenance, repair and replacement within the Units shall be shared by the Association and the Unit Owners as follows:
    - (i) **By the Association:** The Association shall be responsible for maintaining, repairing and replacing the following items, and the cost of the maintenance thereof shall constitute Common Expenses:
      - (A) All landscaping, sprinkling systems, lawn and grass areas, fences, and also all water and wastewater lines located within or below the foundation;

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- (B) The entire Dwelling located within a Unit, including, without limitation, exterior walls, party walls, roofs and foundations, except for that portion of the Dwelling within the unfinished surfaces of the perimeter walls, floors and ceilings ("Living Space"); and
  - (C) The load-bearing walls within the Living Space, except for the finished surfaces thereof.
- (ii) By the Unit Owner: Each Unit Owner shall maintain, repair and replace everything within the confines of the Owner's Unit, including the Dwelling, which is not to be maintained by the Association pursuant to subparagraph (b)(i) of this section, including, but not limited to:
- (A) All exterior doors, windows and screens of any permitted improvement; provided, however, that the painting of the exterior doors shall be a Common Expense. These surfaces shall be maintained in such manner as to preserve a uniform appearance among the Dwellings within Units of the Condominium;
  - (B) Interior paint, finish, covering, wallpaper and decoration of all walls, floors and ceilings;
  - (C) All built-in shelves, cabinets, counters, storage areas and closets;
  - (D) All mechanical, ventilating, heating and air conditioning equipment serving the individual Dwelling; any refrigerators, stoves, ovens, disposals, dishwashers and other kitchen equipment; all bathroom fixtures, equipment and apparatuses;
  - (E) All electrical, plumbing, telephone and television fixtures, apparatuses, equipment, outlets, switches, wires, pipes and conduits above the slab serving only the respective Dwelling, and all electric lines between the Dwelling and its individual service panel or meter;
  - (F) All interior doors, non-load-bearing walls, partitions, and room dividers; and

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- (G) All furniture, furnishings and personal property contained within the respective Dwelling.

## Section 8

### ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY THE ASSOCIATION

Whenever, in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from maintenance, repairs and replacements) costing in excess of \$5,000 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by the Owners of a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate \$5,000 or less in a calendar year may be made by the Board of Directors without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall be as a "Capital Improvement Assessment" of the Unit Owners as provided in Section 12.2 hereof. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

## Section 9

### ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY UNIT OWNER

- 9.1 To Common Elements: After the completion of the improvements included in the Common Elements which are set forth in this Declaration, or which are contemplated by the Developer in the completion of the development as set forth herein, there shall be no alterations or additions to Limited Common Elements of this Condominium except as authorized by the Board of Directors, and approved by not less than 75% of the total vote of the Unit Owners of this Condominium, provided that no alterations or additions may be made involuntarily to the Limited Common Elements of any particular Unit if such alteration or addition will adversely affect or prejudice the rights of such Unit Owner unless his consent has been first obtained. The cost of the foregoing shall be assessed as Common Expenses unless otherwise provided herein.
- 9.2 To the Units: Except as otherwise reserved by the Developer, no Unit Owner shall make any alteration or improvement to such Unit Owner's Unit except in accordance with this section. A Unit Owner may make alterations and improvements to the interior of the Dwelling located



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within the Unit so long as such alterations or improvements are not visible from the outside of the Unit, do not impair the structural integrity of the dwelling, do not otherwise violate the terms of this Declaration, and are in compliance with all applicable building codes and the law. A Unit Owner may not expand, enlarge or relocate the Dwelling originally located within his Unit. Any other alterations or improvements to a Unit (including but not limited to the enclosing or screening in of any porch or patio within the Unit) may be made only if prior approval in writing is obtained from the Board of Directors.

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 that date of installation or construction thereof as may be required by the Association.

## Section 10

### ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY DEVELOPER

The foregoing restrictions of Section 9 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, 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, to the proposed or already constructed Dwelling located or to be located thereon, and Limited Common Elements appurtenant thereto. Such Unit shall include, without limitation, (i) the removal of walls, floors, ceilings and other structural portions of the Dwelling; (ii) change the layout or number of rooms in any Developer-owned Units; and (iii) change the size and/or number of Developer-owned Units by combining separate Developer-owned Units or otherwise. Any amendments to this Declaration or the Condominium Plat required by actions taken pursuant to this Section 10 may be effected by the Developer alone without consent of any other person. Without limiting the generality of Section 6.6 hereof, the provisions of this Section may not be added to, amended or deleted unless by, or with the prior written consent of, the Developer.

**Section 11**  
**OPERATION OF THE CONDOMINIUM BY**  
**THE ASSOCIATION: POWERS AND DUTIES**

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

- (a) The irrevocable right to have access to any portion of each Unit and its Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of such portions thereof as required by this Declaration or the Act, for performing extermination services, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units or the Dwellings thereon.
- (b) The power to make and collect Assessments and other charges against Unit Owners, to lease, maintain, repair and replace the Common Elements and to grant, modify or cancel easements pertaining to the Common Elements.
- (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- (d) The power to contract for the management and maintenance of the Condominium Property and to authorize a duly licensed management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and regulations, and perform the maintenance, repair and replacement required of the Association with such funds as shall be made available by the Association for such purposes.
- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the

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Association, if any. Such actions must be approved by a majority of the entire Board of Directors and the Owners of all the Units or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, and no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.

- (f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property.
  - (g) The power to acquire, lease, mortgage, and convey real and personal property and to grant, modify and cancel easements regarding such property, provided that such action may be done only (i) upon the approval of a majority of the Board of Directors, and (ii) a finding by the Board that such action is for the benefit of the members of the Association. The requirements of Section 8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the proviso as to the debt incurred) shall also apply to this acquisition and dealing with Association-owned property; provided, however, that the acquisition of a Unit as a result of a foreclosure of the lien for Assessments shall be exempt from these requirements.
  - (h) The power to acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands or facilities for recreational purposes as long as such arrangements are also approved by the Owners of a majority of the Units.
  - (i) All of the powers which a corporation not-for-profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation and By-Laws, Chapter 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act or the documents of the Condominium.
- 11.2 **Conflict.** In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and, the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the

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contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

- 11.3 Limitation of Liability of Association.** Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners, regardless if whether or not same shall have been approved by the Association pursuant to the provisions hereof.

**NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:**

(a) **IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE CONDOMINIUM PROPERTY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF;**

(b) **THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, HILLSBOROUGH COUNTY, PLANT CITY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND**

(c) **ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE**

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**HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.**

**EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.**

**AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE DEVELOPER AND ITS AFFILIATES, WHICH SHALL BE FULLY PROTECTED HEREBY.**

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

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or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

**Section 12**  
**DETERMINATION OF ASSESSMENTS**

- 12.1 **General Assessment.** The Board of Directors shall from time to time, and at least annually, prepare and adopt a budget for the Condominium, determine the amount 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 ("General Assessment"). The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the General Assessment payable by each of them as determined by the Board of Directors as aforesaid. The budget for Common Expenses shall include the reserves required by law or determined appropriate by the Board, the costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or by the Association. 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 adopted budget shall be subject to change by the Board of Directors, and the amount of the General Assessment shall be changed in accordance with such revised budget to cover actual expenses at any time.
- 12.2 **Special and Capital Improvement Assessments.** In addition to General Assessments, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:
- (a) "Special Assessments" shall mean or refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.
  - (b) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from maintenance, repairs and replacement) of any capital

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Improvements located or to be located within the Common Elements.

- (c) Special Assessments and Capital Improvement Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special and Capital Improvement Assessments, in the aggregate in any year, exceed \$5,000.00 or cause the total Assessments levied to exceed 115% of Assessments for the proceeding calendar year, the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum is attained.

## Section 13 COLLECTION OF ASSESSMENTS

The General Assessment, Special Assessments and Capital Improvement Assessments (collectively, the "Assessments") shall be collected as follows:

- 13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while he is the Unit Owner. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
- 13.2 Default in Payment of Assessments. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at fifteen percent (15%) per annum from the date due until paid. Each delinquent payment shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest thereon and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien shall be effective on the earliest date allowed by law, which shall be no later than as of the recording of the claim of lien. Such lien shall be evidenced by the recording of a claim of lien in the public records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due

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and the due dates. 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. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, the administrative late fee, and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association or its assignee may bring an action to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed in Florida and may also bring an action at law to recover a money judgment for the unpaid Assessments and other amounts due without waiving any claim of lien. The Association is entitled to recover its costs and 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 and the recording of a claim of lien, the Association may declare the next twelve (12) months' of General Assessment Installments and payments of other known Assessments to be accelerated and shall thereupon be immediately due and payable. In the event that the amount of such installments or payments changes during the twelve (12) month period, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued as provided above, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection as aforesaid and then to the delinquent and any accelerated Assessment. The foregoing application of funds received shall be applicable despite any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

- 13.3 Notice of Intention to Foreclose Lien. Unless otherwise required by the Act or other applicable law, 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



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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 delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award 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.

- 13.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent, the expenses of such receiver to be paid by the party which does not prevail in the foreclosure action.
- 13.5 Institutional First Mortgagee. In the event an Institutional First Mortgagee or other purchaser shall obtain title to a Unit by foreclosure, or by deed in lieu of foreclosure, such Institutional First Mortgagee or other purchaser, its successors and assigns, shall be liable for Assessments or other charges secured by the claim of lien only to the extent provided by the Act. If, due to the applicable provisions of the Act, any unpaid share of the Assessments or other charges are not required to be paid, then such unpaid share or other charges shall be deemed to be a Common Expense collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.
- 13.6 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

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- 13.7 Installments. General Assessments shall be collected monthly or quarterly, in advance, as determined from time to time by the Board of Directors. Initially, General Assessments will be collected monthly.
- 13.8 Developer's Guarantee. If in the purchase agreement or by other means pursuant to the Act, Developer shall guarantee to each purchaser that the Assessment for a specific period of time will not exceed a certain dollar amount, then the Developer shall only be obligated to pay the amount of Common Expenses incurred during that period and not produced by the Assessments received from other Unit Owners.

## Section 14 INSURANCE

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

### 14.1 Purchase, Custody and Payment.

- (a) Purchase. All insurance policies purchased by the Association shall be issued by an insurance company authorized to do business in Florida meeting all criteria established by the Board or the Act and any rules promulgated thereunder.
- (b) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
- (c) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).
- (d) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of

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each preceding policy that is being renewed or replaced, as appropriate.

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

14.2 Coverage. The Association shall use its best efforts to obtain and maintain adequate insurance covering the following:

- (a) Casualty. Insurance covering loss or damage to the Common Elements and all other portions of the Condominium Property which the Association is responsible to maintain under the terms of this Declaration, and all items for which the Association is required under applicable provisions of the Condominium Act to insure against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage and vandalism and malicious mischief endorsements. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability 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 per occurrence, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.
- (c) Worker's Compensation and other mandatory insurance, when applicable.

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- (d) Flood Insurance if required by the Primary Institutional First Mortgagee or FNMA/FHLMC or if the Association so elects.
- (e) Fidelity Insurance, if required by the Act or FNMA/FHLMC, covering all persons who control or disburse Association funds, such insurance to be in the amount required by Law.
- (f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (g) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

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

Every casualty insurance policy obtained by the Association shall have the agreed amount and inflation guard endorsement unless the Board finds such endorsement is unobtainable or economically infeasible.

- 14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may wish to 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.

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- 14.4 **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 14.5 **Insurance Trustee; Share of Proceeds.** All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:
- (a) **Insured Property.** Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.
- (b) **Optional Property.** Proceeds on account of damage solely to Units made functionally a part thereof and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

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

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

- (a) **Expenses of the Trust.** All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.
- (b) **Reconstruction or Repair.** If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 *et seq.*, and distributed first to all institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- (d) **Certificate.** In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

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

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- 14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.
- 14.9 Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.10 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

## Section 15

### RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY

- 15.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If the Insurance Trustee has not been appointed, then the Board of Directors shall act as if it were the Insurance Trustee hereunder.

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 a majority of Institutional First Mortgages 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,

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

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

**15.3 Special Responsibility.** If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the



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Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

- (a) **Disbursement.** The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (i) **Association - Lesser Damage.** If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$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 underinsured), or may be distributed to Owners of the Optional Property who have

the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

- (iv) **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) **Certificate.** Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to

be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

- 15.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.
- 15.5 Benefit of Mortgages. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

Section 16  
CONDEMNATION

- 16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a Special Assessment shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.
- 16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.
- 16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of

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*Insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.*

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

- (a) **Restoration of Unit.** *The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.*
- (b) **Distribution of Surplus.** *The balance of the award in respect of the Unit or its Limited Common Elements, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.*
- (c) **Adjustment of Shares in Common Elements.** *If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:*
  - (i) *add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and*
  - (ii) *divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.*

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

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

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
  - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof (the "Percentage Balance"); and
  - (ii) divide the percentage of each Unit of a continuing owner prior to this adjustment, but after any adjustments made

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necessary by subsection 16.4(c) hereof, by the Percentage Balance. The result of such division for each Unit shall be the adjusted percentage for such Unit.

- (d) **Assessments.** If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) **Arbitration.** If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Units Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

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

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is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

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

## Section 17 OCCUPANCY AND USE RESTRICTIONS

In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

- 17.1 Occupancy. Each Unit and the Dwelling therein shall be used as a single family residence only, except as may be otherwise herein expressly provided. The provisions of this subsection 17.1 shall not be applicable to Units used by the Developer for model apartments, guest accommodations, sales or other offices or management services.
- 17.2 Antennae. No antenna or aerial may be erected or installed on the exterior walls of a Building or on the Limited Common Elements or Common Elements, which includes the roof, without obtaining the prior written consent of the Association.
- 17.3 Specific Prohibited Uses. No sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, on or upon any part of the Unit, Limited Common Elements or Condominium Property by any Unit Owner or occupant without prior written consent of the Board of Directors. The foregoing includes signs within a Unit which are visible from outside the Unit. No person shall use the Common Elements or any part thereof, or a Unit, or the Condominium Property, or any part thereof, in any manner contrary to or not in accordance with the rules and regulations set forth in the By-Laws or properly pertaining thereto and promulgated from time to time by the Association.
- 17.4 Nuisances. No nuisances (as reasonably determined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or

occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance.

- 17.5 **No Improper Uses.** No Improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.

**Section 18**  
**SELLING, LEASING AND MORTGAGING OF UNITS**

Units may be made subject to mortgages without restrictions, but sales and leases thereof shall be subject to the provisions of this Section 18.

- 18.1 **Sales.** No conveyance of a Unit, by parties other than the Developer or Institutional Mortgagees, shall be valid unless a certificate executed and acknowledged by an officer of the Association, stating that all Assessments levied against such Unit have been paid in full, is recorded together with the instrument of conveyance. The Board of Directors shall furnish such certificate upon receipt from the Unit Owner of a request form (which will be prepared by the Association) setting forth the proposed purchaser's name, notice address and date of closing. Each new Owner receiving a conveyance from any party except the Developer shall notify the Association promptly after becoming a new Owner by delivering a copy of his deed to the Unit to the Association.
- 18.2 **Leases.** No Unit Owner may lease or rent his Unit if he is delinquent in the payment of any Assessments. If all Assessments are paid up to date, a Unit Owner may rent or lease his Unit without further approval. However, the Unit Owner renting or leasing his Unit shall promptly notify the Secretary of the Association, or such other person or entity as the Association may designate, of each renter and the term of such rental or lease. The sub-leasing or sub-renting of a Unit Owner's interest shall



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be subject to the same limitations as are applicable to the leasing or renting thereof. The Association shall have the right to require upon notice to all Unit Owners that a substantially uniform form of lease or sub-lease be used by all Unit Owners (including the Developer) intending to rent or lease after said notice and to provide such form as a Common Expense of the Condominium. Entire Units only may be rented, provided the occupancy is only by the lessee, his family and guests; no individual rooms may be rented and no transient tenants may be accommodated.

A tenant of a Unit shall have all of the use rights in the Association Property and Common Elements otherwise readily available for use generally by Unit Owners and the Owner of the leased Unit shall not have such rights, except as a guest. This shall not, however, interfere with access rights of an Owner as landlord pursuant to applicable law.

- 18.3 Continuing Liability. The liability of the Unit Owner under these covenants shall continue, notwithstanding the fact that he may have leased, rented or sub-let said interest as provided herein. Every purchaser, tenant or lessee, shall take subject to this Declaration, the Articles of Incorporation and By-Laws of the Association, and the Management Agreement, as well as the provisions of the Act.
- 18.4 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.
- 18.5 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18.

## Section 19 COMPLIANCE AND DEFAULT

Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

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- 19.1 **Negligence.** A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.
- 19.2 **Compliance.** In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines or to sue in a court of law for damages.
- 19.3 **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the Articles or By-Laws of the Association, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).
- 19.4 **No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Articles and Bylaws of the Association, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

## Section 20 TERMINATION OF CONDOMINIUM

The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided elsewhere in this Declaration, or (ii) such time as termination of the condominium form of ownership is authorized by a vote of Owners owning at least ninety percent (90%) of the Units and by the Primary Institutional First Mortgagee. Upon such termination, the former Condominium Property shall be subject to an action for partition by any Owner, and the net proceeds of sale shall be divided among all Owners in proportion to their respective interests in the Common Elements; provided, however, that no payment shall be made to an Owner until all mortgages

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and liens on his Unit, in the order of their priority, have been satisfied out of his share of such net proceeds. The termination of the Condominium shall be effective upon a certificate of the Association, executed by its President and Secretary, certifying the basis of the termination being recorded among the public records of the County.

This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.

## Section 21 ADDITIONAL RIGHTS OF MORTGAGEES AND OTHERS

The following provisions are intended for the benefit of each holder of a first mortgage upon a Unit, and, to the extent that any other provisions of this Declaration conflicts with the following provisions, if at all, the following provisions shall control:

- 21.1 Upon request in writing, the Association shall furnish to each First Mortgagee of a Unit and any holder, insurer or guarantor of a First Mortgage a written notice of any default by the Unit Owner of such Unit in the performance of such Unit Owner's obligations under this Declaration that has not been cured within thirty (30) days.
- 21.2 Upon request in writing, each First Mortgagee of a Unit and any holder, insurer or guarantor of a First Mortgage on a Unit shall have the right:
  - (a) to examine current copies of this Declaration, the By-laws, rules and regulations and the books, records and financial statements of the Association during normal business hours;
  - (b) to receive, without any charge and within a reasonable time after such request, the annual audited financial statement which is prepared and distributed by the Association to the Unit Owners at the end of its fiscal year; provided, however, that in the event an audited financial statement is not available, the holders of 51% or more of the First Mortgages in the Units shall be entitled to have such an audited statement prepared at their expense;
  - (c) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;
  - (d) to receive written notice of any decision by the Unit Owners to make a material amendment to the Declaration, By-Laws or Articles of Incorporation of the Association;

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- (e) to receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
  - (f) to receive written notice of any action which would require the consent of a specified number of First Mortgagees.
- 21.3 No provision of this Declaration or Articles of Incorporation of the Association or any similar instrument pertaining to the Condominium Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over any rights of the First Mortgagees of Units pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, and/or the Common Elements, or any portion thereof or interest therein. In such event, the holder of any first mortgage on a Unit shall be entitled, upon specific written request, to timely written notice of any such loss.
- 21.4 The consent of Owners holding at least seventy-five percent (75%) of the total votes in the Association and the approval of the holders of first mortgages on Units which are entitled to at least fifty-one percent (51%) of the votes in the Association shall be required to add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:
- (a) Voting rights;
  - (b) Assessments, assessment liens or priority of assessment liens;
  - (c) Reserves for maintenance, repair and replacement of the Common Elements;
  - (d) Insurance or fidelity bonds;
  - (f) Responsibility for maintenance and repair of the Condominium Property;
  - (g) Boundaries of any Units;
  - (h) The reallocation of interests in the Common Elements or Limited Common Elements;
  - (i) Convertibility of Units into Common Elements or of Common Elements into Units;

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- (j) Leasing of Units;
  - (k) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit; and
  - (l) The expansion (other than the phases described in this Declaration) or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium;
  - (m) Restoration or repair of the Condominium (after a hazard or partial condemnation) in a manner other than as provided in this Declaration; and
  - (n) Any provisions which are for the express benefit of holders, insurers or guarantors of first mortgages on the Units.
- 21.5 Upon specific written request to the Association, each First Mortgagee of a Unit or holder, insurer or guarantor of a mortgage on a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the common elements if such damage or destruction or taking exceeds Ten Thousand (\$10,000.00) Dollars or if damage shall occur to a Unit in excess of One Thousand (\$1,000.00) Dollars.
- 21.6 If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder, insurer or guarantor of any first mortgage on a Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle a Unit Owner or other party to priority over such holder with respect to the distribution to such Unit of the proceeds of any award or settlement.
- 21.7 Except for termination of the condominium regime as provided herein, the consent of Unit Owners having at least ninety-five percent (95%) of the votes in the Association shall be required to terminate the condominium regime.
- 21.8 Any holder of a first mortgage on a Unit who receives a written request to approve additions or amendments and fails to deliver or mail to the

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requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

21.9 In the event professional management has been previously required by any holder, insurer or guarantor of a first mortgage on a Unit, any decision to establish self management by the Association shall require the prior consent of Unit owners in accordance with Section 718.302(1), Florida Statutes.

21.10 As required by Section 718.110, Florida Statutes, any mortgagee consent required under this Section shall not be unreasonably withheld and shall otherwise be deemed to apply to the extent applicable.

## Section 22 **DISCLAIMER OF WARRANTIES**

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

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

## Section 23 **ARBITRATION OF CLAIMS**

Any warranty, negligence or other claim against the Developer or any party having a right of contribution from, or being jointly and severally liable with, the Developer relating to the design, construction, furnishing or equipping of the Condominium Property which does not require a dispute resolution process provided by The Act (the "Claim") shall be adjudicated pursuant to binding arbitration, rather than civil litigation, as permitted by the Florida Arbitration Code (the "Code"), Chapter 682, Florida Statutes, in the following manner:

- (a) The party making the Claim (the "Claimant") shall notify the Developer of the Claim, specifying with particularity the nature of each component

thereof and providing a true and complete copy of each and every report, study, survey or other document supporting or forming the basis of the Claim.

- (b) Within thirty (30) days of receipt of the notice of the Claim, the Developer will engage, at its own expense, a duly licensed engineer (the "Arbitrator") to serve as the arbitrator of the Claim pursuant to the Code. Such engineer shall be independent of the Developer and the Claimant, not having any then current business relationship with the Developer or Claimant, other than by virtue of being the Arbitrator. Upon selecting the Arbitrator, the Developer shall notify the Claimant of the name and address of the Arbitrator.
- (c) Within thirty (30) days from the date of his appointment, the Arbitrator shall review the Claim and supporting materials, inspect the Condominium Property and all appropriate plans, specifications and other documents relating thereto, and render a report (the "Final Report") to the Developer and the Claimant setting forth, on an item-by-item basis, his findings with respect to the Claim and the method of correction of those he finds to be valid. If the Developer so requests, by written notice to the Arbitrator, the Arbitrator will specify the estimated cost of the correction of each of those Claim he finds to be valid and shall offset therefrom costs reasonably attributable to any failure to maintain or mitigate or to any contributory negligence, in all cases whether chargeable to the Claimant or others.
- (d) The Developer shall have one hundred eighty (180) days after receipt of the Final Report in which to (i) correct the Claim found to be valid or (ii) pay to the Claimant the amount estimated by the Arbitrator to be the cost to correct same after the aforesaid offset.
- (e) As to those matters the Developer elects to correct, upon the completion of all corrective work the Developer will so notify the Arbitrator (with a copy of such notice to the Claimant) and the Arbitrator shall then inspect the corrected items and render a report (the "Remedial Report") to the Developer and the Claimant on whether those items have been corrected. Such procedure shall be repeated as often as necessary until all items have been corrected.
- (f) For all purposes, the Final Report and Remedial Report of the Arbitrator will constitute binding and enforceable arbitration awards as defined in Section 682.09 of the Code and any party affected by such reports will have the right to seek the enforcement of same in a court of competent jurisdiction. Moreover, no party will have the right to seek separate

Judicial relief with respect to warranty disputes as defined above, or to seek to vacate the aforementioned arbitration awards, except in accordance with the Code, and then only upon the specific grounds and in the specified manner for the vacation of such awards as established by Section 682.13 of the Code.

- (g) The Arbitrator shall not be liable to the Condominium Association, the Claimant or the Developer by virtue of the performance of his services hereunder, fraud and corruption excepted.
- (h) The procedures set forth above shall also be the sole means by which disputes as to Association finances are resolved, including, without limitation, the Developer's payment of Assessments, any deficit funding obligations, the handling of reserves and the keeping of accounting records, except that the Arbitrator shall be a Certified Public Accountant who meets the independence test set forth above.

Section 24  
**MEDIATION AND ARBITRATION**

All issues or disputes which are recognized by the Act or by administrative rules promulgated under the Act as being appropriate or required for mediation or arbitration shall be resolved through such alternative resolution procedures instead of civil litigation.

Section 25  
**ADDITIONAL PROVISIONS**

- 25.1 **Notices.** All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by first class mail to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the address of such Unit Owner appearing in the Association's records at the time the notice is transmitted. Where a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one (1) address which the Developer initially identifies for that purpose and thereafter as one (1) or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or the Owners of the Unit do not agree, to the address provided in the deed of record.



OFF. REC. 6419 PG 1739

All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association.

All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

- 25.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel to the Association, or the legal counsel having drafted this Declaration, that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 25.3 Exhibits. There are hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.
- 25.4 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and, wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 25.5 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 25.6 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.

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OFF. REC. 6419 PC 1740

- 25.7 **Ratification.** Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and ByLaws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 25.8 **Gender; Plurality.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 25.9 **Captions.** The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 30 day October, 1991.

Signed in the presence of  
these witnesses:

SUN CITY CENTER CORP., a Delaware  
Corporation, doing business as Florida  
Design Communities

Michelle Broughton  
Signature of Witness

By: [Signature]  
Title: Vice President

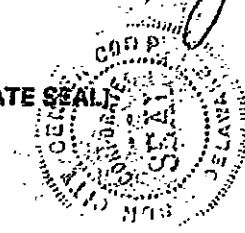
Michele Broughton  
Print Name

Jonathan O. Ellmaker  
Signature of Witness

Attest: [Signature]  
Title: Patricia A. Kelsey

Jonathan O. Ellmaker  
Print Name

[CORPORATE SEAL]



# THIS IS NOT A CERTIFIED COPY

STATE OF FLORIDA )  
                          )  
COUNTY OF HILLSBOROUGH )

REC. 6419 PG 1741

SS:

The foregoing instrument was acknowledged before me this 30 day of October, 1991, by Jerry L. Starkey as Vice President and by Patricia A. Kelaey as Assistant Secretary of Sun City Center Corp., a Delaware corporation, doing business as Florida Design Communities, on behalf of said corporation.



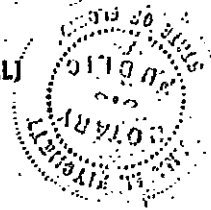
Notary Public

Print Name: Ana M. Fitchett

My Commission Expires:

Notary Public, State of Florida at Large  
My Commission Expires Dec. 6, 1992

(NOTARIAL SEAL)



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OFF. REC. 6419 PG 1742

EXHIBIT 1 is recorded in the Condominium Book and Page identified on the first page of this Declaration of Condominium, and, for convenience, the legal description of the property being submitted to condominium ownership is included below, and a reduced-in-size copy of the condominium drawings constituting Exhibit 1 is attached.

#### DESCRIPTION:

A parcel of land lying in Section 31, Township 28 South, Range 22 East, and Section 6, Township 29 South, Range 22 East, Hillsborough County, Florida, being more particularly described as follows:

Commence at the Northeast corner of said Section 6, thence on the North boundary of said Section 6, N 89°58'05" W, a distance of 666.08 feet, to the East boundary of the Northwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of said Section 6; thence departing said North boundary and on said East boundary, S 00°16'39" W, a distance of 198.66 feet to the POINT OF BEGINNING; Continue thence S 00°16'39" W, a distance of 465.35 feet to the Northeast corner of the Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of said Section 6; thence on the East boundary of the Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of said Section 6, S 00°03'31" E, a distance of 665.06 feet to the Southeast corner of the Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of said Section 6; thence on the South boundary of the Northeast 1/4 of the Northeast 1/4 of said Section 6, N 89°52'41" W, a distance of 668.11 feet to the Southwest corner of the Northeast 1/4 of the Northeast 1/4 of said Section 6; thence departing said South boundary, N 62°19'15" W, a distance of 43.46 feet; thence N 06°15'49" W, a distance of 323.92 feet; thence N 09°56'19" W, a distance 466.95 feet; thence N 15°03'14" E, a distance of 796.53 feet to a point on the South Right of Way boundary of West Timberlane Drive and on a curve concave Southwesterly having a radius of 410.16 feet and a central angle of 24°53'22"; thence on the arc of said curve, a distance of 178.17 feet; said arc subtended by a chord which bears S 70°22'49" E, a distance of 176.78 feet to a point of reverse curvature and the beginning of a curve concave Northeasterly having a radius of 490.64 feet and a central angle of 24°51'34"; thence on the arc of said curve, a distance of 212.88 feet, said arc subtended by a chord which bears S 70°21'55" E, a distance of 211.21 feet to the curves end; thence S 82°47'42" E, a distance of 134.26 feet; thence departing said South Right of Way boundary of West Timberlane Drive, S 00°16'39" W, a distance of 294.58 feet; thence S 89°43'21" E, a distance of 120.00 feet to the POINT OF BEGINNING.

Containing 24.258 acres more or less.

EXHIBIT 1 TO THE DECLARATION OF CONDOMINIUM

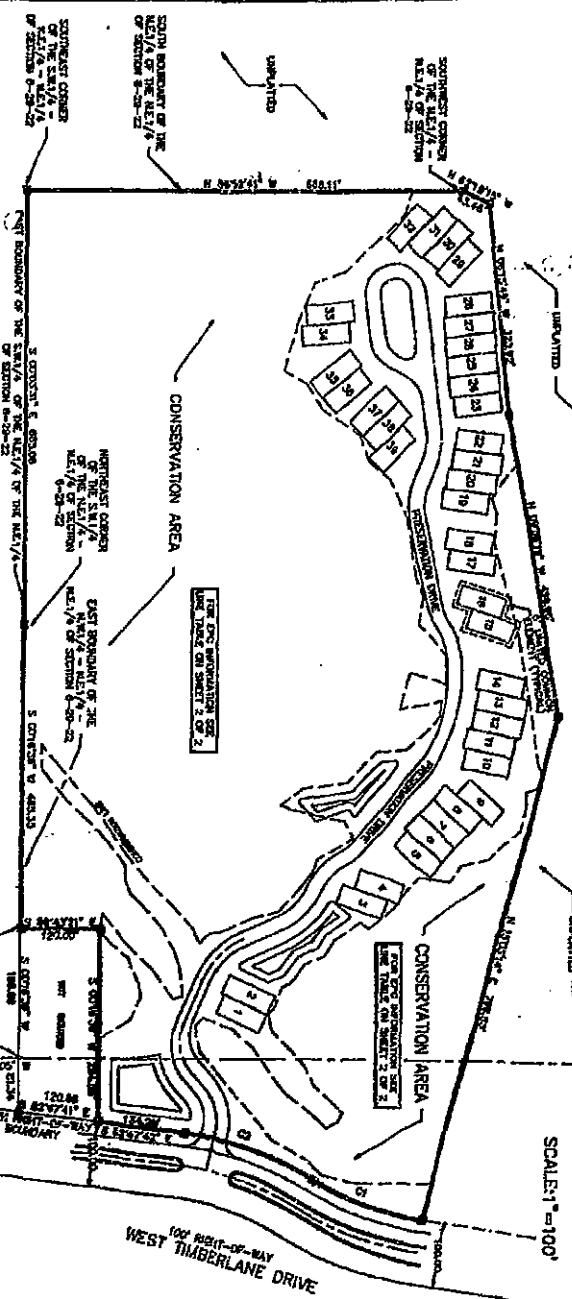
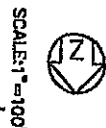
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OFF REC 6419 FC1743

GENERAL INFORMATION  
CONDOMINIUM INTERESTS  
RESERVED BY THE SOUTH SOUTHWEST  
CONDOMINIUM DEVELOPMENT, INC.  
THIS DECLARATION IS TO BE FILED IN THE PUBLIC RECORDS OF THE COUNTY OF SANSALOUA, MISSISSIPPI.

## THE PRESERVE, A CONDOMINIUM

SECTION 6, TOWNSHIP 28 SOUTH, RANGE 22 EAST AND SECTION 5, TOWNSHIP 28 SOUTH, RANGE 22 EAST, COUNTY OF SANSALOUA, MISSISSIPPI.



DESCRIPTION:  
A parcel of land lying in Section 5, Township 28 South, Range 22 East, and Section 6, Township 28 South, Range 22 East, Mississippi County, Florida, being more particularly described as follows:  
Commence at the Southeast corner of said Section 6, Thence S. 70°00'00\"/>

- 1. Description of Common Elements.
- 2. The portion of the property owned by the owner of a unit in this condominium which is to be held in common by the owners of all units in this condominium, including but not limited to the portions of the property owned by the owner of a unit in this condominium which are to be held in common by the owners of all units in this condominium, including but not limited to the portions of the property owned by the owner of a unit in this condominium which are to be held in common by the owners of all units in this condominium, including but not limited to the portions of the property owned by the owner of a unit in this condominium which are to be held in common by the owners of all units in this condominium.

REMARKS:  
The undersigned, condominium owner, has this day prepared a plan of the proposed Condominium, showing the location of the units, the common areas, the conservation areas, and the boundaries of the units and common areas, and the same is attached to this declaration as an exhibit, and the same is hereby certified to be true and correct by the undersigned, and the same is hereby certified to be true and correct by the undersigned, and the same is hereby certified to be true and correct by the undersigned, and the same is hereby certified to be true and correct by the undersigned.

SHEET 1 OF 2

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DECLARATION OF CONDOMINIUM O.R. BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

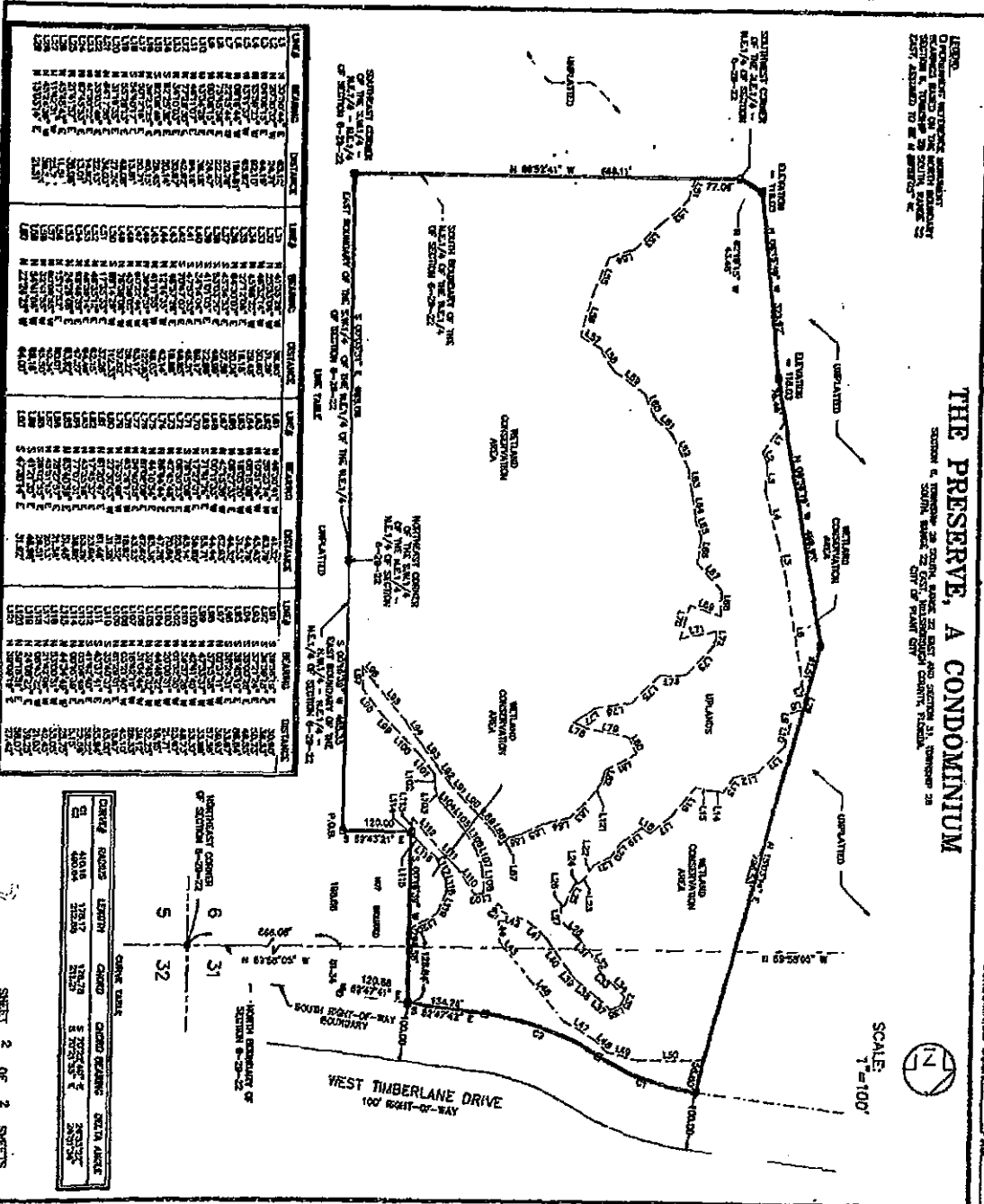
CONDOMINIUM BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

**LEGEND:**  
 DIMENSIONS: METERS  
 DIMENSIONS: FEET  
 DIMENSIONS: FEET AND INCHES  
 DIMENSIONS: FEET AND INCHES AND FRACTIONS  
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## THE PRESERVE, A CONDOMINIUM

SECTION 6, TOWNSHIP 28 NORTH, RANGE 22 WEST AND SECTION 21, TOWNSHIP 28 NORTH, RANGE 22 WEST, COUNTY OF DELTA, STATE OF ALABAMA

SCALE: 1"=100'



UNIT	REMARKS	DISTANCE	UNIT	REMARKS	DISTANCE	UNIT	REMARKS	DISTANCE	UNIT	REMARKS	DISTANCE
1	...	...	2	...	...	3	...	...	4	...	...
5	...	...	6	...	...	7	...	...	8	...	...
9	...	...	10	...	...	11	...	...	12	...	...
13	...	...	14	...	...	15	...	...	16	...	...
17	...	...	18	...	...	19	...	...	20	...	...
21	...	...	22	...	...	23	...	...	24	...	...
25	...	...	26	...	...	27	...	...	28	...	...
29	...	...	30	...	...	31	...	...	32	...	...
33	...	...	34	...	...	35	...	...	36	...	...
37	...	...	38	...	...	39	...	...	40	...	...
41	...	...	42	...	...	43	...	...	44	...	...
45	...	...	46	...	...	47	...	...	48	...	...
49	...	...	50	...	...	51	...	...	52	...	...
53	...	...	54	...	...	55	...	...	56	...	...
57	...	...	58	...	...	59	...	...	60	...	...
61	...	...	62	...	...	63	...	...	64	...	...
65	...	...	66	...	...	67	...	...	68	...	...
69	...	...	70	...	...	71	...	...	72	...	...
73	...	...	74	...	...	75	...	...	76	...	...
77	...	...	78	...	...	79	...	...	80	...	...
81	...	...	82	...	...	83	...	...	84	...	...
85	...	...	86	...	...	87	...	...	88	...	...
89	...	...	90	...	...	91	...	...	92	...	...
93	...	...	94	...	...	95	...	...	96	...	...
97	...	...	98	...	...	99	...	...	100	...	...

OWNER	ADDRESS	PHONE	DATE	REMARKS
...	...	...	...	...
...	...	...	...	...
...	...	...	...	...
...	...	...	...	...

SHEET 2 OF 2 SHEETS

219  
10

THIS INSTRUMENT PREPARED BY:  
Amy Goldin Schnelrov, Esquire  
CARLTON, FIELDS, WARD, EMMANUEL,  
SMITH & CUTLER, P.A.  
P. O. Box 3239  
Tampa, FL 33601-3239

O.R. BOOK 6625 PAGE 1734

RICHARD AKE  
CLERK OF CIRCUIT COURT  
HILLSBOROUGH COUNTY

**SECOND AMENDMENT  
TO  
DECLARATION OF CONDOMINIUM FOR  
THE PRESERVE, A CONDOMINIUM**

1992 JUN -1 PM 4:39

92119436

WHEREAS, the Declaration of Condominium for The Preserve, A Condominium ("Condominium") was recorded on the 30th day of October, 1991, in Official Records Book 6419, Page 1691 ("Declaration"), and the First Amendment thereto was recorded on the 3rd day of March, 1992, in Official Records Book 6535, Page 823, all of the Public Records of Hillsborough County, Florida;

WHEREAS, the Condominium drawings were recorded in Condominium Book 14, Page 30 and amended by the Condominium drawings recorded in Condominium Book 14, Page 44 of the Public Records of Hillsborough County ("Original Drawings");

WHEREAS, Section 6 of the Declaration allows Sun City Center Corp., d/b/a Florida Design Communities (the "Developer"), to amend the Declaration;

WHEREAS, Developer is the owner of one hundred percent (100%) of the units in the Condominium;

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. The Original Drawings are hereby replaced with the condominium drawings recorded in Condominium Book 14, Page 56 of the Public Records of Hillsborough County, Florida ("Amended Drawings"), which modify the description of the limited common elements and label the swimming pool and electronic gate and which shall constitute Exhibit 1 to the Declaration. For convenience, a reduced-in-size copy of the Amended Drawings is attached hereto.

2. The Declaration is amended in the sections thereof indicated below by deleting the words stricken through and adding the words underlined.

**Section 3.5 Easements.** The following easements are hereby created (in addition to any easements created under the Act):

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

**Section 6.4 Special Amendment.** Anything herein to the contrary notwithstanding, Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends the Declaration and any provision therein (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other federal, state or local governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Units; and (iii) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Unit Owner and the Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Developer to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate on the earlier later



of December 31, March, 1996, and such date when Developer has sold all Units and has transferred control of the Condominium to the Association.

**Section 10**

The foregoing restrictions of Section 9 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, 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, to the proposed or already constructed Dwelling located or to be located thereon, and Limited Common Elements appurtenant thereto. Such Unit shall include, without limitation, (i) the removal of walls, floors, ceilings and other structural portions of the Dwelling; (ii) change the layout or number of rooms in any Developer-owned Units; and (iii) change the size and/or number of Developer-owned Units by combining separate Developer-owned Units or otherwise. Any amendments to this Declaration or the Condominium Plat required by actions taken pursuant to this Section 10 may be effected by the Developer alone without the consent of any other person; provided, however, if any such amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Unit Owner shares the Common Expenses and owns the Common Surplus, the execution of the amendment to the Declaration effecting such change must be joined in by the record owners of the Unit and all record owners of liens on the affected Units. Without limiting the generality of Section 6.6 hereof, the provisions of this Section may not be added to, amended or deleted unless by, or with the prior written consent of, the Developer.

**Section 21.4** The consent of Owners holding at least seventy-five percent (75%) of the total votes in the Association and the approval of the holders of first mortgages on Units which are entitled to at least fifty-one percent (51%) of the votes in the Association shall be required to add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (i) ~~The expansion (other than the phases described in this Declaration) or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium;~~

**Section 21.7** Except for termination of the condominium regime as provided herein, the consent of Unit Owners having at least ninety-five percent

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D.B. BOOK 6625 PAGE 1737

~~(95%)~~(90%) of the votes in the Association shall be required to terminate the condominium regime.

3. The By-Laws of The Preserve Condominium Association, Inc., located at Exhibit 3 to the Declaration, are amended in the articles thereof indicated below by deleting the words stricken through and adding the words underlined.

#### ARTICLE II

##### Section 2. Voting.

(B) A majority of the members who are present in person or by proxy, pursuant to applicable Florida law, and are entitled to vote under Section 5 of this Article at a meeting at which a quorum is present shall decide any question (except the election of members of the Board of Directors which must be by written ballot or voting machine), unless the Declaration of Condominium, Articles of Incorporation, or By-Laws provide otherwise, in which event the voting percentage required in the said documents shall control.

Section 3. Quorum. The presence in person, or by limited or general proxy pursuant to applicable Florida law, of a majority of the members entitled to vote under Section 5 hereof shall constitute a quorum.

#### ARTICLE IV

Section 4. Vacancies on Board of Directors. If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification or otherwise or should a vacancy be created by an enlargement of the Board or should a director be removed by the procedure of Section 3 of this Article and a successor not be elected at the meeting, a majority of the remaining directors, though less than a quorum, shall choose a successor or successors, who shall hold office for the balance of the unexpired term in respect to which such vacancy occurred. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors. Notwithstanding the above, only the Developer may elect an individual vote, ~~in person or by proxy, pursuant to applicable Florida law,~~ to fill a vacancy on the Board previously occupied by a Board member elected or appointed by the Developer, in which case a quorum for purposes of that ~~election vote~~ shall consist of a majority of Units owned by the Developer. Only Unit Owners other than the Developer may elect an individual vote, ~~in person or by proxy, pursuant to applicable Florida law,~~ to fill a vacancy on the Board previously occupied by a Board member elected or appointed by Unit Owners other than the Developer, ~~in which case a quorum for purposes of~~

~~that election vote shall consist of a majority of Unit Owners other than the Developer.~~

**Section 9. Quorum.** At all meetings of the Board of Directors, a majority of the directors constitute a quorum for the transaction of business, and the acts of the majority of the directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, less than a quorum is present, the majority of those present may adjourn the meeting from time to time. At such adjourned meeting, and provided a quorum is then present, any business may be transacted which might have been transacted at the meeting, as originally called, ~~without further notice. If a meeting is adjourned and rescheduled for another day, then Proper notice of any adjourned meeting shall be given in accordance with applicable Florida law.~~

#### **ARTICLE V**

**Section 2. Election.** The officers of the Association designated in Section 1 above shall be elected annually by the Board of Directors at the organizational meeting of each new Board following the meeting of the members. Officers may be elected by secret ballot pursuant to applicable Florida law.

IN WITNESS WHEREOF, this instrument was executed by the undersigned  
this 26th day of May, 1992.

**DEVELOPER AND OWNER OF 100%  
OF THE CONDOMINIUM UNITS:**

**Sun City Center Corp., a Delaware  
corporation, d/b/a FLORIDA DESIGN  
COMMUNITIES**

**WITNESSES:**

*Dee Anja King*  
PRINT NAME: Dee Anja King

*Ana M. Fitchett*  
PRINT NAME: Ana M. Fitchett

By: *Jerry L. Starkey*  
PRINT NAME: Jerry L. Starkey

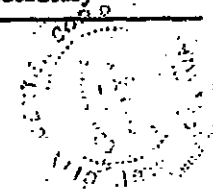
Title: Senior Vice President

Attest: *Patricia A. Kelsey*

PRINT NAME: Patricia A. Kelsey

Title: Assistant Secretary

(Corporate Seal)



STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 26th day of May, 1992, by Jerry L. Starkey and Patricia A. Kelsey, as Senior Vice President and Assistant Secretary, respectively, of Sun City Center Corp., d/b/a FLORIDA DESIGN COMMUNITIES, on behalf of the corporation, as developer of The Preserve, A Condominium. They are personally known to me and did not take an oath.

My Commission Expires:

Ana M. Fitchett  
(Signature)

Name: Ana M. Fitchett

(AFFIX NOTARY SEAL)



Notary Public, State of Florida at Large  
My Commission Expires Dec. 6, 1992

(Legibly Printed)

Notary Public, State of Florida at Large

AA 628801

(Serial Number, if any)

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BOOK 6625 PAGE 1741

**EXHIBIT 1** is recorded in the Condominium Book and Page identified on the first page of the Second Amendment to the Declaration of Condominium for The Preserve, A Condominium. For convenience, the legal description of the property being submitted to condominium ownership is included below, and a reduced-in-size copy of the condominium drawings constituting Exhibit 1 is attached.

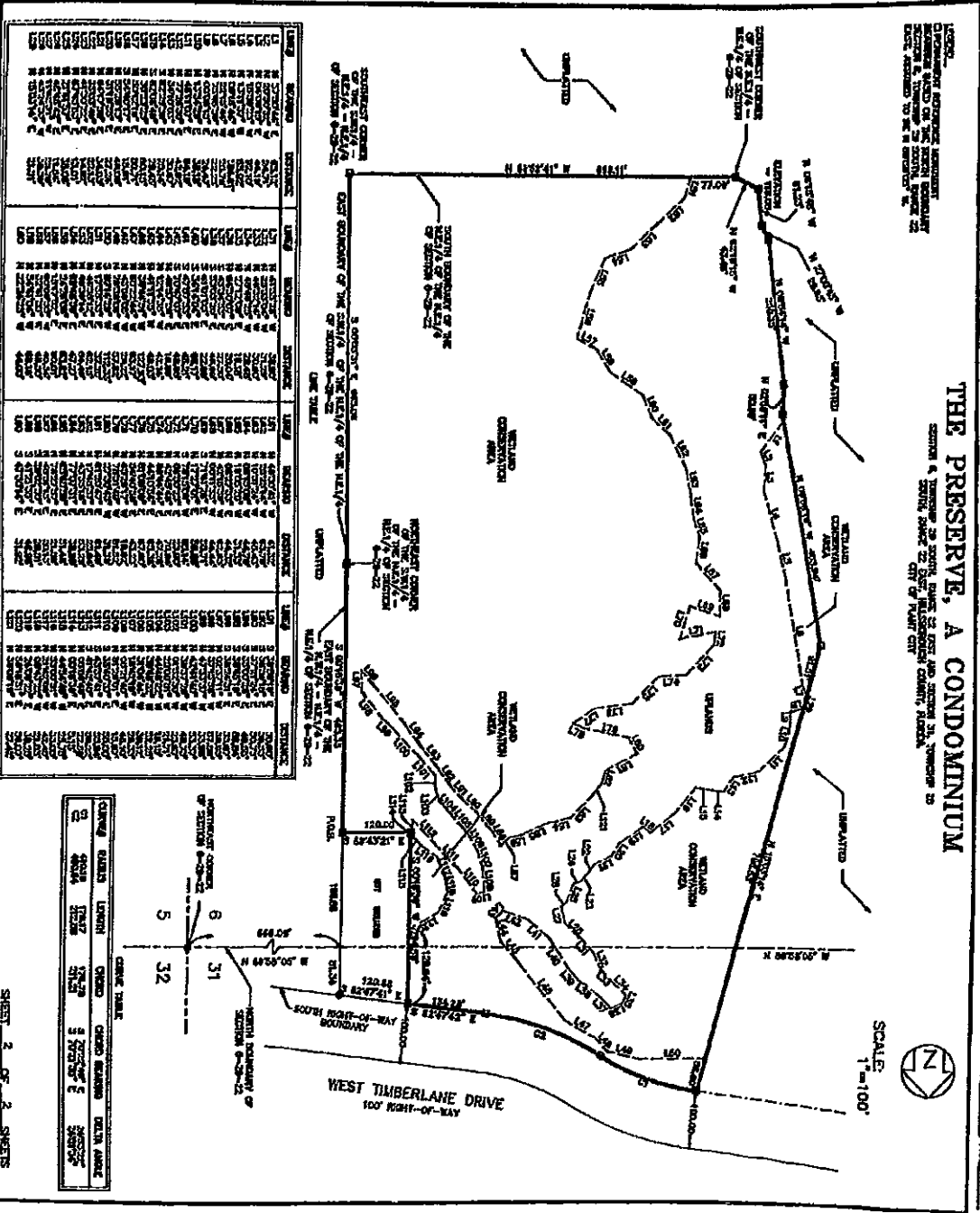
## DESCRIPTION

A parcel of land lying within Section 6, Township 29 South, Range 22 East, and Section 31, Township 28 South, Range 22 East, Hillsborough County, Florida, more particularly described as follows:

Commence at the Northeast corner of said Section 6; thence on the North boundary thereof, N 89°58'05" W, a distance of 866.08 feet to the East boundary of the N.W. 1/4 of the N.E. 1/4 of the N.E. 1/4 of said Section 6; thence departing said North boundary and on said East boundary, S 00°16'39" W, a distance of 198.66 feet, to the POINT OF BEGINNING; thence S 00°16'39" W, a distance of 465.35 feet to the Northeast corner of the S.W. 1/4 of the N.E. 1/4 of the N.E. 1/4 of said Section 6; thence on the East boundary thereof, S 00°03'31" E, a distance of 665.06 feet to the Southeast corner of the S.W. 1/4 of the N.E. 1/4 of the N.E. 1/4 of said Section 6; thence on the South boundary thereof, N 89°52'41" W, a distance of 668.11 feet to the Southwest corner of the N.E. 1/4 of the N.E. 1/4 of said Section 6; thence N 62°19'15" W, a distance of 43.46 feet; thence N 06°15'48" W, a distance of 61.23 feet; thence N 27°00'45" W, a distance of 26.63 feet; thence N 06°54'14" W, a distance of 250.35 feet; thence N 02°59'11" E, a distance of 50.99 feet; thence N 09°58'19" W, a distance of 403.94 feet; thence N 15°03'14" E, a distance of 798.53 feet; to the South right-of-way boundary of West Timberlane Drive and a point of intersection with a non-tangent curve, concave Southerly, having a radius of 410.16 feet and a central angle of 24°53'22", thence on said South right-of-way boundary the following three courses: 1) Easterly along the arc of said curve to the right, from which the local tangent at the beginning point bears S 82°49'30" E, a distance of 178.17 feet, said arc subtended by a chord which bears S 70°22'49" E, a distance of 176.78 feet; to a point of reverse curvature with a curve, concave Northerly, having a radius of 490.64 feet and a central angle of 24°51'34", 2) thence Southeasterly along the arc of said curve to the left, a distance of 212.88 feet, said arc subtended by a chord which bears S 70°21'55" E, a distance of 211.21 feet to the curve's end; 3) thence S 82°47'42" E, a distance of 134.28 feet; thence departing said South right-of-way boundary, S 00°16'39" W, a distance of 294.58 feet; thence S 89°43'21" E, a distance of 120.00 feet, to the POINT OF BEGINNING; Containing 24.5373 acres of land, more or less.

EXHIBIT 1 TO THE DECLARATION OF CONDOMINIUM






UNIT	COMMON	PARKING	PARKING	PARKING	PARKING
101	101	101	101	101	101
102	102	102	102	102	102
103	103	103	103	103	103
104	104	104	104	104	104
105	105	105	105	105	105
106	106	106	106	106	106
107	107	107	107	107	107
108	108	108	108	108	108
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COMMON AREA	
UNIT	COMMON AREA
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SHEET 2 OF 2 SHEETS



# State of Florida



Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of THE PRESERVE CONDOMINIUM ASSOCIATION, INC., a corporation organized under the Laws of the State of Florida, filed on October 23, 1991, as shown by the records of this office.

The document number of this corporation is N45724.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
23rd day of October, 1991.



CR2EO22 (2-91)

Jim Smith  
Secretary of State

OFF. REG. 6419 PG. 1746

FILED  
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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLES OF INCORPORATION OF  
THE PRESERVE CONDOMINIUM ASSOCIATION, INC.**

The undersigned incorporator, for the purpose of forming a corporation not-for-profit pursuant to the laws of the State of Florida, hereby adopts the following Articles of Incorporation:

**ARTICLE 1**

**NAME**

The name of the corporation shall be THE PRESERVE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit. For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the By-Laws of the Association as the "By-Laws".

**ARTICLE 2**

**PURPOSE**

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act as it exists on the date hereof (the "Act") for the operation of that certain condominium located in Hillsborough County, Florida, and known as THE PRESERVE, A CONDOMINIUM (the "Condominium").

**ARTICLE 3**

**DEFINITIONS**

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of Condominium for The Preserve, a Condominium, to be recorded in the Public Records of Hillsborough County, Florida ("Declaration"), unless herein provided to the contrary, or unless the context otherwise requires.

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TALLAHASSEE, FLORIDA

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## ARTICLE 4

OFF. REC. 6419 PG 1747

### POWERS

The powers of the Association shall include and be governed by the following:

- 4.1 General. The Association shall have all of the common law and statutory powers of a corporation not-for-profit under the Laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the By-Laws or the Act.
- 4.2 Enumeration. The Association shall have all of the powers and duties set forth in the Act, and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:
- (a) To make and collect Assessments and other charges against members as unit owners, to enforce such levy of Assessments through a lien, and to use the proceeds thereof in the exercise of its powers and duties.
  - (b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the Declaration.
  - (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property, and other property acquired or leased by the Association.
  - (d) To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its officers, directors and unit owners.
  - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and for the health, comfort, safety and welfare of the unit owners.
  - (f) To approve or disapprove the leasing, transfer, ownership and possession of units as may be provided by the Declaration.
  - (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the ByLaws, and the rules and

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REC. 6419 PG 1748

regulations for the use of the Condominium Property, subject, however, to the limitation regarding assessing units owned by Developer for fees and expenses relating in any way to claims or potential claims against Developer as set forth in the Declaration and/or By-Laws.

- (h) To contract for the management and maintenance of the Condominium Property and to authorize a management firm (which may be an affiliate of Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the 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 by the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
  - (i) To employ personnel to perform the services required for the proper operation of the Condominium.
- 4.3 Condominium Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Act, the Declaration, these Articles and the By-Laws.
- 4.4 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

## ARTICLE 5

### MEMBERS

- 5.1 Membership. The members of the Association shall consist of all of the record title owners of units in the Condominium from time to time and, after termination of the Condominium, shall also consist of those who were members at the time of such termination, and their successors and assigns.

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- 5.2 **Assignment.** The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit for which that share is held.
- 5.3 **Voting.** On all matters upon which the membership shall be entitled to vote, there shall be only one (1) vote for each unit, which vote shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning two (2) or more residential units shall be entitled to one vote for each unit owned.
- 5.4 **Meetings.** The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

## ARTICLE 6

### TERM OF EXISTENCE

The Association shall have perpetual existence.

## ARTICLE 7

### INCORPORATOR

The name and address of the Incorporator of this Corporation are:

<u>NAME</u>	<u>ADDRESS</u>
Laurence E. Kinsolving	Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. One Harbour Island P. O. Box 3239 Tampa, Florida 33601

## ARTICLE 8

### OFFICERS

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws or by the Board of Directors. The officers shall be

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elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve for a term of one (1) year and until a qualified successor is elected by the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties and qualifications of the officers. Until transfer of the control of the Association to the unit owners other than the developer has been accomplished, the officers need not be directors or members. The names of the persons who shall serve as the first officers are:

President:

Patricia A. Kelsey

2020 Clubhouse Drive  
Sun City Center, Florida 33570

Vice President:

Jerry L. Starkey

2020 Clubhouse Drive  
Sun-City Center, Florida 33570

Secretary-Treasurer:

Milton Flinn

2020 Clubhouse Drive  
Sun City Center, Florida 33570

## ARTICLE 9

### DIRECTORS

- 9.1 Number and Qualifications. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) nor more than five (5) directors. Until control of the Association is transferred to unit owners other than the developer, the developer shall be entitled to designate non-member directors to the extent permitted by the Act. Except for non-member directors appointed by the developer, all directors shall be elected at the annual membership meeting of the Association.
- 9.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, subject only to approval by unit owners when such approval is specifically required.
- 9.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members and may be elected to staggered terms, in the manner determined by and subject to the qualifications set forth

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in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

Notwithstanding anything in these Articles or the By-Laws to the contrary, the developer shall be entitled to elect or designate from time to time all or a part of the directors, who will manage the affairs of the Association until such time as the developer is no longer entitled to elect or designate directors or a director pursuant to the Act in the effect on the date of the creation of the Association.

- 9.4 First Directors. The first Board of Directors shall be comprised of three (3) persons who shall serve until their respective successors are elected (or designated) and qualified. The names and addresses of the members of the Board of Directors who shall serve as the first Directors are:

<u>NAME</u>	<u>ADDRESS</u>
Patricia A. Kelsey	2020 Clubhouse Drive Sun City Center, Florida 33570
Jerry L. Starkey	2020 Clubhouse Drive Sun City Center, Florida 33570
Milton Flinn	2020 Clubhouse Drive Sun City Center, Florida 33570

## ARTICLE 10

### BY-LAWS

The first By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided in the By-Laws and shall be attached as an exhibit to the Declaration.

## ARTICLE 11

### AMENDMENTS

Amendments to these Articles shall be proposed and adopted in the following manner:

- 11.1 Proposal. An amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association.
- 11.2 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. Such notice shall contain the entire text of the proposed amendment or a summary of the changes to be affected thereby.
- 11.3 Adoption. A proposed amendment to these Articles shall be adopted upon the approval by:
- (a) not less than a majority of the votes of all of the members of the Association entitled to vote thereon and cast at a meeting at which a quorum was present, and by
  - (b) not less than 66-2/3% of the entire Board of Directors.
- 11.4 Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Sections 4.3 or 4.4 of Article 4 hereof without the approval in writing of all members and the joinder of all record owners of mortgages upon units. No amendment shall be made that is in conflict with the Act or the Declaration. No amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options provided in favor of or reserved to developer without the written consent of the developer. No amendment to this paragraph 11.4 shall be effective.
- 11.5 Developer Amendments. Notwithstanding the foregoing, the developer alone, without the joinder of any other person, may amend these Articles during such time that it is the sole member. Also, to the extent lawful, the developer may amend these Articles consistent with the provisions of the Declaration, allowing certain amendments to be effected by the developer alone.
- 11.6 Recording. A copy of each adopted amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the Public Records of Hillsborough County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration is recorded.



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ARTICLE 12

OFF. REC. 6419 pc 1753

PRINCIPAL PLACE OF BUSINESS

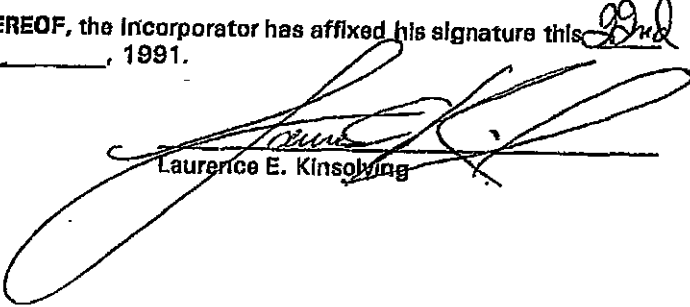
The principal place of business of the Association shall be 1904 Clubhouse Drive, Sun City Center, Florida, 33570 or at such other place or places as may be designated from time to time.

ARTICLE 13

INITIAL REGISTERED OFFICE  
ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this corporation shall be at 2020 Clubhouse Drive, Sun City Center, Florida 33570, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Jerry L. Starkay.

IN WITNESS WHEREOF, the Incorporator has affixed his signature this 2nd  
day of October, 1991.

  
Laurence E. Kinsolving

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REC. 6419 pc 1754

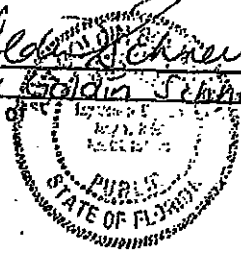
STATE OF FLORIDA

COUNTY OF Hillsborough SS:

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of October, 1991, by Laurence E. Kinsolving.

Amy Golda Schreier  
Print Name: Amy Golda Schreier  
Notary Public, State of  
Florida at Large

Notary Public, State of Florida at Large  
My Commission Expires May 1, 1995



My Commission Expires:

[NOTARIAL SEAL]

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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OFF. REC. 6419 PG 1755

**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE  
FOR THE SERVICE OF PROCESS WITHIN THIS STATE,  
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED.**

In compliance with the laws of Florida, the following is submitted:

First -- That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation for The Preserve Condominium Association, Inc., a corporation not-for-profit, in the County of Hillsborough, State of Florida, the corporation named in the said Articles has named Jerry L. Starkey, located at 2020 Clubhouse Drive, Sun City Center, Hillsborough County, State of Florida, 33570 as its statutory agent.

Having been named the Registered Agent of said corporation at the place designated in this certificate, I hereby accept the same and agree to act in this capacity. I further agree to comply with the provisions of Florida law relative to keeping the registered office open, and I am familiar with and accept the obligations of my position as Registered Agent.

  
REGISTERED AGENT

DATED this 21 day of October  
1991.

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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**BY-LAWS OF  
THE PRESERVE CONDOMINIUM ASSOCIATION, INC.,  
a Florida corporation not-for-profit**

**ARTICLE I**

**IDENTITY**

THE PRESERVE CONDOMINIUM ASSOCIATION, INC. ("Association") is a not-for-profit corporation, organized and existing pursuant to the laws of the State of Florida for purposes of operating and administering THE PRESERVE, A CONDOMINIUM, located in Plant City, Florida ("Condominium").

Section 1. The principal office of the Association shall be as designated from time to time by the Board of Directors of the Association.

Section 2. As used herein, the word "Condominium Association" shall be the equivalent of "Association," as defined in the Declaration of Condominium to which these By-Laws are attached, and all other terms used herein shall have the same definitions as attributed to them in said Declaration of Condominium. As used herein, in the Declaration of Condominium, or in the Condominium Act ("Act"), the term "Board of Directors" and "Board of Administration," shall be synonymous.

**ARTICLE II**

**MEMBERSHIP AND VOTING PROVISIONS**

Membership in the Association shall be limited to owners of Units in the Condominium. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership shall become vested in the transferee. If Unit ownership is vested in more than one person, then all of the persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be cast by the "voting member." If Unit ownership is vested in a corporation, said corporation may designate an individual as its "voting member."

Any application for the transfer of membership, or for a conveyance of an interest in, or to encumber or lease a Condominium Parcel, where the approval of the

**EXHIBIT 3 TO THE DECLARATION OF CONDOMINIUM**

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OFF. REC. 0419 PG. 1757

Board of Directors of the Association is required by these By-Laws and the Declaration of Condominium shall be accompanied by application fee in an amount to be set by the Association, to cover the cost of contacting the references given by the applicant, and such other costs of investigation that may be incurred.

## Section 2. Voting.

(A) The owner(s) of each Condominium Unit shall be entitled to the one (1) vote for each Unit owned. If a Condominium Unit Owner owns more than one (1) Unit, he shall be entitled to one (1) vote for each Unit owned. The vote of a Condominium Unit shall not be divisible.

(B) A majority of the members who are present in person or by proxy and are entitled to vote under Section 5 of this Article at a meeting at which a quorum is present shall decide any question (except the election of members of the Board of Directors which must be by written ballot or voting machine), unless the Declaration of Condominium, Articles of Incorporation, or By-Laws provide otherwise, in which event the voting percentage required in the said documents shall control.

Section 3. Quorum. The presence in person or by limited or general proxy of a majority of the members entitled to vote under Section 5 hereof shall constitute a quorum.

Section 4. Proxies. Votes may be cast in person or may be cast by limited or general proxy in certain circumstances in accordance with applicable provisions of Section 718.112 of the Florida Statutes (1991). All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5) and shall be filed with the secretary not less than three (3) days prior to the meeting in which they are to be used. Proxies shall be valid only for the particular meeting designated therein. Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife where a third person is designated.

Section 5. Designation of Voting Member. If a Condominium Unit is owned by one person, his right to vote shall be established by the recorded title to the Unit. If a Condominium Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated in a certificate, signed by all of the recorded owners of the Unit and filed with the secretary of the Association. If a Condominium Unit is owned by a corporation, the individual entitled to cast the vote of the Unit for the corporation shall be designated in a certificate for this purpose, signed by the president or vice president, attested to by the secretary or assistant secretary of the corporation, and filed with the secretary of the Association. The person designated in such certificate who is entitled to cast the vote for a Unit shall be known as the "voting member". If such a certificate is required and is not filed with

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the secretary of the Association for a Unit owned by more than one person or by a corporation, the vote of the Unit concerned may not be cast and shall not be considered in determining the requirement for a quorum or for any purpose requiring the approval of a person entitled to cast the vote for the Unit. Unless the certificate shall otherwise provide, such certificates shall be valid until revoked or until superseded by a subsequent certificate, or until a change in the ownership of the Unit concerned. Notwithstanding the foregoing, if a Condominium Unit is owned jointly by a husband and wife, the following three provisions are applicable thereto:

(A) They may, but they shall not be required to, designate a voting member by certificate.

(B) If they do not designate a voting member, and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting.

(C) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit's vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

## ARTICLE III

### MEETING OF THE MEMBERSHIP

Section 1. **Place.** All meetings of the Association membership shall be held at such place and at such time as shall be designated by and stated in the notice of the meeting.

Section 2. **Notices.** It shall be the duty of the secretary to mail or deliver a written notice of each annual or special meeting, stating the time and place thereof and an identification of agenda items to each Unit Owner of record at least fifteen (15) but not more than thirty (30) days prior to such meeting, and to post at a conspicuous place on the property a copy of the notice of said meeting at least fourteen (14) continuous days preceding said meeting. Notice of any annual or special meeting shall state the purpose thereof and said meeting shall be confined to the matters stated in said notice. All notices shall be mailed to or served at the address of the Unit Owner last furnished to the Association and posted as hereinbefore set forth. An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this section, to each Unit Owner at the address last furnished to the Association.

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**Section 3. Annual Meeting.** The annual meeting for the purpose of electing directors and transacting any other business authorized to be transacted by the members shall be held once in each calendar year at such time and on such date in each calendar year as the Board of Directors shall determine. At the annual meeting, the members shall elect by plurality vote, a Board of Directors and shall transact such other business as may have been stated in the notice for said meeting. The election of the Board of Directors at the annual meeting shall be conducted in accordance with applicable provisions of Section 718.112 of the Florida Statutes (1991). Cumulative voting shall be prohibited.

**Section 4. Special Meeting.** Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president, and shall be called by the president or secretary at the request in writing of a majority of the Board of Directors. Except for the purpose of removing a director governed by the provisions of Section 3 of Article IV hereof, a special meeting must be called by the president or secretary upon the request in writing of voting members representing ten percent (10%) of the members' total votes, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the matters stated in the notice thereof.

**Section 5. Waiver and Consent.** Any approval by Unit Owners called for by the Act, the Declaration of Condominium or these By-Laws, shall be made at a duly noticed meeting of Unit Owners and shall be subject to all requirements of the Act or the Declaration of Condominium relating to Unit Owner decision making, except that Unit Owners may take action by written agreement, without meetings, on any matters for which the vote of members at a meeting is required or permitted by any provision of these By-Laws, or on matters for which action by written agreement without meeting is expressly allowed by the Declaration of Condominium, or any Florida Statute which provides for Unit Owner action.

**Section 6. Adjourned Meeting.** If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.

**Section 7. Approval or Disapproval** of a Unit Owner upon any matter, whether or not the subject of an Association meeting, shall be by the voting members provided, however, that where a Unit is owned jointly by a husband and wife, and they have not designated one of them as a voting member, their joint approval or disapproval shall be required where they are both present, or in the event only one is present, the person present may cast the vote without establishing the concurrence of the absent person.

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## ARTICLE IV

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### DIRECTORS

**Section 1. Number, Term and Qualifications.** The affairs of the Association shall be governed by a Board of Directors, serving without compensation, composed of not less than three (3) nor more than nine (9) directors. The term of each director's service shall extend until the next annual meeting of the members, and thereafter, until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3 below. All directors shall be members of the Association; provided, however, that all directors that the Developer is entitled to elect or designate need not be members. All officers of a corporation owning a Unit shall be deemed to be members of the Association so as to qualify each to become a director hereof. Notwithstanding the provisions of the first sentence in this section, the Developer shall be entitled to designate from time to time all or a part of the directors, as provided hereinbelow, that will govern the affairs of the Association until such time as the Developer is no longer entitled to elect or designate directors or a director pursuant to the Act. The Developer shall be entitled to elect or designate all of the directors of the Association as long as Unit Owners other than the Developer own less than 15% of the Units that will be operated ultimately by the Association. Unit Owners other than the Developer shall be entitled to elect one-third of the members of the Board of Directors and when such Unit Owners own 15% or more of the Units of the Condominium, Unit Owners other than the Developer shall be entitled to elect not less than a majority of the members of the Board of Directors of the Association at such time as is provided by F.S. 718.301, Florida Statutes. After such time that Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors, the Developer shall be entitled to elect at least one member of the Board of Directors (unless such right is waived in the sole discretion of the Developer) as long as the Developer holds for sale in the ordinary course of business at least 5% of the Units in the Condominium. Notwithstanding the foregoing, there shall never be fewer than three (3) directors.

**Section 2. First Board of Directors.** The first Board of Directors of the Association named in the Articles of Incorporation shall hold office and serve until their successors have been elected and qualified.

### **Section 3. Removal of Directors.**

(A) Any director, other than a director designated by the Developer, may be recalled and removed from office with or without cause, by the vote or agreement in writing by a majority of the voting members. Such action may be considered at any duly convened regular or special membership meeting for which specific mention of the matter has been included in the notice therefor. A special meeting of the membership to remove a director may be called by ten percent (10%) of the voting



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members giving notice pursuant to Section 2 of Article III of these By-Laws and said notice shall state the purpose of said meeting.

(B) If the recall is approved by a majority of the voting members by a vote at a meeting, the recall shall be effective immediately, and the recalled director or directors of the Board shall turn over to the Board any and all records of the Association in their possession within 72 hours after the meeting.

(C) If the proposed recall is by an agreement in writing by a majority of the voting members, the agreement in writing shall be served on the Association by certified mail. The Board shall call a meeting of the Board within 72 hours after receipt of the agreement in writing, and shall either certify the written agreement to recall a director or directors of the Board, in which case such director or directors shall be recalled effective immediately and shall turn over to the Board, within 72 hours, any and all records of the Association in their possession, or proceed as described in subparagraph (D) below.

(D) If the Board determines not to certify the written agreement to recall a director or directors of the Board, or if the recall by a vote at a meeting is disputed, the Board shall, within 72 hours, file with the Department of Business Regulation for the State of Florida, Division of Florida Land Sales and Condominiums, a petition for binding arbitration pursuant to the procedures of Section 718.1255 of the Florida Statutes (1991). If the arbitrator certifies the recall as to any director or directors of the Board, the recall shall be effective upon service of the final order of arbitration upon the Association. Any member or members so recalled shall deliver to the Board any and all records of the Association in their possession within 72 hours of the effective date of the recall.

**Section 4. Vacancies on Board of Directors.** If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification or otherwise or should a vacancy be created by an enlargement of the Board or should a director be removed by the procedure of Section 3 of this Article and a successor not be elected at the meeting, a majority of the remaining directors, though less than a quorum, shall choose a successor or successors, who shall hold office for the balance of the unexpired term in respect to which such vacancy occurred. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors. Notwithstanding the above, only the Developer may vote, in person or proxy, to fill a vacancy on the Board previously occupied by a Board member elected or appointed by the Developer, in which case a quorum for purposes of that vote shall consist of a majority of Units owned by the Developer. Only Unit Owners other than the Developer may vote, in person or proxy, to fill a vacancy on the Board previously occupied by a Board member elected or appointed by Unit Owners other than the Developer, in which case a quorum for

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purposes of that vote shall consist of a majority of Unit Owners other than the Developer.

**Section 5. Disqualification and Resignation of Directors.** Any director may resign at any time by sending a written notice of such resignation to the secretary of the Association. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the secretary. Commencing with the directors elected by the Unit Owners other than the Developer, the transfer of title of the Unit owned by a director shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors.

**Section 6. Regular Meetings.** The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such regular meetings (which shall specifically incorporate an identification of agenda items) shall, nevertheless, be given to each director personally or by mail, telephone or telegraph at least five (5) days prior to the day named for such meeting and shall be posted in accordance with the procedures of Section 718.112 of the Florida Statutes.

**Section 7. Special Meetings.** Special meetings of the Board of Directors may be called by the president, and, in his absence, by the vice president or secretary, or by a majority of the members of the Board of Directors, by giving five (5) days' notice, in writing which shall specifically incorporate an identification of agenda items, to all of the members of the Board of Directors of the time and place of said meeting and shall be posted in accordance with the procedures of Section 718.112 of the Florida Statutes. All notices of special meetings shall state the purpose of the meeting.

**Section 8. Directors' Waiver of Notice.** Before or at any meeting of the Board of Directors, any director may waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 9. Quorum.** At all meetings of the Board of Directors, a majority of the directors constitute a quorum for the transaction of business, and the acts of the majority of the directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, less than a quorum is present, the majority of those present may adjourn the meeting from time to time. At such adjourned meeting, and provided a quorum is then present, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice.

**Section 10. Waiver and Consent.** Whenever the vote of the Directors at a meeting is required or permitted by any provision of the Florida Statutes or the Articles of Incorporation or these By-Laws to be taken in connection with any action of the Association, the meeting and the vote of Directors may be dispensed with if all the Directors who would have been entitled to vote upon the action at such meeting, if such meeting were held, shall consent in writing to such action being taken.

**Section 11. Powers and Duties.** The Board of Directors of the Association shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by the Declaration of Condominium, or these By-Laws, directed to be exercised and done by Unit Owners. These powers shall specifically include, but shall not be limited to, the following:

(A) To exercise all powers specifically set forth in the Declaration of Condominium, the Articles of Incorporation, these By-Laws, and in the Act, and all powers incidental thereto.

(B) To adopt a budget and make and collect Assessments, including Special Assessments, enforce a lien for nonpayment thereof, and use and expend the Assessments to carry out the purposes and powers of the Association, subject to the provisions of the Declaration of Condominium to which these By-Laws are attached and, where applicable, recognizing obligations of the Association contained in the provisions of said Declaration of Condominium. The Board of Directors shall also have the power to levy a specific charge against the Owner of a Unit for the purposes specified in the Declaration of Condominium.

(C) To employ, dismiss and control the personnel necessary for the maintenance and operation of the Condominium, including the right and power to employ attorneys, accountants, contractors, and other professionals, as the need arises, subject to any applicable provisions of the Declaration of Condominium.

(D) To make and amend regulations respecting the operation and use of the Common Elements and Condominium Property and facilities and the use and maintenance of the Condominium Units therein.

(E) To contract for the management and maintenance of the condominium property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments and other sums due from Unit Owners, preparation of records, enforcement of rules and maintenance, repair and replacement of the common elements with funds as shall be made available by the Association for such purposes. The Association, its directors and officers shall, however, retain at all times the powers and duties granted by the condominium documents 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) To enter into agreements acquiring leaseholds, memberships or other possessory or use interests regarding recreation area(s) and facilities for the use and enjoyment of the members of the Association as provided for in the Declaration of Condominium.

(G) To further improve the Condominium property, both real and personal, to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and to acquire and enter into agreements pursuant to the Act, subject to the provisions of the Declaration of Condominium and these By-Laws.

(H) To enter into such agreements or arrangements, as deemed appropriate, with such firms or companies as it may deem for and on behalf of the Unit Owners to provide certain services and/or maintenance otherwise the individual responsibility of the Unit Owners and to increase the Assessments due or otherwise charge each Unit Owner a share of the amount charged for said maintenance and service.

(I) To designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the Association. Such committee shall consist of at least three (3) members of the Association. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular minutes of their proceedings and report the same to the Board of Directors, as required.

Section 12. Proviso. The validity of any delegation of power and/or duty by the Board of Directors, as hereinbefore provided, shall not affect the remainder of said delegations, or the other provisions of these By-Laws or the Condominium documents and their exhibits.

ARTICLE V

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**OFFICERS**

Section 1. **Elective Officers.** The principal officers of the Association shall be a president, a vice president, a secretary and a treasurer, all of whom shall be elected by the Board of Directors and shall serve without compensation. One person may not hold more than one of the aforementioned offices, except one person may be both secretary and treasurer. The president and vice president shall be members of the Board of Directors. Notwithstanding the foregoing, the restriction as to one person holding only one of the aforementioned offices or the president and vice president being members of the Board of Directors shall not apply until control of the Association shall be transferred to the Unit Owners other than the Developer.

Section 2. **Election.** The officers of the Association designated in Section 1 above shall be elected annually by the Board of Directors at the organizational meeting of each new Board following the meeting of the members.

Section 3. **Appointive Officers.** The Board may appoint assistant secretaries and assistant treasurers, and such other officers as the Board of Directors deems necessary.

Section 4. **Term.** The officers of the Association shall hold office until their successors are chosen and qualified in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors; provided, however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. **The President.** He shall be the chief executive officer of the Association; he shall preside at all meetings of the Unit Owners and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the Association and other officers. He shall sign all written contracts to perform all of the duties incident to his office and which may be delegated to him from time to time by the Board of Directors.

Section 6. **The Vice President.** He shall perform all of the duties of the president in his absence and such other duties as may be required of him from time to time by the Board of Directors of the Association.

Section 7. **The Secretary.** He shall issue notices of all Board of Directors, meetings and all meetings of the Unit Owners; he shall attend and keep the minutes

of same; he shall have charge of all of the Association's books, records and papers, including roster of members and mortgages except those kept by the treasurer. The assistant secretary shall perform the duties of the secretary when the secretary is absent.

**Section 8. The Treasurer.**

(A) He shall have custody of the Association's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and he shall deposit all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may be designated from time to time by the Board of Directors. The books shall reflect an account for each Unit in the Condominium which shall designate the name and current mailing address of the Unit Owner, the amount of each Assessment, the dates and amounts in which the Assessment came due, the amount paid upon the account and the balance due.

(B) He shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these By-Laws, making proper vouchers for such disbursements, and shall render to the president and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the treasurer and of the financial condition of the Association.

(C) He shall collect the Assessments and shall promptly report the status of collections and of all delinquencies to the Board of Directors and, when requested, to the Developer.

(D) He shall give status reports to potential transferees on which reports the transferees may rely.

(E) The assistant treasurer shall perform the duties of the treasurer when the treasurer is absent.

**ARTICLE VI**

**FINANCES AND ASSESSMENTS**

**Section 1. Depositories.** The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board of Directors and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors.

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Obligations of the Association shall be signed by at least two officers of the Association. The foregoing is further subject to the applicable provisions under the Declaration of Condominium.

**Section 2. Fidelity Bonds.** The treasurer and all officers who are authorized to sign checks, all officers and employees of the Association who control or disburse funds of the Association, and any contractor handling or responsible for Association funds shall be bonded. The amount of the bond shall be determined by the Board of Directors or as required by the Declaration of Condominium. The premiums on such bonds shall be paid by the Association. The bond shall be in an amount sufficient to equal the monies an individual handles or has control of via a signatory or a bank account or other depository account.

**Section 3. Fiscal Or Calendar Year.** The Association shall be on a fiscal year basis beginning on the first day of April each year. Notwithstanding the foregoing, the Board of Directors is authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America as such time as the Board of Directors deems it advisable. The setting of a fiscal year, as provided herein, shall not affect the applicable provisions of Article III, Section 3, of these By-Laws requiring an annual meeting in each calendar year.

#### **Section 4. Determination of Assessments.**

(A) The Board of Directors of the Association shall fix and determine from time to time the sum or sums necessary and adequate for the Common Expenses of the Condominium. Common Expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, cost of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, obligations of the Association pursuant to the Declaration of Condominium, water and sewer and any other expenses designated as Common Expenses from time to time by the Board of Directors of the Association or under the provisions of the Declaration of Condominium. The Board of Directors is specifically empowered, on behalf of the Association, to make and collect Assessments and to maintain, repair and replace the Common Elements and Limited Common Elements of the Condominium. Provided, however, the Association shall not charge any fee against a Unit Owner for the use of Common Elements or Association property unless such use is the subject of a lease between the Association and the Unit Owner. Funds for the payment of Common Expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing Common Expenses as provided in the Declaration of Condominium and exhibits attached thereto. Said Assessments shall be payable monthly in advance and shall be due on the first day of each month in advance unless otherwise ordered by the Board of Directors. Special Assessments, should such be required by the Board of Directors, shall be levied in the same manner

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as hereinbefore provided for regular Assessments and shall be payable in the manner determined by the Board of Directors.

(B) All funds due from Unit Owners not as Common Expenses, including sums due as users of cable television service or pursuant to other applicable agreements or arrangement pertaining to all or substantially all Units may be collected by the Association, or its agents.

(C) An annual budget and level of assessment for Common Expenses sufficient to fund such budget shall be proposed and adopted by the Board of Directors. The Board shall mail, or cause to be mailed, to each Unit Owner a notice of the Board of Directors meeting at which the budget will be considered not less than fourteen (14) days prior to said meeting. Such notice shall include a copy of the proposed annual budget and Assessment as well as the time and place for the meeting, which shall be open to the Unit Owners. If the Association shall fail for any reason to adopt a budget and authorize an assessment prior to the beginning of the new fiscal year, the budget and Assessment for the previous year shall be increased by fifteen percent (15%) and shall continue in effect until changed by the Association.

If the adopted budget requires an assessment against the Unit Owners in any fiscal year exceeding 115% of the Assessments for the preceding year, the Board, upon written application of 10% of the Unit Owners to the Board, shall call a special meeting of the Unit Owners within thirty (30) days upon not less than fourteen (14) days written notice to each Unit Owner. At this special meeting, Unit Owners shall consider and enact a budget upon the vote of the members representing a majority of all Units. If a special meeting of the Unit Owners has been called pursuant to this section and a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the Board shall go into effect as scheduled. In determining whether Assessments exceed 115% of similar Assessments in the preceding year, any authorized provisions for reasonable reserves for repair or replacement of the Condominium property, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or Assessments for betterments to the Condominium property shall be excluded from the computation. However, as long as the Developer is in control of the Board of Directors, the Board shall not impose an assessment for any year greater than 115% of the prior fiscal year's assessment without prior approval of the members representing a majority of all Units.

(D) Subject to any specific applicable provisions in the Declaration of Condominium, all Assessments shall be payable to the Association, unless otherwise directed.

Section 5. Application of Payments and Co-Mingling of Funds. All sums collected by the Association shall be maintained separately in the Association's name. In addition, reserve funds shall be maintained in separate accounts from operating



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funds. All Assessments and specific charge payments collected shall be applied pursuant to the applicable provisions of the Declaration of Condominium.

**Section 6. Acceleration of Assessment Installments Upon Default.** As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the next twelve (12) months' of Assessment installments to be accelerated and shall thereupon be immediately due and payable. In the event that the amount of such installments changes during the twelve (12) month period, 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.

## ARTICLE VII

### UNAUDITED FINANCIAL STATEMENTS

In addition to the reporting requirements of Section 718.112 of the Florida Statutes, the Board, or its agents, shall (1) render to the members of the Association an unaudited statement for each fiscal year no later than 4 months next thereafter, and (2) perform internal audits of the Association's financial records for the purpose of verifying the same; however, no independent or external audit shall be required of it.

## ARTICLE VIII

### COMPLIANCE AND DEFAULT

**Section 1. Violations.** In the event of a violation (other than the non-payment of an assessment) by the Unit Owner in any of the provisions of the Declaration of Condominium, of these By-Laws, or of the applicable portions of the Act, the Association, by direction of its Board of Directors, may notify the Unit Owner by written notice of said breach, transmitted by mail or delivered in person, and, if such violation shall continue for a period of thirty (30) days from the date of the notice in the case of violations involving alterations and structural changes to the Unit and five (5) days from the date of the notice in the case of all other violations, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional and inexcusable and material breach of the Declaration, of the By-Laws, or of the pertinent provisions of the Act, and the Association may then, at its option, have the following elections:

(A) An action at law to recover for its damage on behalf of the Association or on behalf of the other Unit Owners.

(B) An action in equity to enforce performance on the part of the Unit Owner; or

(C) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Failure on the part of the Association to maintain such action at law or in equity within thirty (30) days from date of a written request, signed by a Unit Owner, sent to the Board of Directors, shall authorize any Unit Owner to bring an action in equity or suit at law on account of the violation in the manner provided for in the Act.

**Section 2. Fines.** In addition to the remedies as identified in Section 1 above, the Association may levy fines in accordance with the procedures of Section 718.303 of the Florida Statutes (1991), and any and all rules and regulations promulgated thereunder, against Unit Owners for violations of provisions of the Declaration of Condominium, these Bylaws or of the applicable portions of the Act.

**Section 3. Negligence or Carelessness of Unit Owner.** Any Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned thereby for as long as such increase shall be applicable. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance company of rights of subrogation.

**Section 4. Costs and Attorneys' Fees.** In any proceeding brought by the Association pursuant to this Article, the Association, if it is the prevailing party, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court.

**Section 5. No Waiver of Rights.** The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

**Section 6. Election of Remedies.** All rights, remedies and privileges granted to the Association or Unit Owner pursuant to any terms, provisions, covenants or conditions of the Condominium documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by Condominium documents, or at law or in equity.

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**ARTICLE IX**

**ACQUISITION OF UNITS**

Section 1. Acquisition on Foreclosure. At any foreclosure sale of a Unit, the Board of Directors may, with the authorization and approval by the affirmative vote of voting members casting not less than seventy-five percent (75%) of the total votes of the members present at any regular or special meeting of the members wherein said matter is voted upon, acquire in the name of the Association or its designee a Condominium Parcel being foreclosed. The term "foreclosure", as used in this section, shall mean and include any foreclosure of any lien, excluding the Association's lien for Assessments. The power of the Board of Directors to acquire a Condominium Parcel at any foreclosure sale shall never be interpreted as any requirement or obligation on the part of the said Board of Directors or of the Association to do so at any foreclosure sale. The provisions hereof are permissive in nature and for the purpose of setting forth the power in the Board of Directors to do so should the requisite approval of the voting members be obtained. Once general authority to purchase a Unit at a foreclosure sale is obtained, the Board of Directors shall not be required to obtain the specific approval of Unit Owners regarding the sum the Board of Directors determines to bid at such foreclosure sale unless the limit of such authority has been established in the original authorization.

**ARTICLE X**

**AMENDMENTS TO THE BY-LAWS**

The By-Laws may be altered, amended or added to at any duly called meeting of the Unit Owners provided:

(A) Notice of the meeting shall contain a statement of the proposed amendment.

(B) If the amendment has received the unanimous approval of the full Board of Directors, then it shall be approved upon the affirmative vote of two-thirds (2/3) of the votes cast at a meeting called for such purpose.

(C) If the amendment has not been approved by the unanimous vote of the Board of Directors, then the amendment shall be approved by the affirmative vote of three-fourths (3/4) of the votes cast at a meeting called for such purpose.

(D) Said amendment shall be recorded and certified as required by the Act.

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(E) Notwithstanding the foregoing, these By-Laws may only be amended with the written approval when required of the parties specified in the Declaration of Condominium to which these By-Laws are attached.

(F) No amendment to these By-Laws shall be made which affects any of the rights and privileges provided to the Developer in the Condominium documents without the written consent of the Developer.

## ARTICLE XI

### NOTICES

Whatever notices are required to be sent hereunder shall be posted, delivered or sent in accordance with the applicable provisions as to same as set forth in the Declaration of Condominium to which these By-Laws and other exhibits attached to said Declaration.

## ARTICLE XII

### INDEMNIFICATION

The Association shall indemnify every director and every officer, his heirs, executors and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Association, including reasonable counsel fees, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

## ARTICLE XIII

### LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

The termination of membership in the Condominium shall not relieve or release any such former owner or member from any liability or obligations incurred under or in any connected with the Condominium during the period of such ownership and membership, or impair any rights or remedies which the Association may have against such former owner and member arising out of or in any connected with such ownership and membership, and the covenants and obligations incident thereto.

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## ARTICLE XIV

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### LIMITATION OF LIABILITY

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage by a latent condition in the property, nor for injury or damage caused by the elements or by other owners or persons.

## ARTICLE XV

### PARLIAMENTARY RULES

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Act, the Declaration of Condominium, or these By-Laws.

## ARTICLE XVI

### MORTGAGE REGISTER

The Association or its agents may maintain a register of all mortgages and at the request of a mortgagee, the Association shall forward copies of all notices for unpaid Assessments or violations served upon a Unit Owner to said mortgagee. If a register is maintained, the Association, or its agent, maintaining same may make such charge as it deems appropriate against the applicable Unit for supplying the information provided herein.

## ARTICLE XVII

### RULES AND REGULATIONS

Section 1. In addition to the rules and regulations set forth in the Declaration of Condominium, the following rules and regulations, together with such additional rules and regulations as may hereafter be adopted, shall govern the use of the Condominium Units, Common Elements, Limited Common Elements, and any other Condominium property, and also the conduct of all residents thereof. The Unit Owners shall, at all times, obey said rules and regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees, servants, lessees and persons over whom they exercise control and supervision. Said initial rules and regulations are as follows:

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1. The sidewalk, entrances and all of the Limited Common Elements and Common Elements must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises; nor shall any carriages, velocipedes, bicycles, wagons, shopping carts, benches, tables, or any other object of a similar type and nature be stored therein.
2. The personal property of all Unit Owners shall be stored within their Condominium Units and Dwellings thereon.
3. No garbage cans, supplies, milk bottles, or other articles shall be placed on the Common Elements and Limited Common Elements of the Condominium except as authorized by the Association, nor shall any linens, cloths, clothing, curtains, rugs, mops or laundry of any kind, or other articles, be shaken or hung from any of the windows, doors, porches, patios or entry ways, or exposed on any part of the Limited Common Elements or Common Elements. The Limited Common Elements and Common Elements shall be kept free and clear of rubbish, debris, and other unsightly material. No clothes line or similar device shall be allowed on any portion of the Condominium property nor shall clothes be hung anywhere within the Condominium property except within a Dwelling.
4. Where applicable, no Unit Owner shall allow anything whatsoever to fall from the windows, porches, patios, entry ways or doors; nor shall he sweep or throw any dirt or other substance from his Unit or Limited Common Elements onto the Common Elements or any portion of the Condominium property.
5. No Unit Owner shall store or leave boats or trailers on the Condominium property. Refuse and bagged garbage shall be deposited only in the area provided therefor.
6. Agents or employees of the Association shall not be sent off the Condominium property by any Unit Owner at any time for any purpose. No Unit Owner or resident shall direct, supervise, or in any manner attempt to assert any control over the agents or employees of the Association.
7. The parking facilities shall be used in accordance with the regulations adopted by the Association. No vehicle which cannot operate on its own power shall remain on the Condominium premises for more than twenty-four (24) hours, and no repair of vehicles shall be made on the Condominium property.
8. No Unit Owner shall make or permit any disturbing noises by himself, his family, servants, employees, agents, visitors, and licensees, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of the Unit Owners. No Unit Owner shall play upon or suffer to be played upon any musical instrument, or operate or suffer to be operated, a phonograph, television, radio or sound amplifier, in such manner as to disturb or annoy other occupants of the Condominium. No Unit Owner shall conduct or permit to be

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conducted, vocal or instrumental instruction at any time, which disturbs other residents.

9. No awning, canopy, shutter, or other projection, shall be attached to or placed upon the outside walls or doors or roof of a Dwelling without the written consent of the Board of Directors of the Association. Patios or porches may not be enclosed, which includes the screening of same, nor may anything be affixed to the walls within such patios or porches or entry ways except with the prior written consent of the Board of Directors of the Association, and said consent may be given as to certain Units and not given as to others.

10. The type, color and design of chairs and other items of furniture and furnishings that may be placed and used on any entry way, patio or porch may be determined by the Board of Directors, and a Unit Owner shall not place or use any item thereon or upon any portion of the Common Elements except with the approval and as designated by said Board.

11. No cooking shall be permitted on any porch, patio or entry way nor on the Limited Common Elements nor on the Condominium Property, except in such area, if any, designated by the Board of Directors of the Association. Notwithstanding the foregoing, cooking with the use of an outdoor barbecue grill is allowed on the porch of a Dwelling, provided that, when such grill is not in use, it shall be stored out of sight from the public.

12. No inflammable, combustible, or explosive fluid, chemical or substance, shall be kept within any Unit, except such as are required for normal household use.

13. Each Unit Owner who plans to be absent from his Unit during the hurricane season must prepare his Unit and Dwelling thereon prior to his departure.

14. Food and beverage may not be consumed outside of a Unit, except for such areas as are designated by the Board of Directors of the Association.

Section 2. The Board of Directors may, from time to time, adopt or amend rules and regulations governing the details of the operation, use, maintenance, management and control of the Units, Common Elements or Limited Common Elements or other property of the Condominium or services made available to the Unit Owners. A copy of any additional rules and regulations adopted from time to time, as herein provided, shall from time to time be posted in a conspicuous place and/or copies of same shall be furnished to each Unit Owner.

Section 3. Conflict. In the event of any conflict between the rules and regulations adopted or from time to time amended and the condominium documents or the Act, the latter shall prevail. If any unreconciled conflict should exist or hereafter

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arise with respect to the Interpretation of these By-Laws and the Declaration of Condominium, the provisions of said Declaration of Condominium shall prevail.

#### ARTICLE XVIII

##### MANDATORY NONBINDING ARBITRATION

The Unit Owners, the Board of Directors and officers of the Association are encouraged to seek dispute resolution as an alternative to litigation and shall seek mandatory nonbinding arbitration of those categories of matters defined as "disputes" pursuant to Section 718.1255 of the Florida Statutes. Such arbitration shall be conducted in accordance with the provisions of Section 718.1255 of the Florida Statutes, and the rules promulgated by the Department of Florida Land Sales, Condominiums and Mobile Homes.

These By-Laws of the Association have been approved by all the members of the first Board of Directors.





**HOLLINGSWORTH & ASSOCIATES, INC.**

Land Surveyors

1701 South Alexander Street, Suite 113 • Plant City, FL 33567 • (813) 754-3639 • Tampa (813) 654-1265

October 22, 1991

OFF. REC. 6419 PC1777

Carlton Fields  
Laurence Kinsolving  
One Harbour Place  
P.O. Box 3239  
Tampa, FL 33601

RE: The Preserve, A Condominium

Dear Mr. Kinsolving:

Please accept this letter as documentation for your needs.  
The cost for the preparation of the final condominium plat  
will not exceed \$1,000.00 for the above referenced project.

Sincerely,

Jeffery Hollingsworth  
Fla. Reg. Surveyor No. 4156

ks/pfs/preserve.let