

**DECLARATION OF CONDOMINIUM  
OF  
SYCAMORE RESORT, A CONDOMINIUM**

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**TABLE OF EXHIBITS**

**EXHIBIT**

**SUBJECT MATTER**

"A"	Legal Description of Phase A
"B"	Legal Description of Subsequent Phases
"C"	Plot Plan and Survey
"D"	Certified Copy of Articles of Incorporation of Sycamore Resort Condominium Association, Inc.
"E"	Bylaws of Sycamore Resort Condominium Association, Inc.
"F"	Allocated Interests

This instrument prepared by or under the supervision of  
(and after recording, return to):

Mark F. Grant, Esq.  
Greenspoon Marder LLP  
200 East Broward Boulevard, Suite 1800  
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**DECLARATION OF CONDOMINIUM  
FOR  
SYCAMORE RESORT, A CONDOMINIUM**

PRIMELAND REAL ESTATE DEVELOPMENT LLC, a Florida limited liability company, its successors and/or assigns (the "**Declarant**") hereby declares:

**ARTICLE 1  
INTRODUCTION AND SUBMISSION STATEMENT - PHASE CONDOMINIUM.**

1.1 The Land. Declarant or an affiliate of Declarant owns the real property, including the land and air rights, defined as the "**Land**" in that certain Declaration of Covenants, Easements and Restrictions for Sycamore Resort, recorded in the Public Records of Orange County, Florida in Official Records **Document #** \_\_\_\_\_ (as now or subsequently amended, modified or supplemented, the "**Hotel Declaration**"). The portion of the Land, which is subject to the Hotel Declaration, is divided into two (2) legally separate parcels, the "**Hotel Parcel**" (as defined in the Hotel Declaration and owned by the Hotel Declarant), and the "**Condo-Hotel Parcel**" (as defined in the Hotel Declaration). Declarant owns the Condo-Hotel Parcel, upon which this Condominium is being established. The Condo-Hotel Parcel is an air rights parcel, and is legally described on the Condominium Plot Plan (hereafter defined) attached to this Declaration as Exhibit "A".

**THE CONDOMINIUM HAS BEEN ESTABLISHED IN SUCH A MANNER TO MINIMIZE COMMON ELEMENTS. COMPONENTS OF THE BUILDING WHICH ARE TYPICAL "COMMON ELEMENTS" OF A CONDOMINIUM HAVE INSTEAD BEEN DESIGNATED HEREIN ARE PART OF THE SHARED FACILITIES OF THE HOTEL PARCEL. NO PORTION OF THE SHARED FACILITIES OF THE HOTEL PARCEL SHALL BE DEEMED COMMON ELEMENTS HEREUNDER.**

1.2 Submission Statement – Phase Condominium. Declarant hereby submits the Condo-Hotel Parcel and all structures and improvements erected or to be erected on the Condo-Hotel Parcel (the "**Condominium Improvements**") and all other property, real, personal or mixed, now or hereafter situated on or within the Condo-Hotel Parcel, to the condominium form of ownership and use in the manner provided for in the Act, but excluding any structures or improvements or other property now or hereafter situated on the Condo-Hotel Parcel that are part of the Hotel Parcel or its Shared Facilities (as those terms are defined in the Hotel Declaration).

The land which will have become part of the Condominium Property when, as and if all of the "Phases" (as hereinafter defined) are added to the Condominium Property is described in Exhibit A and Exhibit B ("Land") attached hereto and made a part hereof. The legal description of the portion of the Land ("Initial Phase Land") constituting "Tower Phase A" or "Phase A" of the Condominium Property is set forth on Exhibit A attached hereto and made a part hereof. The legal descriptions of the portions of the Land constituting each "Subsequent Phase" (as hereinafter defined) (Tower Phases B through F) of the Condominium Property are set forth on Exhibit B attached hereto and made a part hereof.



No improvements or property, real, personal or mixed, not situated within or upon the Condo-Hotel Parcel, and no portion of the Hotel Parcel or its Shared Facilities, shall for any purposes be deemed part of this Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Act or any rules or regulations promulgated pursuant to the Act, unless otherwise expressly provided herein. No portion of the Land other than that portion described as part of the Condominium in the Condominium Plot Plan shall be deemed part of this Condominium.

1.2.1 Name of Condominium. The name by which this Condominium is to be identified is Sycamore Resort, A Condominium (the "**Condominium**").

1.2.2 Plan of Development. The Condominium is planned to consist of three hundred seventy eight (378) Condo-Hotel Units.

1.2.3 Name of Association. The name of the Association responsible for the operation of the Condominium is Sycamore Resort Condominium Association, Inc., a not-for-profit Florida corporation.

## **ARTICLE 2 DEFINITIONS**

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

2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes as it exists on the date this Declaration is recorded in the Public Record of Orange County, Florida.

2.2 "Allocated Interests" has the meaning ascribed to it in Section 5.1 of this Declaration.

2.3 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time. A copy of the Articles of Incorporation is attached to this Declaration as Exhibit "D"; provided, however, notwithstanding such attachment, the Articles of Incorporation may be amended by the amendment procedures set forth in the Articles of Incorporation.

2.4 "Assessments" means (i) collectively, Regular Periodic Assessments, Special Assessments and Capital Expenditure Assessments, as determined in accordance with this Declaration; and (ii) Shared Expenses as determined in accordance with the Hotel Declaration.

2.5 "Association" means Sycamore Resort Condominium Association, Inc., a Florida corporation not for profit and the sole entity responsible for the operation of the Common Elements of the Condominium. The Association has the right to operate additional condominiums within Sycamore Resort.

2.6 "Association Property" means that property, real and personal and mixed, if any, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.

2.7 "Board" or "Board of Directors" means the board of directors, from time to time, of the Association. Directors must be natural persons who are eighteen (18) years of age or older.

2.8 "Building" means the structure in which the Condominium is located, which structure is located within the Land. The Units are located within portions of the Building as shown on the Condominium Plot Plan. The Common Elements consist of the land below the Building.

2.9 "By-Laws" means the By-Laws of the Association, as adopted and amended from time to time. A copy of the By-Laws is attached to this Declaration as Exhibit "E"; provided, however,

notwithstanding such attachment, the By-Laws may be amended by the amendment procedures set forth in the By-Laws, not the amendment procedures set forth in this Declaration.

2.10 "Capital Improvement Assessments" shall have the meaning set forth in Section 11.2(b) of this Declaration.

2.11 INTENTIONALLY DELETED.

2.12 "Claim of Lien" shall have the meaning set forth in Section 11.3 of this Declaration.

2.13 "Common Elements" means and includes:

- (a) The portions of the Condominium Property that are not included within the Units
- (b) An easement of support in every portion of the Building that contributes to the support of the Units and Condominium Property;
- (c) The Limited Common Elements, if any; and
- (d) Any other parts of the Condominium Property designated as Common Elements in this Declaration or otherwise required by law to be a Common Element.

**THE CONDOMINIUM HAS BEEN ESTABLISHED IN A MANNER THAT MINIMIZES THE COMMON ELEMENTS. MOST OF THE COMPONENTS WHICH ARE TYPICALLY "COMMON ELEMENTS" OF A CONDOMINIUM HAVE INSTEAD BEEN DESIGNATED IN THE HOTEL DECLARATION AND/OR THIS DECLARATION AS PART OF THE SHARED FACILITIES OF THE HOTEL PARCEL. NO PORTION OF THE SHARED FACILITIES SHALL BE DEEMED COMMON ELEMENTS UNDER THIS DECLARATION.**

2.14 "Common Expenses" mean all expenses incurred by the Association for the operation, maintenance, repair, replacement, management, protection or insurance of the Common Elements and the Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, this Declaration, the Articles or the By-Laws. For all purposes of this Declaration, "Common Expenses" shall include, without limitation: (a) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (b) if applicable, costs relating to insurance for directors and officers; (c) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property and/or rental or other expenses incurred in connection with any Units leased by the Association; (d) any lease payments required under leases for mechanical equipment, including without limitation, leases for recycling equipment (if any); (e) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure, and (g) the expenses incurred for operation, maintenance, repair, replacement, management, protection or insurance of Limited Common Elements, if any (except where the operation, maintenance, repair, replacement, management or insurance obligation, or the cost thereof, is the responsibility of the Owner to which such Limited Common Element is assigned). Common Expenses shall not include any separate obligations of individual Owners with respect to their Units, including, without limitation, real estate taxes or Shared Expenses.

2.15 "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.'

2.16 "Condominium" shall have the meaning set forth in Section 1.2.1 of this Declaration.

2.17 "Condominium Documents" shall mean this Declaration and all of the exhibits hereto, as they may be amended from time to time.

2.18 "Condominium Improvements" shall have the meaning set forth in Section 1.1 of this Declaration.

2.19 "Condo-Hotel Parcel" has the meaning ascribed to such term in the Hotel Declaration (as defined in Section 2.34 below).

2.20 "Condo-Hotel Unit" or "Unit" has the meaning ascribed to such term in the Hotel Declaration and shall include "Unit" as defined in Section 2.54 below.

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

2.22 "Condominium Plot Plan" means the Condominium drawings required by Section 718.104 of the Act and the legal description of the Condominium, which are attached to this Declaration as Exhibit "C". The Condominium Plot Plan contains a graphic description of the Condominium Improvements, a plot plan of the Condominium, and the legal description of the Condominium. The Condominium Plot Plan also identifies the Units in the Condominium, the Common Elements and, if applicable, the Limited Common Elements and the relative locations and approximate dimensions of each.

2.23 "Condominium Property" means the Condo-Hotel Parcel, the Condominium Improvements and other property described in Section 1.2 of this Declaration submitted to the condominium form of ownership, subject to the limitations of this Declaration and the exclusions from this Declaration. Notwithstanding anything contained in this Declaration to the contrary, the Life Safety Systems, entry doors providing access to the Units, demising walls (and any space between such demising walls) separating Units, interior structural columns within Units and exterior windows and sliding glass doors of the Unit and all other Shared Facilities are part of the Shared Facilities within the Hotel Parcel and are not part of the Units or the Condominium Property, regardless of location. In the event of any ambiguity with respect to in which Parcel an Improvement is located, it will be deemed to be in the Hotel Parcel and not the Condo-Hotel Parcel. No portion of the land within any Subsequent Phase shall be included in the term "Condominium Property" until and unless such Subsequent Phase is submitted to condominium ownership by amendment to this Declaration.

2.24 "County" means Orange County, State of Florida.

2.25 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached to this Declaration, as same may be amended from time to time.

2.26 "Declarant" means Primeland Real Estate Development LLC, a Florida limited liability company, its designees, successors and such of its assigns as to which the rights of Declarant under this Declaration are specifically assigned. Declarant may assign all or a portion of its rights under this Declaration, or all or a portion of such rights in connection with specific portions of Condominium. In the event of any partial assignment, the assignee shall not be deemed Declarant (unless so designated in writing by Declarant), but may exercise such rights of Declarant as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. Notwithstanding any assignment of Declarant's rights under this Declaration (whether partially or in full), the assignee shall not be deemed to have assumed any of the obligations of Declarant unless, and only to the extent that, it expressly agrees to do so in writing, in which event Declarant shall be released of such obligations. The rights of Declarant under this Declaration are independent of Declarant's rights to control the Board of Directors and, accordingly, shall not be deemed waived, transferred or assigned to the Owners, the Board or the Association upon the transfer of control of the Association.

2.27 "Declarant's Mortgagee" means the mortgagee, if any, advancing construction funds for the development of the Condominium Improvements and, if more than one, the lead lender or administrative agent for any syndication or participation loan, or the lender loaning the greatest amount of indebtedness (based on the initial size of the loan, regardless of what has then been advanced), and shall include its successors and/or assigns.

2.28 "Dispute," for purposes of ARTICLE 16, means any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit or the appurtenances thereto; or (ii) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; the levy of a fee or Assessment or the collection of an Assessment levied against a party; alleged breaches of fiduciary duty by one or more Directors; or claims for damages to a Unit based upon the alleged failure of the Association to maintain the Common Elements of the Condominium Property.

2.29 "District" shall have the meaning set forth in Section 6.4 of this Declaration.

2.30 "Division" means the Division of Condominiums, Timeshares and Mobile Homes, State of Florida, or its successor.

2.31 "First Mortgagee" means any person or entity holding a first mortgage on a Unit or Units.

2.32 "HC Unit" shall have the meaning set forth in Section 8.1(e) of this Declaration.

2.33 "Hotel Declarant" shall have the meaning set forth in Section 1.1 of this Declaration.

2.34 "Hotel Declaration" shall have the meaning set forth in Section 1.1 of this Declaration. This Declaration shall be junior and subordinate to the Hotel Declaration.

2.35 "Hotel Parcel" has the meaning ascribed to such term in the Hotel Declaration.

2.36 "Hotel Parcel Owner" the meaning ascribed to such term in the Hotel Declaration.

2.37 "Institutional First Mortgagee" means any lending institution owning a first mortgage encumbering any Unit or Parcel within Sycamore Resort, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution," including the Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Declarant and which hold a mortgage on any portion of the Property securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in the community as an institutional lender; or Declarant, its successors and assigns.

2.38 "Land" has the meaning ascribed to such term in the Hotel Declaration.

2.39 "Life Safety Systems" means any and all emergency lighting, audio and visual signals, safety systems, sprinklers and smoke detection systems, which are now or subsequently installed in the

Building, whether or not within the Units or the Condominium Property. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, regardless of where located, shall be deemed part of the Shared Facilities of the Hotel Parcel.

2.40 “Limited Common Elements” means those portions of the Common Elements, if any, which are reserved for the use of a certain Unit or Units to the exclusion of the other Units as provided in this Declaration or identified in the Condominium Plot Plan as a Limited Common Element. Reference in this Declaration to Common Elements shall also include all Limited Common Elements unless the context would otherwise require. Except as set specifically set forth in the Condominium Plot Plan, in the event of any reasonable doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors and shall be binding and conclusive when so made; provided, however, this provision shall not affect Common Elements identified as such in the Condominium Plot Plan or otherwise in this Declaration.

2.41 “Manager” shall have the meaning ascribed to such term in the Hotel Declaration.

2.42 **INTENTIONALLY DELETED**

2.43 “Material Amendment” shall have the meaning set forth in Section 6.2 of this Declaration.

2.44 “Occupant” means an Owner in possession of a Unit, including, without limitation, hotel guests. Where the context dictates, an Occupant shall also be deemed to include the family members, guests, licensees and invitees of such Occupant.

2.45 “Owner” means a record owner of legal title to a Unit, as follows:

2.45.1 Individual as Owner. If an individual is a record owner of legal title to a Unit (an “Individual Owner”), his or her ownership shall also include such Individual Owner’s spouse. If a Unit is owned by multiple Individual Owners, all such individuals must designate in writing to the Hotel Parcel Owner and the Association which one (1) of the multiple individuals is the primary point of contact for receiving correspondence and making decisions for such Unit (“Responsible Individual”). The maximum number of persons permitted to be on the deed as the Owner of such Unit for purposes of determining the Resort Subsidy Charge (as defined in the Hotel Declaration) applicable to such Unit shall not exceed a total of six (6) persons at any time. If the number of persons on the deed including any spouses not named on the deed, exceed six (6) individuals, the Responsible Individual must designate in writing to the Hotel Parcel Owner the six (6) individuals to be treated as an Owner for purposes of determining the Resort Subsidy Charge applicable to such Unit. The designation by an Individual Owner under this subsection may not be changed more frequently than once in any twelve (12) month period, regardless of a change in ownership of the Individual Owner of such Unit.

2.45.2 Entity as Owner. If an entity (whether a corporation, partnership, limited liability company, trust or otherwise) is a record owner of legal title to a Unit (an “Entity Owner”), the Entity Owner must provide Hotel Parcel Owner with a copy of such Entity Owner’s respective Articles of Incorporation. For the purposes of this Declaration, the officers and directors of such Entity Owner will be considered deeded Owners of its respective Unit. Such Entity Owner must designate in writing to the Hotel Parcel Owner and the Association which one (1) individual is the primary point of contact for receiving correspondence and making decisions for such Unit (“Responsible Individual”). The maximum number of persons permitted to be on the Articles of Incorporation as the officers and directors of such Entity Owner of such Unit for purposes of determining the Resort Subsidy Charge (as defined in the Hotel Declaration) applicable to such Unit shall not exceed a total of six (6) persons at any time. If more than six (6) officers and directors exist, such Responsible Individual must designate in writing to the Hotel Parcel Owner the six (6) individuals permitted to be treated the same as an Individual Owner for purposes of determining the Resort Subsidy Charge applicable to such Unit. The designation by an Entity Owner under this subsection may not be changed more frequently

than once in any twelve (12) month period, regardless of a change in ownership of the Entity Owner of such Unit.

2.45.3 Individual Owners and Entity Owners. If a Unit is owned by a combination of Individual Owners and Entity Owners, the maximum number of permitted persons to be designated for purposes of the Resort Subsidy Charge (as set forth in the Hotel Declaration) shall not exceed a combined total of six (6) persons at any time. The written designations required by an Individual Owner to the Hotel Parcel Owner in Subsection 2.45.1 above shall also be required for this Subsection 2.45.3, when applicable. The written designations required by an Entity Owner to the Hotel Parcel Owner in Subsection 2.45.2 above shall also be required for this Subsection 2.45.3, when applicable.

In the event of an inconsistency between this Declaration and the Hotel Declaration, the Hotel Declaration shall control.

2.46 "Phase" or "Phases" means that portion of the Land and improvements thereon, as contemplated by Section 718.403 of the Act, which may become part of the Condominium Property by recording this Declaration or an amendment hereto.

"Primary Institutional First Mortgagee" means Declarant's Mortgagee for as long as it holds a mortgage on any Unit in the Condominium, and thereafter shall mean 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.

2.48 "Regular Periodic Assessment" means a share of the funds required for the payment of Common Expenses that from time to time is assessed by the Association against an Owner; however, the Regular Periodic Assessments may be adjusted from time to time by the amendment procedures for Regular Periodic Assessments set forth in this Declaration.

2.49 "Rules and Regulations" means the rules and regulations of the Association as created and amended from time to time.

2.50 "Shared Expenses" has the meaning ascribed to such term in the Hotel Declaration. Shared Expenses are not Common Expenses, but may be collected by the Association if the Hotel Parcel Owner requests the Association to do so.

2.51 "Shared Facilities" has the meaning ascribed to such term in the Hotel Declaration. Shared Facilities (i) are not part of the Common Elements, Association Property or Condominium Property, and (ii) are owned by the Hotel Parcel Owner.

2.52 "Special Assessments" shall have the meaning set forth in Section 11.2(a) of this Declaration.

2.53 "Standards" shall have the meaning set forth in Section 7.4 of this Declaration.

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

Unless the context otherwise requires, any capitalized word or term not defined but used herein which is defined in the Hotel Declaration has the meaning given to such word or term in the Hotel Declaration.

### **ARTICLE 3 DESCRIPTION OF CONDOMINIUM AND PHASE DEVELOPMENT**

3.1 Description of Improvements – Initial Phase. The portion of the Land and improvements (collectively "Initial Phase") being submitted to condominium ownership pursuant to this Declaration are described on the "Initial Phase Survey" (as hereinafter defined). The improvements in the Initial Phase

include one (1) seven (7)-story Building which contains sixty-eight (68) Units, each of which is designated as described in Article 3.1.3; certain easement rights in certain property within the Condominium. Only the Units and the land located below the foundation of the Building comprise the Condominium. All other Improvements in the Building are part of the Hotel Parcel.

3.1.1 Initial Phase Survey. Annexed hereto as part of Exhibit A and made a part hereof is the legal description, Survey, Plot Plan and Graphic Description of Improvements for Tower Phase A (the "Initial Phase") which includes a survey of the land in the Initial Phase, graphic description of the improvements in which the Units and the Common Elements are located and plot plan thereof (all of which are herein collectively referred to as the "Initial Phase Survey"). The Initial Phase Survey shows and identifies thereon the Common Elements and every Unit, their relative location and approximate dimensions. There is attached to the Initial Phase Survey and made a part of this Declaration a certificate of a surveyor prepared, signed and conforming with the requirements of Section 718.104(4)(e) of the Act.

3.1.2 Description and Identification of Units. Each Unit in Tower Phase A and its appurtenances constitute a separate parcel of real property that may be owned in fee simple. Each Unit may be conveyed, transferred, and encumbered like any other parcel of real property, independently of all other parts of the Condominium Property, subject to the provisions of this Declaration, the Hotel Declaration and applicable law. Each Unit is identified by a separate numerical or alpha-numerical designation, which is set forth on the Condominium Plot Plan. Each Unit shall have, as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration, including, without limitation, the right to transfer such right to other Units or Owners; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time; provided, however, that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

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

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

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

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

(b) Perimeter Boundaries. The perimeter boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the drywall walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries described in this Section 3.1.3. Notwithstanding the foregoing, (a) as to walls shared by a Unit and the Hotel Parcel, the perimeter boundary of the Hotel Parcel at such shared wall shall be coextensive to the perimeter boundary of the adjoining Unit (so that the shared wall and all installations therein shall be part of the Hotel Parcel rather than the Common Elements or any Unit) and therefor the perimeter boundary of the Hotel Parcel shall extend to the unfinished interior surface of any walls bounding a Unit, and (b) as to walls shared by two or more Units only, or by Unit(s) and Common Element(s) only, such shared walls (and installations therein) are also part of the Hotel Parcel and are designated Shared Facilities in the Hotel Declaration. Only the unfinished drywall walls is part of the Hotel Parcel and designated as Shared Facilities. Any finishes on the drywall (i.e., paint, wallpaper, etc.) is part of the Unit and such finished interior surfaces of the drywall walls belongs to the respective Owner thereof and is not part of the Shared Facilities.

(c) Apertures. Where there are apertures in any boundary which is a part of the Condominium Property, same shall be deemed part of the Shared Facilities, and as such, part of the Hotel Parcel. Notwithstanding the boundaries set forth above, all exterior surfaces of the Building, all exterior windows made of glass or other transparent materials, and all doors providing access to the Units, including all doors leading to balconies, terraces or other exterior parts of the Building shall be deemed part of the Hotel Parcel and excluded from the boundaries of the Unit and the Condominium.

(d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the Condominium Plot Plan shall control in determining the boundaries of a Unit. Notwithstanding anything contained in this Declaration to the contrary, the Life Safety Systems, the demising walls (and any space between such demising walls) separating Units, and the interior structural columns within the Units, are not part of the Units or the Condominium Property (regardless of location) but are part of the Hotel Parcel. No Shared Facilities or any other portion of any Parcel shall be part of any Unit, the Common Elements, the Association Property or Condominium Property.

3.2 Developer is developing the Condominium Property as a phase condominium as provided for by Section 718.403 of the Act. In addition to the portion of the Land and improvements described on the Initial Phase Survey being submitted to condominium ownership pursuant to this Declaration, Developer contemplates that all or a portion of the Subsequent Phases may, by amendment or amendments hereto, be added to the Condominium Property as an additional Phase or additional Phases. If, as and when Subsequent Phases are added, the Condominium Property shall be enlarged and expanded so as to encompass and include the real property, the improvements thereon, and the easements and rights appurtenant thereto which are submitted to condominium ownership as parts of such Subsequent Phase or Phases, and each Subsequent Phase added to the Condominium Property will utilize the surface water management system permitted by the South Florida Water Management District.

3.2.1 Subsequent Phase Surveys. Annexed hereto as Exhibit B-2 through B-6 are the legal descriptions, surveys, plot plans and graphic descriptions of improvements for Tower Phase B through F ("Phase B Survey," "Phase C Survey," "Phase D Survey," "Phase E Survey," and "Phase F Survey" (collectively, the "Subsequent Phase Surveys"). Notwithstanding any indications to the contrary herein contained, Developer may make nonmaterial changes in the description(s) of any Subsequent Phase.

While at the time of recordation of this Declaration Developer plans to include the number of Units in each Subsequent Phase as set forth in the following chart, the Act requires that the Declaration also set forth the minimum and maximum number of Units which Developer reserves the right to add in each Subsequent Phase, which information is set forth in the following chart:

<u>PHASES</u>	<u>NUMBER OF BUILDINGS</u>	<u>NUMBER OF UNITS</u>		
		Minimum	Planned	Maximum
B through F	5	5	10	10

While Developer plans that the general size for each One Bedroom Type Unit will be approximately 684SF air conditioned square feet, Developer reserves the right to include in the each One Bedroom Type Units a minimum of 684 SF air conditioned square feet, to a maximum of 684 SF air conditioned square feet; that the general size for each Two Bedroom Type Unit will be approximately 1237 SF air conditioned square feet, Developer reserves the right to include in the Two Bedroom Type Units a minimum of 1237 SF air conditioned square feet to a maximum of 1237 SF air conditioned square feet; and that the general size for each Three Bedroom Type Unit will be approximately 1481 SF air conditioned square feet, Developer reserves the right to include in the Three Bedroom Type Units a minimum of 1481 SF air conditioned square feet to a maximum of 1481 SF air conditioned square feet.]

3.2.3 Description and Identification of Units. Each Unit in any Subsequent Phase, if any such Subsequent Phase is submitted to the Condominium Property pursuant to a "Subsequent Phase Amendment" (as hereinafter defined), shall be identified by the Phase description together with a three (3)-digit number and is so referred to herein and in the Exhibits hereto. No Unit in any Subsequent Phase which is added to the Condominium shall bear the same identifying number as any other Unit in the Condominium.



3.3 Subsequent Phases B Through F. Subsequent Phases B, C, D, E, and F, if added to the Condominium Property pursuant to this Declaration by an amendment hereto, are intended to consist of the real property more particularly described in the Surveys attached hereto for such Phases and made a part hereof, the improvements of which are intended to include, as to each Phase, include one (1) seven (7)-story residential Building which contains number (310) Units, each of which is designated as described in this Article 3; easement rights in certain property within the Condominium. The Survey (as revised prior to the recordation of the Amendment adding such Phase) shall be attached to the Amendment adding such Phase. Developer shall provide no items of personal property for the Common Elements within these Phases. If such Phases are submitted to the Condominium Property pursuant to an Amendment, such Phases will be completed and the respective Amendments will be recorded amongst the Public Records no later than the later to occur of (i) seven (7) years from the date of recordation hereof or (ii) the maximum time allowed by law.

3.4 Changes in Subsequent Phases. Notwithstanding any indications to the contrary herein contained, descriptions relating to Phases or Exhibits referred to in this Article 3 hereof, including, but not limited to, legal, graphic, alphabetical, numerical, narrative and the like, are approximations. To the fullest extent permitted by law, Developer reserves the right to change such descriptions as to a Phase by recording an amendment hereto until such time as Developer conveys a Unit in such Phase to a Unit Owner. Such an amendment shall not require the execution thereof by the Association, Institutional Mortgagees or any other person, persons or entity unless: (i) Developer changes the proportion by which a Unit Owner, other than Developer, shares the Common Expenses and the Common Surplus or owns the Common Elements, in which event such Unit Owner whose share of Common Elements, Common Expenses and Common Surplus is being so changed and the Institutional Mortgagees of record holding mortgages on the affected Unit must consent in writing thereto; or (ii) such change materially and adversely affects a Unit Owner as determined by Developer in the reasonable discretion of Developer, in which event such Unit Owner and the Institutional Mortgagee of record holding the mortgage on the affected Unit must consent thereto in writing or such amendment must be adopted in accordance with Article 8 hereof.

3.5 Addition of Subsequent Phases – No Prescribed Order. Notwithstanding the alphabetical sequence of the Subsequent Phases or any inference that can be drawn therefrom or from any other provision of the Condominium Documents, Developer reserves the right to submit Subsequent Phases to the Condominium Property in any sequence, provided, however, that there shall be submitted as a portion of the Common Elements, if necessary, an easement providing means of ingress and egress from and to any Subsequent Phase which is submitted to the Condominium Property to and from public ways, including dedicated streets.

3.6 Impact of Subsequent Phases on Initial Phase.

3.6.1 Common Elements of Initial Phase. The Common Elements as shown on the Initial Phase Survey and included in the Initial Phase will be owned by all Unit Owners in all Phases submitted to the condominium form of ownership as a portion of the Condominium Property pursuant to this Declaration and amendments hereto, if any.

3.6.2 Subsequent Phase Not Added. If any Subsequent Phase does not become part of the Condominium Property, no portion of such Subsequent Phase (including, but not limited to, the portion which would have constituted the Common Elements) shall become a part of the Condominium Property.

3.6.3 Common Elements of Subsequent Phases. If any Subsequent Phase is added to and does become a part of the Condominium Property, then all of the Common Elements constituting a portion of such Subsequent Phase shall become a part of the Common Elements of the Condominium Property, with such Common Elements being owned in undivided shares by all Unit Owners in all Phases then and thereafter constituting a portion of the Condominium.

3.6.4 Share of Ownership Upon Submission of Only Initial Phase. If only the Initial Phase is submitted to the Condominium Property pursuant to this Declaration, there will be sixty-eight (68) Units

in the Condominium, each having as an appurtenance thereto one (1) vote in the Association and an equal undivided share of ownership in the Common Elements.

3.6.5 Share of Ownership Upon Submission of Subsequent Phases. If any Subsequent Phase, in addition to the Initial Phase, is submitted to the Condominium Property, then each Unit in all Phases submitted to the Condominium Property shall have as appurtenances thereto one (1) vote in the Association and an equal undivided share of ownership in the Common Elements. If all Subsequent Phases are submitted, as planned, to condominium ownership as a portion of Condominium Property pursuant to an amendment or amendments to this Declaration, the total number of Homes shall be three hundred seventy-eight (378). The number of Units planned to be included in each Subsequent Phase if, as and when added to the Condominium, is set forth in this Article 3 hereof.

3.7 Withdrawal Notice. Developer, in its absolute discretion, reserves the right to add or not to add any or all of the Subsequent Phases as part of the Condominium Property. Hence, notwithstanding anything contained in this Declaration to the contrary, no portion of any Subsequent Phase shall be affected or encumbered by this Declaration unless and until such Subsequent Phases are added to the Condominium Property by amendment to this Declaration recorded amongst the Public Records. Notwithstanding the fact that the foregoing portion of this Paragraph 3.7 is self-operative, if Developer determines not to add any or all Subsequent Phases to the Condominium Property, Developer may, in addition to any action otherwise required by the Act, record amongst the Public Records a notice ("Withdrawal Notice") to the effect that such Subsequent Phase or Subsequent Phases shall not be added to the Condominium Property. Further, should Developer record amongst the Public Records a Withdrawal Notice with respect to one (1) or more, but not all, of the Subsequent Phases, Developer shall retain the right to record additional Withdrawal Notices with respect to any or all of the Subsequent Phases, which were not submitted to the Condominium Property and are not covered by any prior Withdrawal Notice. Notwithstanding anything contained herein to the contrary, in the event Developer records amongst the Public Records one (1) or more Withdrawal Notices, then Developer shall have all rights permissible by law with respect to ownership of the Subsequent Phases covered by any and all such Withdrawal Notices, including, but not limited to, the right to develop such Subsequent Phase and/or Subsequent Phases as one (1) or more separate condominiums, which may or may not be operated by the Association.

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

3.8.1 Support. Each Unit and any structure and/or improvement now or subsequently constructed upon the Land shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements and such other structures and improvements constructed upon the Land.

3.8.2 Utility and Other Services; Drainage. Easements are reserved in favor of the Association and the Hotel Parcel Owner under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and monitoring systems, and other services and drainage facilities in order to serve the Condominium and/or members of the Association and/or the Parcels. An Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Association and Hotel Parcel Owner, and their respective agents, employees, contractors and assigns, shall have a right of access to each Unit for the purpose of performing such functions as are permitted or required to be performed by the Association or Hotel Parcel Owner, as applicable, in connection with its duties, including, without limitation, maintaining, repairing and replacing any Common Element or Shared Facility contained in the Unit or elsewhere in or around the Condominium Property, and removing any Improvements interfering with or impairing such facilities or easements reserved in this Declaration or the Hotel Declaration; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Owner's permitted use of the Unit and shall be made on not less than two (2) days advance written notice (which

notice shall not, however, be required if the Owner is absent when the giving of notice is attempted) and reasonable efforts will be undertaken to exercise such rights during daylight hours.

3.8.3 Encroachments. If (i) any portion of the Common Elements and/or the Shared Facilities encroaches upon any Unit; (ii) any Unit encroaches upon any other Unit or upon any portion of the Common Elements and/or the Shared Facilities; (iii) any part of the Condominium Property encroaches upon any other structures or improvements constructed on the Land; (iv) any structures or improvements constructed on the Land encroach upon the Condominium Property; or (v) any encroachment shall subsequently occur as a result of (1) construction of the Condominium Improvements and/or any structures or improvements upon the Land; (2) settling or shifting of the Condominium Improvements and/or any structures or improvements constructed upon the Land; (3) any alteration or repair to the Common Elements (or the Shared Facilities) made by or with the consent of the Association, Declarant or the Hotel Parcel Owner, as appropriate; or (4) any repair or restoration of the Condominium Improvements and/or any structures or improvements constructed upon the Land (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements or the Shared Facilities, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Condominium Improvements or the relevant structures and improvements constructed upon the Land, shall stand.

3.8.4 Ingress and Egress. Declarant reserves unto itself and grants to the Association, each member of the Association and each Occupant of a Unit a non-exclusive easement for pedestrian traffic over, through and across any and all portions of the Common Elements that are intended to provide direct pedestrian access, for the purpose of providing such direct pedestrian access to and from the Units to and from the surrounding portions of the Land and public right of ways adjacent to the Land. Any lien encumbering such easements automatically shall be subordinate to the rights of the Association, Owners and Parcel Owners with respect to such easements.

3.8.5 Demolition and Construction; Maintenance. Declarant (including without limitation, its designees, agents, contractors, successors and assigns), the Hotel Parcel Owner (including its designees, agents, contractors, successors and assigns), in its and their sole discretion from time to time, to enter the Condominium Property and take all action necessary or convenient for the purpose of completing the construction of any and all structures and improvements upon any portion of the Land, or any Condominium Improvements or Units located or to be located on any portion of the Condominium Property, and for repair, replacement and maintenance or warranty purposes as to any portion of the Land or where Declarant and/or the Hotel Parcel Owner, in its or their sole discretion, determines that it is required or desires to do so. Declarant and Hotel Parcel Owner shall have the right to temporarily prohibit access to any portion of the Common Elements or Shared Facilities to any of the Owners, residents and guests, and to utilize portions of the Common Elements or Shared Facilities in connection with the construction, development, repair and replacements of any and all improvements upon any portions of the Land. THERE MAY BE CONSTRUCTION-RELATED NOISE, COMMOTION, INTERRUPTIONS AND OTHER UNPLEASANT EFFECTS OF DEMOLITION AND CONSTRUCTION ACTIVITIES FROM TIME TO TIME WITHIN THE PROPERTIES AND OTHER LANDS ADJACENT TO OR NEARBY THE PROPERTIES. FURTHER, OWNERS AND THEIR GUESTS AND INVITEES MAY BE LIMITED IN USING PORTIONS OF THE COMMON ELEMENTS, AND THE SHARED FACILITIES AND OTHER COMMON FACILITIES DUE TO SUCH ACTIVITIES. NO OWNER OR SUCH OWNER'S GUESTS OR INVITEES SHALL IN ANY MANNER INTERFERE OR HAMPER DECLARANT AND THE HOTEL PARCEL OWNER IN CONNECTION WITH SUCH CONSTRUCTION AND DEMOLITION ACTIVITIES.

3.8.6 Sales Activity. For as long as there are any Units owned by Declarant, its affiliates or any of them and/or Declarant or any of its affiliates has any ownership interest in any portion of the Land, Declarant and its affiliates shall have the right to use any such Units owned by Declarant and parts of the Common Elements, Shared Facilities or Association Property, if any, for guest accommodations, models and sales, leasing and construction offices relating to the Condominium or any other portion of the Land, to show model Units, the Condominium Property, the Shared Facilities or other parts of the Land to prospective purchasers, and to erect on the Condominium Property, the Association Property, the Shared Facilities or any other parts of the Land, signs and other promotional material to advertise or otherwise

market the Units, and/or any facilities built or to be constructed upon any portion of the Land for sale, lease or occupancy.

3.8.7 Owners' Easements. The Hotel Parcel Owner and the "Declarant" of the Hotel Declaration if different than Declarant hereunder (the "**Hotel Declarant**"), and their respective guests, invitees, designees, affiliates, agents, employees, contractors, successors and assigns, shall have an easement to enter onto the Condominium Property for the purpose of performing such functions as are permitted or required to be performed by them under the Hotel Declaration. An easement for such purposes is hereby granted and reserved to Hotel Parcel Owner and Hotel Declarant, and their respective guests, invitees, designees, affiliates, agents, employees, contractors, successors and assigns, and each Owner, by acceptance of a deed or other instrument conveying a Unit, shall be deemed to have agreed to the grant and reservation of easements described in this Declaration and the Hotel Declaration and the rights in this Declaration and the Hotel Declaration vested in Hotel Parcel Owner and the Hotel Declarant.

3.8.8 Support of Adjacent Structures. If any structure(s) is constructed so as to be connected in any manner to the Building and/or any other improvements constructed upon the Land, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjoining structures which are necessarily or conveniently located within the Condominium Property, the Association Property and/or the Land.

3.8.9 Warranty. For as long as Declarant or Hotel Declarant remains liable under any warranty, whether statutory, express or implied, for any act or omission of Declarant in the development, construction, sale and marketing of the Condominium, then Declarant and Hotel Declarant, and their respective designees, agents, contractors, successors and assigns, shall have the right, in the sole discretion of Declarant or Hotel Declarant, as applicable, without requiring prior approval of the Association and/or any Owner, to enter the Common Elements, Units and Condominium Property from time to time for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for Declarant or Hotel Declarant to fulfill any of its warranty obligations; provided, however, that absent an emergency situation, Declarant or Hotel Declarant shall provide reasonable advance notice to the affected Owner(s) and, if Common Elements are affected, the Association. Failure of the Association or any Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. Nothing in this Declaration shall be deemed or construed as Declarant or Hotel Declarant making or offering any warranty, all of which are disclaimed (except to the extent same may not be pursuant to applicable law) as set forth in the Hotel Declaration and ARTICLE 22 of this Declaration.

3.8.10 Additional Easements. For as long as there are any Units owned by Declarant or its affiliates, and/or Declarant or any of its affiliates has any ownership interest in any portion of the Land, Declarant or its affiliates, on behalf of itself and all Owners (each of whom hereby appoints Declarant as its attorney-in-fact for this purpose), and thereafter the Association, through its Board, on the Association's behalf and on behalf of all Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify, relocate, abandon or terminate any such existing easements or drainage facilities, in any portion of the Condominium Property and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property and/or Association Property, as Declarant or the Board, as the case may be, shall deem necessary or desirable for the proper operation, development, construction, sales and maintenance of the Condominium Improvements, or any portion thereof, or any improvement located within the Land, or for the general health or welfare of the Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration or the Hotel Declaration or in connection with services for other Parcels; provided, however, that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling or transient occupancy accommodation purposes.

3.9 Merger. In the event Declarant develops other condominiums within Sycamore Resort which are submitted to the condominium form of ownership, and the other units are to be operated by the Association as a separate condominium, the Association may merge the condominiums operated by the Association by calling a special meeting for such purpose, obtaining the affirmative vote of two-thirds (2/3) of the owners in each such condominium, and upon the recording of new or amended Articles of Incorporation, Declarations, and Bylaws.

3.10 Use of Another Association. Notwithstanding the foregoing provisions, nothing shall prevent Declarant from creating another association to operate the other units within such other condominium(s) within Sycamore Resort.

3.11 Multicondominium. In the event there are other units, as described in Section 3.9 hereinabove, which are units in a condominium or condominiums operated by the Association ("Multicondominium"), then in addition to the provisions of Section 3.9, the following provisions shall also apply. The assets, liabilities, common surplus and liability for the Common Expenses of the Association which are not the Common Expenses attributable to a particular condominium or condominiums ("Association Expenses") shall be equal as to each condominium unit operated by the Association. The Assessment for the Shared Expenses as to each condominium shall be determined by dividing the Shared Expenses by the total number of condominium units in the condominium, which amount shall be added to the common expenses of the condominium to be levied and assessed against the unit owners thereof in accordance with the declaration of the condominium for that condominium. The share of each other unit owner in a Multicondominium in the common surplus of the Association shall be determined in the same manner.

Declarant currently has no plans to have other unit owners in any such Multicondominium share common elements, or to add any property to be owned by the Association.

In the event Declarant creates a Multicondominium, each Multicondominium unit shall have appurtenant thereto one (1) cote in the Association, which shall be exercised personally by the unit owner.

#### **ARTICLE 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, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, except as elsewhere provided to the contrary in this Declaration, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided in this Declaration with respect to termination of the Condominium.

#### **ARTICLE 5 OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS; SHARE OF COMMON EXPENSES; VOTING RIGHTS**

5.1 Percentage Ownership and Shares. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses and Shared Expenses is as set forth on Exhibit "F" attached to and made a part of this Declaration (the "**Allocated Interests**").

5.2 Voting. Each Unit shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the Articles of Incorporation and the By-Laws. Each Owner shall be a member of the Association.

#### **ARTICLE 6 AMENDMENTS**

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

6.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing two-thirds (2/3) or more of the voting interests of all Owners who are present at a meeting at which a quorum is present. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval or disapproval in writing; provided, however, that such approval or disapproval is delivered to the Secretary of the Association at or prior to the meeting.

6.2 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "**Material Amendment**"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by eighty percent (80%) or more of the voting interests of Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.

6.3 Mortgagee's Consent. No amendment may be adopted which would materially affect the rights or interests of Institutional First Mortgagees without their prior written consent, which shall not be unreasonably withheld, delayed or conditioned. It shall be presumed that, except as to those matters set forth in Sections 718.110(4) and 718.110(8) of the Act, amendments to the Declaration do not materially affect the rights or interests of Institutional First Mortgagees.

6.4 Water Management District. No amendment may be adopted which would affect the surface water management system, including environmental conservation areas, without the consent of the applicable water management district with jurisdiction over the Land (the "**District**"). The District shall determine whether the amendment necessitates a modification of the current surface water management permit. If a modification is necessary, the District will advise the Association.

6.5 By Declarant. Notwithstanding anything contained in this Declaration to the contrary, during the time Declarant has the right to elect a majority of the Board of Directors, the Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations of the Association may be amended by Declarant alone (joined in by Declarant's Mortgagee, if holding any mortgages secured by the Units and required by the terms of said mortgage instruments), without requiring the consent of any other party, to effect any change whatsoever, except a Material Amendment (which must be approved, if at all, in the manner provided in Section 6.2 of this Declaration). The unilateral amendment right set forth in this section of the Declaration shall include, without limitation, the right to correct scrivener's errors. Until such time as Declarant no longer holds Units for sale or lease in the ordinary course of business, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any business operations, rights, easements, benefits, privileges or priorities granted or reserved to Declarant, without the consent of Declarant in each instance. This provision may not be amended without consent of Declarant, which consent is in its sole discretion.

6.6 Amendment in the Nature of Correction. Whenever it shall appear that there is a defect, error or omission in this Declaration, the Articles of Incorporation, the By-Laws and/or the Rules and Regulations or in order to comply with applicable laws or requirements of governmental entities, the amendment may be adopted by the Board of Directors alone.

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

## **ARTICLE 7 MAINTENANCE AND REPAIRS**

7.1 Owner Maintenance. Except as otherwise provided in Section 7.2 and Section 7.3 of this Declaration, each Owner shall be responsible for, at such Owner's sole expense, all costs and expenses associated with all of the following items, to be installed and maintained as provided in this Declaration and the Hotel Declaration:

(a) General Maintenance. Except as otherwise provided in this Declaration or the Hotel Declaration, each Owner shall perform, at the Owner's sole cost and expense, all day-to-day cleaning, care, operation, maintenance, repairs and replacements of and to each Unit that he or she owns, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, the day-to-day cleaning, care, operation, maintenance, repair and replacement of all interior surfaces including all interior walls, which includes any finishes on the drywall (i.e., paint, wallpaper, etc.), which is part of the Unit and such finished interior surfaces of the drywall walls belongs to the respective Owner (provided, however, that Hotel Parcel Owner's consent shall be required prior to making any repairs, alterations or replacements to any interior structural wall or to any interior non-structural wall that contains pipes, conduits or other components that are Shared Facilities that serve more than one Unit), all window, wall and floor coverings within the Unit, all interior doors, all electrical (including fixtures, wires and outlets), plumbing (including pipes, fixtures and connections), heating and air-conditioning equipment within the Unit that serves just the Unit, all appliances within the Unit. In addition, each Owner shall be responsible for the day-to-day cleaning, care and maintenance of the following items which, although they may be Shared Facilities, exclusively serve his/her Unit: the interior surfaces and, if readily accessible from the Unit, exterior surfaces of all windows and sliding glass doors, the interior side of the main entrance door and all other doors leading to and from the Unit, any, if applicable, all balconies and terraces adjoining the Unit.

(b) Decorations. Subject to compliance with the obligations set forth in this Section 7.1 and the provisions of the Hotel Declaration, if any, each Owner shall be responsible for, at the Owner's sole cost and expense, all of the decorating within such Owner's Unit (initially and thereafter from time to time), including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Owner shall be entitled to the exclusive use of the interior surfaces of the common walls and the interior surfaces of the vertical perimeter walls, floors and ceiling of such Owner's Unit, and such Owner shall maintain such portions in good condition at such Owner's sole expense as may be required from time to time. The interior surfaces of all windows and sliding glass doors forming part of a perimeter wall of a Unit (and the exterior surfaces to the extent readily reachable) shall be cleaned or washed by and at the expense of each respective Owner. The use of and the covering of interior surfaces of such windows, whether by tinting, draperies, shades or other items visible from the exterior of the Building, and the use and furnishing of any balcony or terrace, shall be subject to the rules and regulations of the Hotel Parcel Owner pursuant to the Hotel Declaration. In order to promote a consistent exterior appearance, curtains or drapes (or linings thereof) which face the exterior

windows or glass doors of any Unit shall be off-white in color and shall be subject to disapproval by Hotel Parcel Owner, in which case they shall be removed and replaced with acceptable items. Notwithstanding the foregoing, Declarant will initially install in each Unit window treatments and/or backings which conform to the Standards, and each Owner shall thereafter be required to maintain and/or replace, as applicable, such window installations in substantially the same condition as initially installed by Declarant.

7.2 Common Elements and Association Property. Except as provided to the contrary in this Declaration, all maintenance, repairs and replacements of the Common Elements and Association Property shall be performed by the Association and the cost and expense thereof shall be charged to all Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Owners, in which case such cost and expense shall be paid solely by such Owners.

7.3 Hotel Parcel Owner Maintenance. Except as provided to the contrary in this Declaration or the Hotel Declaration, all maintenance, repairs and replacements of the Shared Facilities shall be performed by the Hotel Parcel Owner pursuant to the Hotel Declaration, and the Operation & Maintenance Assessment and expense thereof allocable to the Owners shall be charged to the Owners as a Shared Expense and not a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Owners, in which case such cost and expense shall be paid solely by such Owners.

7.4 Standards for Maintenance. Notwithstanding anything to the contrary in this Declaration, any and all maintenance obligations of either the Association or an Owner must be undertaken in such a manner to assure that the Association Property and Condominium Property, including each Unit and all portions of the Common Elements are kept in a condition that meets or exceeds the quality guidelines and standards of any Hotel operated from within the Hotel Parcel (as established and determined by the Hotel Parcel Owner from time to time (the "**Standards**").

7.5 Notice Obligation of Association. In the event that the Association believes that Declarant has failed in any respect to meet Declarant's obligations under this Declaration or has failed to comply with any of Declarant's obligations under law, or believes the Common Elements or Shared Facilities are defective in any respect, the Association shall give written notice to Declarant detailing the alleged failure or defect. The Association agrees that once the Association has given written notice to Declarant pursuant to this Section, the Association shall be obligated to permit Declarant and its agents to perform inspections of the Common Elements and Shared Facilities and to perform all tests and make all repairs/replacements deemed necessary by Declarant to respond to such notice at all reasonable times. The rights reserved in this Section include the right of Declarant to repair or address, at Declarant's sole option and expense, any aspect of the Common Elements and/or Shared Facilities during its inspections. The Association's failure to give the notice and/or otherwise comply with the provisions of this Section 7.5 will damage Declarant. At this time, it is impossible to determine the actual damages Declarant might suffer. Accordingly, if the Association fails to comply with its obligations under this Section in any respect, the Association shall pay to Declarant the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), as agreed-upon liquidated damages.

## **ARTICLE 8 ADDITIONS, ALTERATIONS OR IMPROVEMENTS**

### 8.1 Improvements, Additions or Alterations by Owners.

(a) No Owner (other than Declarant or the Association) shall make any addition, alteration or improvement in or to the Common Elements, the Association Property or such Owner's Unit (to the extent either (i) visible from any other Parcel or Unit, or the exterior of the Building, (ii) affecting the structural integrity of the Building, or (iii) affecting any electrical, mechanical, HVAC, plumbing, Life Safety System, monitoring, information and/or other systems of the Building) without the prior written approval of the Board of Directors. The Board of Directors shall have the obligation to answer, in writing, any written request by an Owner for approval of such an addition, alteration or improvement within sixty (60) days after such request and all additional information requested is received, and the failure to do so within the



stipulated time shall constitute the Board of Directors' consent. The Board of Directors shall have the right to establish restrictions on any and all persons performing work within the Condominium Property, including, without limitation, by (a) restricting the hours during which work may be performed and restricting access of contractors to certain areas, (b) requiring that all persons performing any work have all necessary licenses and permits to perform the work, (c) requiring that all persons performing any work have adequate insurance coverage and that the Association be a named additional insured on such policy(ies), and (d) requiring a security deposit or other collateral to protect against damage that may be caused during such work. The proposed additions, alterations and improvements by the Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise; including, but not limited to, the Standards. Once approved by the Board of Directors, such approval may not be revoked unless the Owner submitted materially false information in securing such approval or the Owner fails to comply with the terms of the approval and/or this Declaration in connection with such approval.

(b) Pursuant to the Hotel Declaration, neither the Association nor any Owner (other than Declarant) shall make any addition, alteration or improvement in or to the Common Elements, the Association Property or a Unit that may: (i) alter, modify, and/or otherwise affect the uniform exterior of the Building, the Shared Facilities and/or the Hotel Parcel (including, without limitation, any exterior lighting schemes and any exterior windows, doors and other exterior glass surfaces, operable or otherwise, accessible from any Unit or the Common Elements) or are or may be visible from the Shared Facilities, the Hotel Parcel, any other Parcel or the exterior of the Building; (ii) affect the structural integrity of the Hotel Parcel (or any other Parcel or Building); (iii) affect any electrical, mechanical, HVAC, plumbing, Life Safety Systems, monitoring, information or other systems of the Hotel Parcel or any bathroom or kitchen exhaust vents of the Units; in any such event without the prior written approval of Declarant (prior to Declarant selling all its Units to third parties) and thereafter the Hotel Parcel Owner, which approval may be withheld for any reason or for no reason whatsoever in the sole and absolute discretion of Declarant and the Hotel Parcel Owner; and which approval right shall include the right to review and approve any plans and/or specifications (and other construction and design documents) with respect to the proposed addition, alteration or improvement. Any such approval granted by Declarant or the Hotel Parcel Owner may be conditioned in any manner, including, without limitation, by (a) restricting the hours during which work may be performed and restricting access of contractors to certain areas; (b) requiring that all persons performing any alterations have all necessary licenses and permits to perform the work, (c) requiring that all persons performing any alterations have adequate insurance coverage and that Declarant and/or the Hotel Owner is a named additional insured on such policy(ies), and (d) requiring a security deposit or other collateral to protect against damage that may be caused during such alteration. Any additions, alterations and improvements approved hereunder shall be made in compliance with all laws, rules, ordinances, and regulations of all governmental authorities having jurisdiction, with the plans and specifications (and other construction and/or design documentation) approved by Declarant and/or the Hotel Parcel Owner hereunder, and with any conditions imposed by Declarant and/or the Hotel Parcel Owner, including but not limited to the Standards. Further, no alteration, addition or modification may in any manner affect any portion of the Shared Facilities, without the prior written consent of the Hotel Parcel Owner, as applicable (which consent may be withheld in its sole discretion).

(c) In addition to the foregoing, all additions, alterations and improvements proposed to be made by any Owner shall be subject to, and restricted by, the terms and conditions of the Hotel Declaration.

(d) An Owner making or causing to be made any additions, alterations or improvements set forth above in Sections 8.1 (a) and (b) of this Declaration agrees, and shall be deemed to have agreed, for such Owner, and his or her heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, Declarant, Hotel Parcel Owner and all other Owners, and their respective officers, directors, employees, managers, agents, contractors, consultants or attorneys, harmless from and to indemnify them for any liability or damage to any portions of the Condominium Property, the Association Property, the Parcels, and/or the Shared Facilities and expenses arising therefrom (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate

levels), 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, Declarant (so long as Declarant still owns a Unit) and the Hotel Parcel Owner. The Association's, Declarant's and the Hotel Parcel Owner's respective rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association, Declarant and the Hotel Parcel Owner, respectively. Neither Declarant, the Association, the Hotel Parcel Owner, nor any of their respective officers, directors, employees, managers, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans under this Declaration, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from Declarant, the Association, and/or the Hotel Parcel Owner, nor any of their respective officers, directors, employees, managers, agents, contractors, consultants or attorneys, arising out of the Association's review of any plans pursuant to this Declaration or the Hotel Declaration. Without limiting the generality of the foregoing, the Association, the Board of Directors, Declarant and Hotel Parcel Owner shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold Declarant, the Association, and the Hotel Parcel Owner and their respective officers, directors, employees, managers, agents, contractors, consultants and attorneys harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans pursuant to this Declaration.

(e) Certain Units shall be constructed and designed in accordance with the 2010 ADA Standards for Accessible Design ("2010 Standards") of the Americans With Disabilities Act of 1990 (ADA), and is designated on the Survey as a wheelchair accessible unit "the **HC Unit**". No HC Unit Owner shall make any addition, alteration or improvement in or to any HC Unit that may alter, modify, and/or otherwise affect the original construction and design of any HC Unit from remaining an approved wheelchair accessible HC Unit.

(f) The foregoing provisions of Section 8.1 shall not be applicable to the Hotel Parcel and/or to any Unit or portion of the Land owned by Declarant or the Hotel Parcel Owner.

8.2 Improvements, Additions or Alterations by Declarant. Notwithstanding anything in this ARTICLE 8 to the contrary, Declarant shall have the right, without the consent or approval of the Board of Directors or other Owners, but without obligation, to (a) make alterations, additions, and improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it or other portions of the Land owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Condominium Improvements or other improvements within the Land), and (b) expand, alter or add to all or any part of the recreational facilities. In making the above alterations, additions, and improvements, Declarant may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially and adversely affect the market value or ordinary use of Units owned by Owners other than Declarant. Any amendment to this Declaration required by a change made by Declarant pursuant to this Section 8.2 may be effected by Declarant alone pursuant to this Declaration of Condominium, without the vote or consent of the Association or Owners (or their respective mortgagees), except to the extent that the vote or consent of the Association or Owners is required under the provisions of Section 718.110(4) of the Act; provided, however, that the exercise of any right by Declarant pursuant to clause (b) above shall not be deemed a Material Amendment.

8.3 Amendment. The provisions of this ARTICLE 8 shall not be amended without (a) the affirmative vote of at least eighty percent (80%) of the total voting interests of Owners, (b) the consent of Declarant as long as it is the owner of any Unit, and (c) the consent of the Hotel Parcel Owner.

**ARTICLE 9**  
**OPERATION OF THE CONDOMINIUM BY THE ASSOCIATION: POWERS AND DUTIES**

9.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Common Elements and the Association Property, if any. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and the By-Laws, as amended from time to time. The affairs of the Association shall be governed by a Board of not less than three (3) nor more than five (5) directors. Directors must be natural persons who are 18 years of age or older. Any person who has been convicted of any felony by any court of record in the United States and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her residence is not eligible for Board membership (provided, however, that the validity of any Board action is not affected if it is later determined that a member of the Board is ineligible for Board membership due to having been convicted of a felony). In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

(a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to close hurricane shutters in the event of the issuance of a storm watch or storm warning.

(b) The power and duty to make and collect Assessments and other charges against Owners, and to lease, maintain, repair and replace the Common Elements and Association Property.

(c) The power and duty to collect (as collection agent on behalf, and at the request, of the Hotel Parcel Owner) from Owners the assessments and charges payable by the Owners to the Hotel Parcel Owner pursuant to the Hotel Declaration, including, without limitation, the Shared Expenses.

(d) The duty to maintain accounting records of the Association according to good accounting practices, which shall be open to inspection by Owners or their authorized representatives at reasonable times upon prior request.

(e) The power (but not the obligation) to enter into agreements with the Hotel Parcel Owner to acquire use rights for, or to provide services to, the Condominium and/or the Owners.

(f) The power (but not the obligation) to enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities (including, without limitation, the right to acquire from the Hotel Parcel Owner, if agreement is reached with the Hotel Parcel Owner, all or a portion of the Hotel Parcel or Shared Facilities), whether or not contiguous to the Condominium Property, provided they are intended to provide enjoyment, recreation or other use or benefit to the Owners. The rental, membership fees, operations, replacements and other expenses of such facilities shall be Common Expenses and the Board may impose covenants and restrictions concerning their use.

(g) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of Declarant, or may be the Hotel Parcel Owner or the operator of the Hotel) to assist the Association in carrying out its powers and duties by performing functions, including, without limitation, the submission of proposals, collection of Assessments, preparation of records, enforcement of Rules and Regulations and maintenance, repair, cleaning and replacement of Common Elements, with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in this Declaration, the By-Laws, the Articles of Incorporation and the Act, including, but not limited to, the making of Assessments, promulgation of Rules and Regulations subject to the provisions of Section 9.1 (i) below, and execution of contracts on behalf of the Association.

(h) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any.

(i) The power to adopt and amend the Rules and Regulations concerning the details of the operation and use of the Common Elements and the Association Property, if any. No such Rules and Regulations may restrict, limit or otherwise impair the rights of the Hotel Parcel Owner and/or Declarant without the prior written consent of the Hotel Parcel Owner and/or Declarant, as applicable.

(j) The power to acquire, convey, lease and encumber real and personal property including, without limitation, the power to acquire Units as a result of foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) upon the majority vote of the Board of Directors, regardless of the price for same and the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Owners. The expenses of acquisition, ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.

(k) If so applicable, the obligation (to the extent assigned or transferred to it by the Hotel Parcel Owner or Declarant) to (i) operate and maintain the surface water management system in accordance with the permit issued by the District, (ii) carry out, maintain, and monitor any required wetland mitigation tasks and (iii) maintain copies of all permitting actions with regard to the District, the costs of such obligations being a Common Expense.

(l) The power to execute all documents or consents, on behalf of all Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of an Owner by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.

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

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration, the Rules and Regulations, or the exhibits attached to this Declaration and the Hotel Declaration, the rules and regulations of the Hotel Parcel Owner, or otherwise, (i) the Hotel Declaration and the rules and regulations of the Hotel Parcel Owner shall take precedence over this Declaration, the Rules and Regulations, or the exhibits attached to this Declaration; (ii) this Declaration shall take precedence over the Articles of Incorporation, the By-Laws and the Rules and Regulations; (iii) the Articles of Incorporation shall take precedence over the By-Laws and the Rules and Regulations; and (iv) the By-Laws shall take precedence over Rules and Regulations, all as amended from time to time. Notwithstanding anything to the contrary in this Declaration, the Rules and Regulations, or the exhibits to this Declaration, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

9.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Owners or to any other person or entity 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, improvements or other activities done by or on behalf of any Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 8.1 of this Declaration. The Association also shall not be liable to any Owner or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain

or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required by this Declaration; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms. Nothing in this Declaration shall be deemed to relieve the Association of its duty to exercise ordinary care in the carrying out of its responsibilities or to deprive the Owners of their right to sue the Association if the Association negligently or willfully causes damage to the Owners' property during the performance of its duties.

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

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

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

9.6 Effect on Declarant. If Declarant holds a Unit for sale in the ordinary course of business, none of the following actions may be taken by the Association, subsequent to the transfer of control of the Board to Owners other than Declarant, without the prior written approval of Declarant:

(a) Assessment of Declarant as an Owner for capital improvements, including, without limitation, Capital Improvement Assets; or

(b) Any action by the Association that would be detrimental to the sales of Units by Declarant; provided, however, that an increase in Regular Periodic Assessments without discrimination against Declarant shall not be deemed to be detrimental to the sales of Units.

## **ARTICLE 10 DETERMINATION OF COMMON EXPENSES AND SHARED EXPENSES AND FIXING OF ASSESSMENTS THEREFOR**

The Board of Directors shall from time to time, and at least annually, prepare, or cause to be prepared, a budget for the Condominium and the Association, which is designed to adhere to the Standards and determine, or cause to be determined, the amount of Regular Periodic Assessments payable by the Owners to meet the Common Expenses and allocate and assess such Common Expenses among the Owners in accordance with the provisions of this Declaration and the By-Laws. Each Owner shall be liable for his or her share of all Common Expenses which shall be in the same percentage as his or her ownership of the Common Elements. The Board of Directors shall advise all Owners promptly in writing of the amount of the Regular Periodic Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the Association budget, on which such Regular Periodic Assessments are based, to all Owners and, if requested in writing, to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common Elements and Association Property, 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 of Incorporation, the By-Laws, applicable Rules and Regulations, or by the Association. Incidental income to the Association, if

any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any operating budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws. Shared Expenses shall be fixed by the Hotel Parcel Owner and charged and collected in accordance with the Hotel Declaration.

## ARTICLE 11 COLLECTION OF ASSESSMENTS

11.1 Liability for Assessments. The Association has been granted the right to make, levy and collect Assessments against the Owners to provide the funds necessary for proper operation and management of the Condominium. An Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while he or she is the Owner and shall be jointly and severally liable with the previous Owner(s) for all unpaid Assessments that came due up to the time of the transfer of title. This liability is without prejudice to any right the current Owner may have to recover from the previous Owner(s) the amounts paid by the current Owner to cover such prior unpaid Assessments. An Owner's 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 and/or Impositions are made or otherwise.

11.2 Special Assessments and Capital Improvement Assessments. In addition to Regular Periodic Assessments levied by the Association to meet the budgeted Common Expenses, the Board of Directors may levy "**Special Assessments**" and "**Capital Improvement Assessments**" upon the following terms and conditions:

(a) "**Special Assessment**" shall mean and refer to an assessment levied against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the annually adopted budget for the Association and are not in the nature of capital improvements.

(b) "**Capital Improvement Assessments**" shall mean and refer to an assessment levied against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property, if any, which are not in the annually adopted budget for the Association.

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 of Directors.

11.3 Effect of Non-Payment of Assessments, Liens; Remedies of Association. Assessments and installments thereof not paid within fifteen (15) days from the date when they are due shall bear interest at the lesser of eighteen percent (18%) per annum, or the highest interest rate permitted by applicable law, from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of Twenty-Five Dollars (\$25.00) or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel to secure the payment of: (a) Assessments levied against the Unit and Owner(s) thereof, and (b) interest, if any, which may become due on delinquent Assessments or charges owing to the Association, and (c) costs and expenses, including actual attorneys' fees and paraprofessional fees and costs (at the trial and appellate levels), which may be incurred by the Association in enforcing its lien upon the Condominium Parcel. The lien of the Association shall also secure all advances for taxes, payments on account of superior mortgages, liens or encumbrances made by the Association to preserve and protect its lien, together with interest at the highest rate permitted by law on all such advances made for such purpose. Such lien shall be evidenced by the recording of a valid claim of lien in the Public Records of the County that states the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due from the Owner and the due dates, and is executed and acknowledged by an authorized officer or agent of the Association (the

**“Claim of Lien”**). Except as set forth below, the Claim of Lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the Claim of Lien is effective from and after the date of the recording of the Claim of Lien in the Public Records of the County. 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 applicable law. No Claim of Lien shall be effective longer than one (1) year after the Claim of Lien has been recorded unless, within that one (1) year period, an action to enforce the Claim of Lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner or any other person claiming an interest in the Unit. The Claim of Lien shall secure (whether or not stated therein) all unpaid Assessments which are due and which may accrue subsequent to the recording of the Claim of Lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys’ fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the Claim of Lien in recordable form. The Association may bring an action in its name to foreclose a Claim of Lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any Claim of Lien. The Association is entitled to recover its reasonable attorneys’ fees incurred either in a Claim of 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 Owner and the recording of a Claim of Lien, the Association may declare the Assessment installments for the remainder of the budget year to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the remainder of the budget year, the Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

11.4 **Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Owner of its intention to foreclose its lien to collect the unpaid Assessments and/or charges. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments and/or charges, including those coming due after the Claim of Lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys’ fees or costs. The notice must be given by delivery of a copy of it to the Owner or by certified or registered mail, return receipt requested, addressed to the 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 Owner or a mailing address at which the 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 Owner records a Notice of Contest of Lien as provided in the Act.

11.5 **Appointment of Receiver to Collect Rental.** If the Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Owner to pay a reasonable rent for the Unit. Subject and subordinate to Hotel Parcel Owner’s rights pursuant to the Hotel Declaration, 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 shall be paid by the party which does not prevail in the foreclosure action.

11.6 **First Mortgagee.** Notwithstanding the foregoing provisions of this **ARTICLE 11**, the liability of a First Mortgagee or its successor or assignees who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the First Mortgagee’s acquisition of title is limited to the lesser of:

- (a) The Unit’s unpaid Common Expenses and Regular Periodic Assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or

- (b) One percent (1%) of the original mortgage debt.

The provisions of this Section 11.6 shall not apply unless the First Mortgagee joins the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the First Mortgagee.

The First Mortgagee or its successor or assignees acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a Claim of Lien against the Unit and proceed in the same manner as provided in this ARTICLE 11 for the collection of unpaid Assessments. A First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is occupied, be excused from the payment of Assessments coming due during the period of such ownership.

11.7 Certificate of Unpaid Assessments and/or Impositions. Within fifteen (15) days after a written request by an Owner or First Mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other monies owed to the Association with respect to that Unit. The Association may charge a reasonable fee for the preparation of such certificate.

11.8 Installments. Regular Periodic Assessments shall be collected monthly, in advance, at the option of the Association.

11.9 Application of Payments. Any payments received by the Association from any Owner shall be applied first to the payment of the Shared Expenses pursuant to the Hotel Declaration, including interest, late fees, collection costs and accelerated Shared Expense assessments (all to the extent not already paid in full by the Association and to the extent the Association shall be acting as the collection agent for the Hotel Parcel Owner), and thereafter to the payment of the following (in the following priorities) with respect to Assessments under this Declaration: (i) any interest accrued on the delinquent Assessment installment(s), (ii) then to any administrative late fees, (iii) then to any costs and reasonable attorneys' fees incurred in collection of such unpaid Assessments and fees, and (iv) then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

## **ARTICLE 12 INSURANCE**

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

### 12.1 Purchase, Custody and Payment.

(a) Purchase. All insurance policies described in this Declaration covering portions of the Condominium Property and the Association Property shall be purchased by the Association and shall be issued by either an insurance company authorized to do business in the State of Florida or by reputable surplus lines carriers offering policies for properties located in the State of Florida. Owners shall obtain liability insurance and property insurance covering all items required to be carried by Florida Statutes 718.111(ii), including all cabinetry and other fixtures within such Owner's Unit as well as personal property therein.

(b) Approval. Due to the integrated nature of the Hotel Parcel and Condominium Property, each insurance policy, including the agency and company issuing the policy, shall be subject to the prior approval of the Hotel Parcel Owner.

(c) Named Insured. The named insured shall be the Association, individually, and as agent for the Owners covered by the policy, without naming them, and as agent for the holders of any



mortgage on a Unit, without naming them. The Owners, the holders of any mortgage on a Unit, the Hotel Parcel Owner and the Association's managing entity (if any) shall be additional insureds.

(d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Hotel Parcel Owner and that all policies and endorsements shall be deposited with the Hotel Parcel Owner.

(e) Copies to Mortgagees and Hotel Parcel Owner. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Hotel Parcel Owner to the Association and, upon request, to the holder of any mortgage on a Unit. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

12.2 Coverage. The Association shall use its best efforts to obtain and maintain insurance covering the following, to the extent applicable considering that many parts of the Building and related equipment and facilities that are traditionally part of the units or common elements in many condominiums are instead Shared Facilities in this Project that are part of the Hotel Parcel and will be insured by the Hotel Parcel Owner pursuant to the terms of the Hotel Declaration:

(a) Liability. The Association shall obtain and maintain commercial general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences for which it may be liable, with such coverage amounts as shall be required by the Board of Directors, but with a minimum single limit of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The Association may obtain directors and officers insurance, if desired and/or required under the Act, covering all directors, officers and employees of the Association, for claims arising out of their alleged "wrongful acts."

(b) Workers' Compensation. The Association shall obtain and maintain workers' compensation insurance, including employer's liability, and other mandatory insurance to the extent applicable in amounts at least equal to the minimum statutory amounts or, if applicable, other greater amounts required by the Hotel Declaration.

(c) Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign Association checks and the President, Secretary and Treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board of Directors, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.

(d) Association Property. The Association may obtain and maintain appropriate additional policy provisions, policies, or endorsements extending the applicable portions of the insurance coverage described above to all Association Property, where such coverage is available and the Board of Directors determines it to be desirable.

(e) Other Insurance. The Association may obtain and maintain such other insurance as the Board of Directors 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 subrogation against the Association, the Hotel Parcel Owner, and against the Owners individually and as a group (and their respective employees and agents). To the extent obtainable, all policies of insurance shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to all of the named insureds and additional insureds.

12.3 Premiums. Premiums for insurance purchased by the Association pursuant to this Declaration may be financed in such manner as the Board of Directors deems appropriate.

12.4 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner and for each holder 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 such claims.

12.5 Owners' Personal Coverage. Owners are required to obtain insurance coverage at their own expense for the property lying within the boundaries of their Unit, including, but not limited to, their personal property, fixtures, appliances, air conditioning and heating equipment, water heaters and built-in cabinets. Owners must also obtain liability insurance in an amount equal to a minimum of five hundred thousand dollars (\$500,000) for each occurrence. Insurance policies must include a short term rental endorsement that covers nightly rentals. Unless the Association elects otherwise, the insurance purchased by the Association pursuant to this Declaration shall not cover claims against an Owner due to accidents occurring within his or her Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Owner, if such Owner so desires, to purchase and pay for insurance as to all such other risks not covered by insurance carried by the Association.

12.6 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property is part of the Condominium Property or the Hotel Parcel, such property shall be presumed to be part of the Hotel Parcel, unless otherwise determined by the Hotel Parcel Owner.

12.7 Effect on Association. Declarant and Association hereby acknowledge that many parts of the Building and related equipment and facilities that are traditionally part of the units or common elements in many condominiums are instead Shared Facilities that are part of the Hotel Parcel and will be insured by the Hotel Parcel Owner pursuant to the terms of the Hotel Declaration. Consequently, Declarant does not anticipate the Association being required to purchase a significant amount of insurance, if any, for the Condominium or the Common Elements since there will be relatively few physical improvements (if any) that are insurable. To the extent that the Association is required to maintain insurance coverages and policies pursuant to the express requirements of this Declaration or the Act, then as to any claims made under such insurance policies, the distribution and application of proceeds from such claims shall be governed by the terms of this Declaration. To the extent the Hotel Parcel Owner maintains insurance coverages and policies pursuant to the Hotel Declaration with respect to the Hotel Parcel (including Shared Facilities), as to any claims made by the Hotel Parcel Owner under such insurance policies, the distribution and application of proceeds from such claims shall be governed by the terms of the Hotel Declaration.

12.8 "Blanket" Insurance. Rather than purchase individual policies, the requirements of this ARTICLE 12 may be met by the Association (individually, and as agent for the Owners without naming them, and as agent for the holders of any mortgage on a Unit without naming them) being included as an insured party under any coverage carried by Declarant or Hotel Parcel Owner, as long as such coverage is in accordance with the amounts and other standards provided in this ARTICLE 12.

12.9 Mandatory Insurance Program. If either the Association or the Hotel Parcel Owner obtains insurance coverage for (i) the property lying within the boundaries of the Units and all contents within the interior of the Units, including, but not limited to, personal property, fixtures, appliances, air conditioning and heating equipment, water heaters and built-in cabinets; and (ii) commercial general public liability and automobile liability insurance(if applicable) (as set forth in Section 12.2 of this Declaration), such insurance policy will be a mandatory insurance program that all Owners will be bound by and all costs for the premiums thereof shall be either a Common Expense of the Association or a Shared Expense assessed by the Hotel Parcel Owner.

### **ARTICLE 13 RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY**

13.1 Determination to Reconstruct or Repair. In the event of damage to or destruction of the Building as a result of fire or other casualty, the Building shall not be repaired and/or restored unless a determination has been made in accordance with ARTICLE VIII of the Hotel Declaration that the Shared Facilities shall be repaired or restored. If a determination is made in accordance with ARTICLE VIII of the Hotel Declaration that the Shared Facilities shall be repaired or restored, the Unit Owners shall arrange for the prompt repair and restoration of their respective Units as soon as the Hotel Parcel Owner confirms that the repairs to the Hotel Parcel and other portions of the Building have progressed to the point where the Unit Owners can commence repairs to their respective Units. The Unit Owners shall repair their respective Units in accordance with any guidelines established by the Hotel Parcel Owner regarding restoration and repairs to the Building. In the event no repairs or restorations to the damaged property will be made, the Condominium Property shall be subject to an action for partition instituted by the Association, any Owner, mortgagee or lienor, as if the Condominium Property were owned in common.

13.2 Plans and Specifications. Any reconstruction or repair to the damaged Units must be made substantially in accordance with the plans and specifications for the original Condominium Improvements; or if not, then in accordance with the plans and specifications for such property approved by the Board of Directors and Hotel Parcel Owner, and in accordance with the then-applicable building code and other codes.

13.3 Reconstruction Responsibility of Owners. If damage is to those parts of the Condominium Property for which the responsibility of insurance is that of the respective Owners (i.e. damage to the Units), then the Owner of such damaged property shall be responsible for all necessary reconstruction and repairs, which shall be effected promptly and in accordance with the guidelines established by the Hotel Parcel Owner and Board of Directors. An Owner shall be required to reconstruct a damaged Unit (or any other damaged Condominium Property over which it has insurance responsibilities) unless a determination has been made under ARTICLE VIII of the Hotel Declaration that the Shared Facilities will not be repaired or restored.

13.4 Water Damage. In the event of water damage each Owner is responsible for drying out the cabinetry and other fixtures and personal property located within his or her Unit. In the event an Owner fails to perform such work in a timely manner, the Hotel Parcel Owner may do so and charge the Owner for the cost thereof. The Hotel Parcel Owner is responsible for drying out the other portions of the Unit in the event of water damage and must take prompt action in that regard to preserve the integrity of the Building.

13.5 Emergency. The Hotel Parcel Owner has the right to enter a Unit in the event of an emergency such as a water leak in the event damage is suspected.

## **ARTICLE 14 CONDEMNATION**

14.1 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged Building will be reconstructed and repaired after casualty, as set forth in Section 13.1 of this Declaration. For this purpose, the taking by eminent domain also shall be deemed to be a casualty in accordance with ARTICLE 13.

14.2 Disbursement of Funds. If the Condominium is not to be repaired or reconstructed after condemnation, the proceeds of the awards with respect to the taking of the Condominium Property will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this Declaration with respect to the ownership and distribution of insurance proceeds if the Condominium is not to be repaired or reconstructed after a casualty. If the Condominium is to be repaired or reconstructed after condemnation, the size of the Condominium will be reduced and the Condominium Property damaged by the taking will be made usable in the manner provided below. The proceeds of awards with respect to the taking of the Condominium Property shall be used for these purposes and shall be disbursed in the manner

provided in this Declaration for disbursement of funds after a casualty, or as elsewhere provided in this ARTICLE 14.

14.3 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable in accordance with the Standards (in the sole opinion of the Hotel Parcel Owner), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium and this Declaration:

(a) Restoration of Unit. The Unit (and the Shared Facilities and/or Common Elements with respect thereto) shall be made habitable in accordance with the Standards. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and paid by the applicable Owner.

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

(c) Adjustment of Allocated Interest. If the floor area of the Unit is reduced by the taking, the Unit's Allocated Interest 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 respective Allocated Interests of all Owners in the Common Elements, Common Expenses, Common Surplus and the Shared Expenses shall then be restated as follows:

(i) the respective square feet of each Unit after reduction by virtue of any taking as aforesaid; and

(ii) divide such amount by the total square feet of all Units after reduction by virtue of such taking.

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

14.4 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable in accordance with the Standards (in the sole opinion of the Hotel Parcel Owner), 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 and this Declaration:

(a) Payment of Award. The awards shall be paid first to the applicable First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not habitable in accordance with the Standards; second, to the Hotel Parcel Owner for any due and unpaid Shared Expenses with respect to each such Unit; third, to the Association for any due and unpaid Assessments with respect to each such Unit; fourth, jointly to the affected 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 or Shared Facilities (as applicable and as determined by the Hotel Parcel Owner).

(b) Addition to Common Elements and/or Shared Facilities. The remaining portion of the uninhabitable Unit, if any, shall become part of the Common Elements or Shared Facilities (as determined by the Hotel Parcel Owner consistent with the Hotel Declaration) and shall be placed in a condition allowing, to the extent possible, for use by all of the Owners in the manner approved by the Hotel Parcel Owner; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, the cost of such work exceeding the taking award shall be assessed as a Common Expense or Shared Expense (as applicable) to the remaining Owners.

(c) Adjustment of Shares. The shares in the Common Elements, Common Expenses, Common Surplus and Shared Expenses appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses, Common Surplus and Shared Expenses among the reduced number of Owners (and among reduced Units). The respective Allocated Interests of all Owners in the Common Elements, Common Expenses, Common Surplus and Shared Expenses shall then be restated as follows:

- (1) the respective square feet of each Unit after reduction by virtue of any taking as aforesaid; and
- (2) divide such amount by the total square feet of all Units after reduction by virtue of such taking.

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

(d) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and mortgagees of the Unit and the Hotel Parcel Owner within sixty (60) 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 Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable Allocated Interest of such Owners as they exist prior to the adjustments to such Allocated Interests effected pursuant hereto by reason of the taking.

14.5 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 and the Hotel Parcel Owner; 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 Owners in the shares in which they own the Common Elements after adjustments to those shares effected pursuant to this Declaration by reason of the taking. If there is a first mortgage on a Unit, the distribution shall be paid jointly to the Owner and the First Mortgagee of the Unit.

14.6 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 that is only required to be approved by, and executed upon the direction of, a majority of the members of the Board of Directors and by the Hotel Parcel Owner.

## **ARTICLE 15 OCCUPANCY AND USE RESTRICTIONS**

In order to provide for congenial occupancy of the Condominium and Association 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 Rules and Regulations and the following provisions:

15.1 Occupancy. Each Unit shall be used only in accordance with all applicable County and State codes, ordinances and regulations and the approvals and permits issued for the Improvements, and for no other purpose. As of the date of this Declaration, the County has imposed the following restriction on occupancy pursuant to Section 38 of the Orange County Zoning Code: "Length of stay under the rental

or lease arrangement shall not exceed one hundred seventy-nine (179) days.” Although not expressed, that restriction means one hundred seventy-nine (179) consecutive days.

The County has the right to modify the above resolution or adopt new or modified regulations, statutes and resolutions, which may impose additional requirements on Owners and/or the Building, including, but not limited to, the Condominium. The County may also modify the limit on the maximum occupancy period permitted by Owners. Each Owner agrees to comply with any such modifications. The rights of Owners to use the Shared Facilities shall be limited to the extent granted in, and subject to the restrictions of this Declaration and the obligation for payment of the assessments and charges as set forth in ARTICLE 10 of this Declaration (provided, however, that in no event shall an Owner be denied access to and from the Owner’s Unit). It is contemplated (but without creating an obligation whatsoever) that in addition to use as a typical hallway for pedestrian passage, the Hotel Parcel may be utilized by the Hotel Parcel Owner in such a manner as to provide, or cause to be provided, certain hotel-related services to Owners, all of which shall be subject to rules, regulations and/or conditions as may be established by the Hotel Parcel Owner from time to time by the Hotel Parcel Owner. The Hotel Parcel Owner is not required to provide any hotel related services, but if it determines to do so, in its sole discretion, it may condition the provisions of such services in any manner it so desires.

The Hotel Parcel Owner reserves the right to charge a fee to any Owner who enters into a contract with a third party to manage or maintain such owner’s Unit. The purpose of such fee is to cover the costs incurred by the Hotel Parcel Owner in coordinating access to such Unit over the Hotel Parcel and helping to offset the cost of providing security by overseeing access to the Unit by workers of such third party. The initial fee charged to each Unit shall be One Hundred Dollars (\$100.00) per annum for each third party but the Hotel Parcel Owner reserves the right to increase such fee by three percent (3%) per annum on a cumulative basis. All persons and entities employed by Owners must be properly licensed and insured and provide evidence of same to the Hotel Parcel Owner.

15.2 Pet Restrictions. Unless otherwise consented to by the Hotel Parcel Owner, not more than one (1) domesticated pet (either a dog or a cat) may be maintained in a Unit provided such pet: (a) does not, at maturity, weigh in excess of fifteen (15) pounds, (b) is permitted to be so kept by applicable laws and regulations, (c) is not kept, bred or maintained for any commercial purpose, (d) do not become a nuisance or annoyance to neighbors, and (e) is not a breed considered to be dangerous or a nuisance by the Hotel Parcel Owner (in its sole and absolute discretion); provided that neither the Hotel Parcel Owner, the Board of Directors, Declarant, nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any Occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Hotel Parcel Owner, the Board, Declarant, each Owner and the Association in such regard. No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). All pets (including cats) must be kept on a leash of a length that affords reasonable control over the pet at all times when outside the Unit. No pets may be kept on the balcony of a Unit when the Owner is not in his or her Unit. Pets must be held by someone when taken in any elevators in the Condominium. This Section shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that a bird(s) is not kept on a balcony or becomes a nuisance or annoyance to neighbors.

Pets are permitted on the Hotel Parcel and within the Shared Facilities, but must be kept on a leash of a length that affords reasonable control over the pet at all times.

Pets shall not be left unattended in any Unit or within any part of the Shared Facilities and Hotel Parcel. If a pet becomes a nuisance by barking or otherwise, the pet owner thereof must cause the problem to be corrected; or, if it is not corrected, the pet owner, upon notice by the Association and/or Hotel Parcel Owner, will be required to permanently remove the pet from the Unit, Shared Facilities and Hotel Parcel. The Association and/or Hotel Parcel Owner retains the right to terminate the occupancy of the guest or owner of such pet. All pets must be registered, licensed and inoculated as required by law.

Trained seeing-eye dogs will be permitted for those persons holding certificates of blindness and necessity. Other assistance/support animals will be permitted if such animals serve as physical aides to handicapped persons and such animals have been trained or provided by an agency or service qualified to

provide such animals. The guide or assistance animal will be kept in direct custody of the assisted person or the qualified person training the animal at all times when on the Hotel Parcel and the animal shall wear and be controlled by a harness or orange-colored leash and collar.

A pet owner shall immediately pick up and remove any solid animal waste deposited by his or her pet, including but not limited to, within and surrounding any designated dog walk area (if applicable) and dispose of such animal waste appropriately. .

Any landscaping damage or other damage to the Shared Facilities or Hotel Parcel caused by a pet must be promptly repaired by the owner of such pet. The Hotel Parcel Owner retains the right to effect said repairs and charge the Owner therefor. An Owner shall be responsible for the payment of repair costs to Hotel Parcel Owner for any damages caused by his or her pet and, for any damages caused by a pet belonging to such Owner's guests, invitees, employees and/or occupants.

Under no circumstances will any dog whose breed is noted for its viciousness or ill-temper, in particular, the "Pit Bull" (as hereinafter defined), Rottweiler, Mastiff, Presa Canario, or any crossbreeds of such breeds, be permitted in any Unit, within the Shared Facilities or on any portion of the Hotel Parcel. A "Pit Bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying a majority of the physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds.

Violation of the provisions of this Section 15.2 shall entitle the Association and/or the Hotel Parcel Owner to all of its rights and remedies, including, but not limited to, the right to (i) fine Owners, as provided in any applicable provisions in this Declaration and/or in the Hotel Parcel Declaration; and/or (ii) to require any pet to be permanently removed from the Unit, Condominium Property, Hotel Parcel and Shared Facilities.

The Hotel Parcel Owner may promulgate additional rules and regulations from time to time designating other rules as necessary to regulate pets within the Units, Shared Facilities and Hotel Parcel.

Each Owner agrees to underwrite the cost of necessary exterminator measures in the Owner's Unit if Owner's or if Occupant's pet is responsible for the infestation of the Building or portions thereof.

15.3 Alterations. No Owner shall cause or allow improvements or changes to any Unit, Shared Facilities, Common Elements or Association Property, including, but not limited to, painting or other decoration of any nature, installing any electrical wiring, television antenna, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of said Unit, without obtaining the prior written consent of the Association (as to the Common Elements only) or the Hotel Parcel Owner (as to all other portions of the Condominium Property). Further, any Unit which is built out for handicap accessibility and/or compliance with applicable disability requirement of County, State or Federal law, must be maintained in that condition and cannot be altered. Additionally, curtains or drapes (or linings thereof) which face the exterior windows or glass doors of Units shall be consistent with the standard adopted from time to time by the Hotel Parcel Owner.

15.4 Mitigation of Dampness and Humidity. No Owner shall install, within his or her Unit, or upon the Common Elements or Association Property or upon any other Parcel within the Building, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Owners, whether or not occupying the Unit, shall run the air conditioning system to maintain the ambient air temperature within the Unit at all times, whether or not occupied, at 78°F to minimize humidity in the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. Declarant does not make any representations or warranties regarding the existence or development of molds or mycotoxins and each Owner shall be deemed to waive

and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. In furtherance of the foregoing, in the event that the Association and/or the Hotel Parcel Owner reasonably believe that the provisions of this Section 15.4 are not being complied with, then, the Association and/or the Hotel Parcel Owner shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Owner or any other party) to turn on the air conditioning in an effort to cause the ambient air temperature within the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Owner). (See ARTICLE 7 of this Declaration).

15.5 Nuisances. No nuisances (as defined by the Hotel Parcel Owner) shall be allowed on the Condominium Property or Association Property, nor shall any use or practice be allowed which is a source of annoyance to Occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property and/or Association Property by its residents, Occupants or members. No activity specifically permitted by this Declaration, including, without limitation, actions, activities or businesses conducted from the Hotel Parcel, shall be deemed a nuisance.

Each Owner, by acceptance of a deed or other conveyance of a Unit shall be deemed to understand and agree that in as much as hotel operations are intended to be conducted from the Condominium Property, noise and/or other disruptions may occur. By acquiring a Unit, each Owner, for as much Owner and its guests and invitees, and its and their successors and/or assigns, agrees not to object to the operations of the hotel, which may include, noise, disruptions and the playing of music outdoors, and hereby agrees to release Declarant, Hotel Parcel Owner, and any hotel operator from any and all claims for damages, liabilities and/or losses suffered as a result of the existence of the hotel and the operations from same, and the noises and disruptions resulting therefrom.

15.6 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction, relating to any portion of the Condominium Property and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property. Nothing shall be done or kept in any Unit, in or on the Common Elements, or any portion thereof, or any other portion of the Building, which would result in the cancellation of the insurance on all or any part of the Condominium Property and/or the Building or an increase in the rate of the insurance on all or any part of the Condominium Property and/or the Building over what the Association and/or the Hotel Parcel Owner, but for such activity, would pay, without the prior written approval of the Association and/or the Hotel Parcel Owner, as applicable. No activity specifically permitted by this Declaration, including, without limitation, actions, activities or businesses conducted from the Hotel Parcel, or Condo-Hotel Parcel shall be deemed an improper use, except to the extent so determined by the Hotel Parcel Owner.

15.7 Weight and Sound Restriction. Hard and/or heavy surface floor coverings, including, without limitation, tile or wood, may not be installed in any part of a Unit other than the kitchen and bathroom(s), without the consent of the Hotel Parcel Owner. The Hotel Parcel Owner shall not approve the installation of any hard and/or heavy surface floor coverings (for which approval is required) unless the aggregate sound isolation and acoustical treatment carries a minimum Sound Transmission Classification (STC) of 48 and a minimum Impact Isolation Classification (IIC) of 46. The installation of the foregoing insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the building structure, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Unit being occupied. The installation of any improvement or heavy object must be submitted to and approved by the Hotel Parcel Owner, and be compatible with the overall structural design of the building. Floor covering may not be installed on the balconies adjacent to Units. The Hotel Parcel Owner may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Hotel Parcel Owner has the right to require immediate removal of violations. Each Owner is hereby advised that sound transmission in a high-rise building such as the Building is very difficult to control, and that noises from adjoining or nearby Units and or mechanical equipment can often



be heard in another Unit. Declarant does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and/or from elevators or mechanical equipment, and each purchaser hereby waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.

15.8 Access to Units. The Owners shall have access to their Units only through an access system developed and controlled by the Hotel Parcel Owner. It is not contemplated that access would be provided by keys and therefor Owners will only have access to their Units by obtaining the access mechanism from the Hotel Operator at check-in. Proper identification will be required at check-in. The Hotel Parcel Owner shall have the right to adopt reasonable regulations from time to time regarding access control and check-in, check-out procedures which shall be applicable to hotel guests, occupants, guests and Owners. No Owner may modify or replace the any portion of the access mechanism or alter any portion of the exterior door of his or her Unit. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Hotel Parcel Owner has the right to require immediate removal of violations with all related removal and repair costs to be at such Owner's sole expense, including all costs related to restoring the access mechanism and/or exterior door to the original condition provided by Hotel Parcel Owner. If an Owner does not immediately cure any such violations, the Hotel Parcel Owner retains the right to effect said removal and repairs and charge the Owner therefor. Said Owner shall also be responsible for the payment of all repair costs to Hotel Parcel Owner for any damages by such violations.

15.9 Exterior Improvements. No Owner shall cause anything to be affixed or attached to, hung, displayed, placed or maintained on the exterior walls, doors, balconies, terraces or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Hotel Parcel Owner (which may be withheld in its sole and absolute discretion. (See Article VIII of the Hotel Declaration and Section 7 of this Declaration).

15.10 Restrictions on Occupancy.

(a) In no event shall the total number of occupants in a Unit exceed two (2) persons per bedroom plus two (2) at any one time, notwithstanding that the Unit may be owned by more than that number of individuals.

(b) Because of the zoning applicable to the Property, the maximum number of days that any person may occupy a Unit shall not exceed one hundred seventy-nine (179) consecutive days in any calendar year.

15.11 Shared Facilities. Use of Shared Facilities is restricted and controlled in various ways. (Refer to the Hotel Declaration).

15.12 Parking. All vehicle parking shall be subject to the procedures, rules and regulations adopted from time to time by the Hotel Parcel Owner. Valet parking service may be required by the Hotel Parcel Owner for the use of the Owners in common with the owners and users (and their respective guests and invitees) of all other Parcels, including, without limitation, the guests and invitees of the Hotel and the Owners. Valet charges will be payable directly to the Hotel Parcel Owner or its designee.

15.13 Open House. No person shall be permitted to have an "open house", a "broker's open" or host any other event intended to attract multiple prospects at a single time, in connection with any attempt to sell a Unit.

15.14 Relief. The Hotel Parcel Owner shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this ARTICLE 15 for good cause shown.

15.15 Standards. The Building (as such term is subsequently defined), including, without limitation, the Condominium Property (as such term is subsequently defined), is subject to the Hotel Declaration. The Hotel Declaration and this Declaration require that all of the Units and Common Elements

be owned, operated and maintained in accordance with the luxury standards of any hotel operated within the Hotel Parcel, as determined by the Hotel Parcel Owner (the "**Standards**"). Declarant has no ability to assure and does not guarantee, represent or warrant that: (i) the Hotel will operate at all times in compliance with the Standards; or (ii) that any particular Hotel Operator, if any, will operate the Hotel for any period of time. NO OWNER SHALL HAVE ANY CLAIM AGAINST DECLARANT FOR ANY MATTER RELATED TO THE FOREGOING MATTERS, NOR SHALL ANY OF THE FOREGOING MATTERS BE, OR BE DEEMED OR CONSTRUED TO BE, MATERIAL AND ADVERSE TO AN OWNER.

15.16 **FF&E**. In accordance with each Owner's purchase agreement with Declarant, Declarant shall initially provide the furniture and install fixtures and décor (collectively, "**FF&E**") in each Unit which will meet or exceed the Standards.

15.17 **Basic Hotel Services**. The Hotel Parcel Owner may from time to time provide certain Hotel related services to the Units and Owners from time to time (the "Hotel Services", as defined in the Hotel Declaration) and the Owners will pay to the Hotel Parcel Owner all fees, costs and charges associated with the Hotel Services as part of the Shared Expenses and Resort Subsidy Charge as assigned and set forth in the Hotel Declaration. The Hotel Parcel Owner may change, add, limit, alter, eliminate, expand or modify the types or categories of Hotel Services in its discretion. No Owner shall have the right to opt out of receiving Hotel Services or the fees, costs or charges to be paid for such Hotel Services. As of the date of this Declaration, Declarant anticipates that the following services will be included as part of the Hotel Services: (a) bellhop service to transport baggage and packages to and from the Units and others; (b) doormen/concierge service; (c) transportation and limousine service, which may also be subject to a per use charge as established from time to time by the Hotel Parcel Owner; and (d) front desk service. Hotel Services will either be Shared Expenses or Hotel Parcel Owner may require payment of all or any portion of Hotel Services upon checkout from the Unit. The Hotel Parcel Owner may change, add, limit, alter, eliminate, expand or modify the types or categories of Hotel Services in its discretion. No Owner shall have the right to opt out of receiving Hotel Services or the fees, costs or charges to be paid for such Hotel Services.

Further, Declarant anticipates that front desk and Unit access service will be provided. The Hotel Parcel Owner may provide staff that will be on duty at the reception desk in the Hotel lobby to handle registration and issue room keys. For security purposes, each Occupant of a Unit, including an Owner, an employee, guest or relative of an Owner, must register with the front desk upon commencing any occupancy of a Unit and provide either (i) a valid state issued driver's license with photo identification; and/or (ii) a valid state issued identification card with photo identification. Such Occupant may be issued an encoded room key at that time (or, to the extent that an Owner or employee, guest or relative of such Owner has its own encoded room key, such encoded room key will be activated or reactivated, as the case may be, at such time). Each Unit may contain an electronic door lock system which may be opened with an encoded room key issued by the front desk to the Occupants of the Units at the time of arrival and check-in. Such encoded room keys will be able to access only the applicable Unit during the period of stay in such Unit. Similar encoded room keys may also be issued to selected hotel service personnel who may be servicing the Units.

All telephone charges reflected on the Hotel Parcel Owner's Telephone System (as defined herein) incurred by an Occupant of a Unit, including an Owner, employee, guest or relative of an Owner, will be levied against such respective Owner's Unit as a Special Assessment.

15.18 **Telephone and Telecommunications Service**. Each Unit has been equipped with at least one outlet activated for connection to the telecommunication system serving the Building with respect to internet connection, cable television, premium programming, Building services and/or pay per view services (as determined from time to time by the Hotel Parcel Owner in its sole discretion) (the system and including the outlet(s), the "**Telecommunications System**"), which Telecommunications System are Shared Facilities of the Hotel Parcel and the cost of basic services provided therefrom shall be a part of the Shared Expense assessment against all of the Units. Notwithstanding anything to the contrary contained herein, the Hotel Parcel Owner may assess the Owner(s) on a per use basis with respect to its Unit's use of internet, premium programming and pay per view services based on such rates as Hotel Parcel Owner may establish from time to time in its discretion.

Each Unit will have an active connection to the telephone system serving the Building, which system provides for telephone operator service, assistance with incoming calls, routing, message service, wake-up call service, room service connections and/or outside operator connections (as determined from time to time by the Hotel Parcel Owner in its sole discretion) (the "**Telephone System**"). The Telephone System is a Shared Facility of the Hotel Parcel and the cost of basic services provided therefrom shall be charged by the Hotel Parcel Owner as a part of the Shared Expense assessments charged to all of the Units. Notwithstanding anything to the contrary contained herein, the Hotel Parcel Owner may assess the Owner(s) on a per use basis with respect its Unit's use of local and long-distance telephones service made through the Telephone System based on such rates as Hotel Parcel Owner may establish from time to time in its discretion.

Additional outlets for connection to the Telecommunication System are obtainable only from the Hotel Parcel Owner and may be installed only by the Hotel Parcel Owner subject to the payment of any required fees. Occupants are prohibited from making any modifications to or tampering with, and from making any connections to, the Telecommunication System without the prior written consent of the Hotel Parcel Owner, and the Hotel Parcel Owner may charge any Owner with the cost of locating and removing any unauthorized connections thereto and or repairing any modifications thereto.

**15.19 General Provisions Concerning Services and Facilities.** In all likelihood, the nature, type and extent of the services to be provided by the Hotel Parcel Owner, the hours during which they are provided and the rates charged for same will change from time to time, in the discretion of the Hotel Parcel Owner or other party providing the service. None of Declarant, the Hotel Parcel Owner, the Association or the Board of Directors (or any of their respective members, managers, partners, directors, officers, agents or employees) will in any event be liable for the availability, interruption, change, discontinuance, elimination or quality of any of such services, including, but not limited to, any services provided by any outside company or person or for any injury to person or damage to property resulting from any act or omission of such company or persons or their employees or agents, except to the extent that any such injury or damage occurs as a result of the respective gross negligence or willful misconduct of Declarant, the Hotel Parcel Owner, the Association or the Board of Directors, as the case may be. Each Owner acknowledges, by the receipt of its deed, that there may or may not be a Hotel Operator or manager and that Declarant makes no representations as to (a) whether there will be a Hotel manager or operator, (b) the terms or duration of any Hotel operating or management agreement, (c) the branch or chain name, if any, of the Hotel, and (d) the amount of any management fee.

**15.20 Third Party Vendors and Service Providers.** Except for certain services provided by the Hotel Parcel Owner pursuant to the Hotel Declaration, an Owner may contract with third parties to provide services and/or goods to the Owner's Unit provided that such services and/or goods comply with the Standards, the Hotel Declaration and the reasonable requirements of the Hotel Parcel Owner. The Hotel Parcel Owner shall have the right, in its sole and absolute discretion, to establish reasonable regulations from time to time with respect to the provision of services and goods by third party providers, including, but not limited to, solicitation and/or provision of housekeeping, personal services (including, without limitation, massage, personal training, dry cleaning, etc.) and/or food and beverage service, to the Condominium, the Owners, and their guests and invitees. Such rules, restrictions and requirements shall be adhered to by any and all third party persons providing services and/or goods to the Units, and may include, among others, restrictions and rules that (i) require any third party persons providing services and goods be attired in a fashion consistent with the Standards (as subsequently defined); (ii) restrict the hours during which services and goods may be provided; (iii) require any third party persons providing services and goods to check in with the Hotel Parcel Owner prior to the commencement of any service; (iv) restrict access of third party providers to certain areas, (v) require that all third party persons undergo background checks and security clearances and complete any service training programs of the Hotel Parcel Owner, (vi) require any third party providers to maintain all necessary licenses and permits to perform the service, (vii) require any third party providers to have adequate insurance coverage and that the Association and Hotel Parcel Owner be a named additional insured on such policy(ies), as may be determined by the Hotel Parcel Owner, and (viii) require a security deposit or other collateral to protect against damage that may be caused during such services.

15.21 Effect on Declarant. Subject to the following exceptions, the restrictions and limitations set forth in this ARTICLE 15 shall not apply to Declarant nor the Units owned by Declarant. Declarant shall not be exempt from the restrictions, if any, relating to pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to Declarant's constructions, maintenance, sales, resales, leasing and other marketing and financing activities, which activities Declarant can perform.

15.22 Timeshare Estates. Timeshare estates will NOT be created with respect to Units in the Condominium. It is hereby specified that timeshare estates may NOT be created with respect to Units in the Condominium; however, because the Condominium is part of Sycamore Resort and is an integral part of the Building containing the Hotel Parcel, before a Unit can be declared to be a timeshare estate, the Owner of such Unit must obtain the prior written consent of Hotel Parcel Owner. A timeshare estate may NOT be created by amending this Declaration. Such amendment requires the signature of the Owner of the Unit(s) and the Hotel Parcel Owner and does not require the consent of any other Owner. An amendment creating timeshare estates in this Condominium may contain any provisions deemed necessary by Hotel Parcel Owner or its assignees to NOT create timeshare estates in compliance with Chapter 721 of the Florida Statutes. The minimum duration of periods of use, possession, or occupancy that may NOT be created with respect to any Unit is one (1) day.

15.23. Non-Smoking/Non-Vaping Building. The Building is a non-smoking and non-vaping Building, including the balconies. Smoking, which includes all types of nicotine and tobacco products (i.e., cigarettes, cigars, pipes) and vaping, which includes all types of handheld electronic devices that vaporize a flavored liquid which permeates an odor (electronic cigarettes, electronic nicotine delivery systems, electronic non-nicotine delivery systems and personal vaporizers), shall only be permitted in those areas of the Hotel Parcel designated as smoking areas by the Hotel Parcel Owner.

## **ARTICLE 16 COMPLIANCE AND DEFAULT**

16.1 Compliance and Default. The Association, each Owner and Occupant shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed to this Declaration, the Rules and Regulations, the Hotel Declaration and the rules and regulations adopted and amended from time to time by the Hotel Parcel Owner, as any one or more of the same may be enacted and amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Owners, if appropriate) shall be entitled to the remedies and relief described in this ARTICLE 16, in addition to the remedies provided by the Act.

16.2 Mandatory Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is

granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

16.3 Negligence and Compliance. An Occupant shall be liable for the expense of any maintenance, repair or replacement to the Condominium Property made necessary by his or her negligence or by that of any member of his or her family or his or her guests, employees or agents, 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. In the event an Occupant fails to maintain a Unit or fails to cause such Unit to be maintained in accordance with the Standards, or fails to observe and perform all of the provisions of this Declaration, the By-Laws, the Articles of Incorporation, the 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 equity to require performance and/or compliance with such applicable documents, to impose any applicable fines, to sue at law for damages, and to charge the Owner for the sums necessary to do whatever work is required to put the Owner or Unit in compliance with such applicable documents; provided, however, that nothing contained in this Section 16.3 shall authorize the Association to enter a Unit to enforce compliance or to maintain the Unit. In any proceeding arising because of an alleged failure of an Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed to this Declaration, 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). An Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

16.4 Fines. In addition to any and all other remedies available to the Association, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, or employees, to comply with any covenant, restriction, rule or regulation herein or in the Articles of Incorporation, By-Laws or Rules and Regulations of the Association; provided, however, the following procedures are adhered to:

(a) Notice: The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days and said notice shall include: (i) a statement of the date, time and place of the hearing; (ii) a statement of the provisions of this Declaration, By-Laws, Articles or Rules and Regulations which have allegedly been violated; and (iii) a short and plain statement of the matters asserted by the Association.

(b) Hearing: The non-compliance shall be presented to a committee of other Owners, who shall hear reasons why penalties should not be imposed. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the committee. A written decision of the committee shall be submitted to the Owner or Occupant by not later than twenty-one (21) days after the meeting.

(c) Fines: The Board of Directors may impose fines against the applicable Unit up to the maximum amount permitted by law from time to time.

(d) Violations: Each separate incident which is grounds for a fine shall be the basis of one separate fine. In the case of continuing violations, each continuation of same after a notice thereof is given shall be deemed a separate incident

(e) Payment of Fines: Fines shall be paid not later than thirty (30) days after notice of the imposition thereof.

(f) Application of Fines: All monies received from fines shall be allocated as directed by the Board of Directors.

(g) Non-exclusive Remedy: These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner or Occupant shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner or Occupant.

## **ARTICLE 17 TERMINATION OF CONDOMINIUM**

The Condominium may be terminated in accordance with the provisions of F.S. 718.117 as it exists on the date of recording this Declaration.

## **ARTICLE 18 ADDITIONAL RIGHTS OF MORTGAGEES AND OTHERS**

18.1 Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (i) this Declaration; (ii) the Articles of Incorporation; (iii) the By-Laws; (iv) the Rules and Regulations; and (v) the books, records and financial statements of the Association.

18.2 Notices. Any holder of a mortgage on a Unit and any insurer or guarantor of a First Mortgage on a Unit shall have the right, upon written request to the Association, to timely written notice of:

(a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;

(b) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;

(c) the occurrence of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) any proposed action which, pursuant to this Declaration, requires the consent of a specified number of mortgage holders.

18.2.2 Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to receive a copy of the audited financial statement of the Association for the immediately preceding fiscal year and to receive notices of and attend Association meetings.

**ARTICLE 19  
COVENANT RUNNING WITH THE CONDO-HOTEL PARCEL**

All provisions of this Declaration, the Articles of Incorporation, the By-Laws and the applicable Rules and Regulations, as well as the Hotel Declaration (and rules and regulations promulgated thereunder), as they may be amended from time to time, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Condo-Hotel Parcel and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of Declarant, the Hotel Parcel Owner, the Association and the Owners, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Owners and Occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, the By-Laws, the applicable Rules and Regulations and the Hotel Declaration (and rules and regulations promulgated thereunder), all as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, the Articles of Incorporation, the By-Laws, the Rules and Regulations and the Hotel Declaration (and rules and regulations promulgated thereunder), all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained in this Declaration.

**ARTICLE 20  
HOTEL DECLARATION**

The Condominium is subject to the Hotel Declaration, which is administered by the Hotel Parcel Owner. The Hotel Declaration contains certain covenants, easements, rules, regulations and restrictions relating to the use of the Condominium Property (including Units), and the Hotel Parcel (including the Shared Facilities). Each Owner will be subject to all of the terms and conditions of the Hotel Declaration, as amended and supplemented from time to time and the rules and regulations promulgated thereunder. **AMONG THE POWERS OF THE HOTEL PARCEL OWNER UNDER THE HOTEL DECLARATION IS THE POWER TO ASSESS THE OWNERS FOR THE SHARED EXPENSES AND TO IMPOSE AND FORECLOSE LIENS UPON EACH UNIT IN THE EVENT SUCH ASSESSMENTS ARE NOT PAID WHEN DUE. THIS DECLARATION IS SUBJECT AND SUBORDINATE TO THE HOTEL DECLARATION.**

**ARTICLE 21  
ASSOCIATION SOFTWARE/HARDWARE TECHNOLOGY**

In managing the Association and the Condominium Property, the Association shall utilize, at all times, software and hardware technology that is compatible with the software and hardware technology being utilized in the management of the Hotel Parcel and its Shared Facilities.

**ARTICLE 22  
DISCLAIMER OF WARRANTIES**

**EXCEPT ONLY FOR THOSE WARRANTIES PROVIDED IN SECTION 718.203 OF THE ACT (AND THEN ONLY TO THE EXTENT APPLICABLE AND NOT YET EXPIRED), TO THE MAXIMUM EXTENT LAWFUL DECLARANT HEREBY DISCLAIMS ANY AND ALL AND EACH AND EVERY EXPRESS OR IMPLIED WARRANTY, WHETHER ESTABLISHED BY STATUTE, COMMON LAW, CASE LAW OR OTHERWISE, AS TO THE DESIGN, CONSTRUCTION, CONTINUATION OF ANY PARTICULAR VIEW (IT BEING UNDERSTOOD AND AGREED THAT CONSTRUCTION ON ANY ADJACENT PROPERTIES MAY OBSTRUCT SUCH VIEW), SOUND AND/OR ODOR TRANSMISSION, EXISTENCE AND/OR DEVELOPMENT OF MOLDS, MILDEW, TOXINS OR FUNGI, AND FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ANY IMPLIED WARRANTIES FOR COMPLIANCE WITH PLANS AND SPECIFICATIONS, ALL WARRANTIES IMPOSED BY STATUTE, AND ALL OTHER EXPRESS AND**

IMPLIED WARRANTIES OF ANY KIND OR CHARACTER RELATED TO THE UNITS OR THE CONDOMINIUM. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED BY DECLARANT UNDER APPLICABLE LAW, 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 BY DECLARANT. DECLARANT HAS NOT GIVEN AND EACH OWNER HAS NOT RELIED UPON OR BARGAINED FOR ANY SUCH WARRANTIES. EACH OWNER, BY ACCEPTING A DEED TO A UNIT, OR OTHER CONVEYANCE THEREOF, SHALL BE DEEMED TO REPRESENT AND WARRANT TO DECLARANT THAT IN DECIDING TO ACQUIRE THE UNIT, THE OWNER RELIED SOLELY ON SUCH OWNER'S INDEPENDENT INSPECTION OF THE UNIT AND THE CONDOMINIUM AND HAS NOT RECEIVED NOR RELIED UPON ANY WARRANTIES AND/OR REPRESENTATIONS FROM DECLARANT OF ANY KIND, OTHER THAN AS EXPRESSLY PROVIDED IN THIS DECLARATION. ALL OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM DECLARANT OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES. THE FOREGOING WAIVER SHALL ALSO APPLY TO ANY PARTY CLAIMING BY, THROUGH OR UNDER AN OWNER. FURTHER, EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF A UNIT SHALL BE DEEMED TO WAIVE AND RELEASE DECLARANT, HOTEL PARCEL OWNER, AND HOTEL OPERATOR FROM ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, SOUND AND/OR ODOR TRANSMISSION, EXISTENCE AND/OR DEVELOPMENT OF MOLDS, MILDEW, TOXINS OR FUNGI, AND FURNISHING AND EQUIPPING OF ANY IMPROVEMENTS THEREON THAT ARE PART OF THE HOTEL PARCEL. FURTHER, GIVEN THE CLIMATE AND HUMID CONDITIONS IN SOUTH FLORIDA, MOLDS, MILDEW, TOXINS AND FUNGI MAY EXIST AND/OR DEVELOP WITHIN THE UNIT, THE CONDOMINIUM PROPERTY, AND/OR THE PROPERTIES. EACH OWNER IS HEREBY ADVISED THAT CERTAIN MOLDS, MILDEW, TOXINS AND/OR FUNGI MAY BE, OR IF ALLOWED TO REMAIN FOR A SUFFICIENT PERIOD MAY BECOME, TOXIC AND POTENTIALLY POSE A HEALTH RISK. BY ACQUIRING TITLE TO A UNIT, EACH OWNER SHALL BE DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH MOLDS, MILDEW, TOXINS AND/OR FUNGI AND TO HAVE RELEASED DECLARANT AND THE HOTEL PARCEL OWNER FROM ANY AND LIABILITY RESULTING FROM SAME.

ADDITIONALLY, EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF A UNIT, UNDERSTANDS AND AGREES THAT THERE ARE VARIOUS METHODS FOR CALCULATING THE SQUARE FOOTAGE OF A UNIT, AND THAT DEPENDING ON THE METHOD OF CALCULATION, THE QUOTED SQUARE FOOTAGE OF THE UNIT MAY VARY BY MORE THAN A NOMINAL AMOUNT. ADDITIONALLY, AS A RESULT OF FIELD CONSTRUCTION, OTHER PERMITTED CHANGES TO THE UNIT, AND SETTLING AND SHIFTING OF IMPROVEMENTS, ACTUAL SQUARE FOOTAGE OF A UNIT MAY ALSO BE AFFECTED. BY ACCEPTING TITLE TO A UNIT, THE APPLICABLE OWNER(S) SHALL BE DEEMED TO HAVE CONCLUSIVELY AGREED TO ACCEPT THE SIZE AND DIMENSIONS OF THE UNIT, REGARDLESS OF ANY VARIANCES IN THE SQUARE FOOTAGE FROM THAT WHICH MAY HAVE BEEN DISCLOSED AT ANY TIME PRIOR TO CLOSING, WHETHER INCLUDED AS PART OF DECLARANT'S PROMOTIONAL MATERIALS OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THIS ARTICLE 22, DECLARANT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE ACTUAL SIZE, DIMENSIONS (INCLUDING CEILING HEIGHTS) OR SQUARE FOOTAGE OF ANY UNIT, AND EACH OWNER SHALL BE DEEMED TO HAVE FULLY WAIVED AND RELEASED ANY SUCH WARRANTY AND CLAIMS FOR LOSSES OR DAMAGES RESULTING FROM ANY VARIANCES BETWEEN ANY REPRESENTED OR OTHERWISE DISCLOSED SQUARE FOOTAGE AND THE ACTUAL SQUARE FOOTAGE OF THE UNIT.

IN ADDITION, EACH OWNER RECOGNIZES AND AGREES THAT IN A STRUCTURE THE SIZE OF THE BUILDING THAT IS LOCATED ON THE PROPERTIES, IT IS TYPICAL TO EXPECT BOWING AND/OR DEFLECTION OF MATERIALS. ACCORDINGLY, INSTALLATION OF FINISHES MUST TAKE SAME INTO ACCOUNT. FURTHER, EACH OWNER RECOGNIZES AND AGREES THAT THE EXTERIOR LIGHTING SCHEME FOR THE BUILDING MAY CAUSE EXCESSIVE ILLUMINATION.



**ACCORDINGLY, INSTALLATION OF WINDOW TREATMENTS SHOULD TAKE SAME INTO ACCOUNT.**

**ARTICLE 23  
ADDITIONAL PROVISIONS**

23.1 Validity of Declaration and Hotel Declaration; Release of Declarant. BEFORE ACCEPTING A DEED TO A UNIT, EACH OWNER IS ADVISED TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THIS DECLARATION AND HOTEL DECLARATION. BY ACCEPTANCE OF A DEED TO A UNIT, EACH OWNER ACKNOWLEDGES THAT HE/SHE/IT HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. DECLARANT IS RELYING ON EACH OWNER CONFIRMING IN ADVANCE OF ACQUIRING A UNIT THAT THIS DECLARATION AND HOTEL DECLARATION ARE VALID, FAIR AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO DECLARANT. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION AND HOTEL DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR DECLARANT TO SUBJECT THE CONDOMINIUM TO THIS DECLARATION, EACH OWNER DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE DECLARANT, ITS SHAREHOLDERS, PARTNERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS, FROM ANY AND ALL LIABILITY, CLAIMS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH AN OWNER MAY HAVE IN THE FUTURE AGAINST DECLARANT, ITS SHAREHOLDERS, PARTNERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RESPECTING THE VALIDITY OR ENFORCEABILITY OF THIS DECLARATION AND HOTEL DECLARATION, OR THE EXHIBITS HERETO AND THERETO. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

23.2 No Liability for Safety; Waiver of Claims. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONDOMINIUM DOCUMENTS OR HOTEL DECLARATION, NEITHER THE ASSOCIATION, DECLARANT, THE HOTEL PARCEL OWNER NOR THE HOTEL OPERATOR SHALL BE LIABLE OR RESPONSIBLE FOR, OR BE A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, LICENSEES, INVITEES, AGENTS, EMPLOYEES OR CONTRACTORS OR FOR ANY PROPERTY BELONGING TO ANY SUCH PERSONS OR ENTITIES. THE ASSOCIATION IS NOT EMPOWERED, AND HAVE NOT BEEN CREATED, TO ACT AS AN AGENCY WHICH ENFORCES OR ENSURES COMPLIANCE BY RESIDENTS, GUESTS OR OTHERS WITH APPLICABLE LAWS OR WHICH PREVENTS TORTUOUS ACTIVITIES. EACH OWNER, BY VIRTUE OF ACCEPTANCE OF A DEED TO HIS OR HER UNIT, AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION, DECLARANT, THE HOTEL PARCEL OWNER AND HOTEL OPERATOR ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION, DECLARANT, HOTEL OPERATOR AND/OR THE HOTEL PARCEL OWNER HAS BEEN DISCLAIMED IN THIS ARTICLE OR OTHERWISE. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF DECLARANT, WHICH SHALL BE FULLY PROTECTED HEREBY. AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, MANAGERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. NOTHING IN THIS ARTICLE SHALL LIMIT THE RIGHT OF ANY OWNER TO SUE THE ASSOCIATION FOR ITS OWN NEGLIGENCE OR ITS WILLFUL ACTS OR

OMISSIONS OR FOR ANY LIABILITY PROVIDED IN THE ACT ON THE DAY THIS DECLARATION IS RECORDED.

23.3 No Jury Trial. BY ACCEPTANCE OF A DEED, EACH OWNER AGREES THAT THE CONDOMINIUM DOCUMENTS ARE VERY COMPLEX AND ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WITH RESPECT TO ANY CLAIM, CROSS CLAIM, ACTION OR PROCEEDING, WHETHER IN CONTRACT AND/OR TORT, ARISING OUT OF OR IN ANY WAY RELATED TO THE CONDOMINIUM DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ANY OMISSION OF ANY PARTY, SHOULD BE HEARD IN A COURT PROCEEDING BY A JUDGE AND NOT A JURY IN ORDER TO BEST SERVE JUSTICE.

23.4 Approval of Association Lawsuits by Owners. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Voting Interests within the Association. This Section shall not, however, apply to: (a) actions brought by the Association to enforce the provisions of the Condominium Documents (including, without limitation, the foreclosure of liens or enforcement of Rules and Regulations), (b) the imposition and collection of Assessments as provided in this Declaration, (c) proceedings involving challenges to ad valorem taxation, and (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless the prior written approval of Declarant is obtained, which may be granted or denied in its sole discretion.

23.5 Notices. All notices to the Association required or desired under this Declaration or under the By-Laws shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may subsequently designate from time to time by notice in writing to all Owners. Except as provided specifically in the Act, all notices to any Owner shall be sent by first class mail to the Condominium address of such Owner, or such other address as may have been designated by him or her from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by certified mail (return receipt requested) 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.

23.6 Interpretation. The Board of Directors shall be responsible for interpreting the provisions of this Declaration and of any of the exhibits attached to this Declaration. The Board of Directors' interpretation of this Declaration or its exhibits shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation of this Declaration or its exhibits adopted by the Board of Directors is not unreasonable shall conclusively establish the validity of such interpretation.

23.7 Mortgagees. Anything in this Declaration to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit and may assume that the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.

23.8 Exhibits. There is hereby incorporated in this Declaration all materials contained in the exhibits annexed to this Declaration, except that any conflicting provisions set forth in such exhibits as to their amendment, modification, enforcement and other matters shall control over those of this Declaration.

23.9 Signature of President and Secretary. Wherever the signature of the President of the Association is required under this Declaration, the signature of a Treasurer may be substituted therefor, and wherever the signature of the Secretary of the Association is required under this Declaration, the signature of an Assistant Secretary may be substituted therefor; provided, however, that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

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

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

23.11 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the exhibits annexed to this Declaration, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

23.12 Waiver. The failure of the Association or any Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed to this Declaration, 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.

23.13 Ratification. Each 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, the Articles of Incorporation, the By-Laws, and applicable Rules and Regulations are fair and reasonable in all material respects.

23.14 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality of this Declaration, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of Declarant, all documents or consents which may be required by all governmental agencies to allow Declarant and its affiliates to complete the plan of development of the Condominium as such plan may be subsequently amended, and each such Owner further appoints hereby and thereby Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This power of attorney is irrevocable and coupled with an interest. The provisions of this Section 23.14 may not be amended without the consent of Declarant.

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

23.16 Captions. The captions of this Declaration and in the exhibits annexed to this Declaration 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.

23.17 Conveyance. THE RIGHTS TO USE THE SHARED FACILITIES ARE APPURTENANT TO UNITS AND CANNOT BE CONVEYED SEPARATELY FROM THE UNITS. THE SHARED FACILITIES ARE OWNED AND CONTROLLED BY THE HOTEL PARCEL OWNER AND ARE NOT A PART OF THE CONDOMINIUM. ADDITIONALLY, A CONDOMINIUM ASSOCIATION, THROUGH ITS MEMBERS AND DIRECTORS, TYPICALLY REGULATES THE USE OF THE COMMON ELEMENTS.

EACH OWNER ACKNOWLEDGES AND AGREES THAT (A) ALL OF THE SHARED FACILITIES ARE OWNED BY THE HOTEL PARCEL OWNER, AND (B) THE OWNERS SHALL NOT HAVE ANY CONTROL OVER THE MAINTENANCE, REPAIR AND REPLACEMENT OF ANY OF THE SHARED FACILITIES, THE AMOUNT OF ANY OF THE SHARED EXPENSES THAT THE OWNERS WILL PAY, THE RULES AND REGULATIONS AFFECTING THE USE OF ANY OF THE SHARED FACILITIES, THE ALTERATION, IMPROVEMENT OR RELOCATION OF ANY OF THE SHARED FACILITIES OR ANY OTHER MATTERS RELATING TO ANY OF THE SHARED FACILITIES.

23.18 Refund of Taxes, Fees and Other Charges. Unless otherwise provided herein, the Association and Hotel Parcel Owner agree that any taxes, fees or other charges paid by Declarant to any governmental authority, utility company or any other entity which at a later date are refunded in whole or in part, shall be returned to Declarant in the event said refund is received by the Association and/or Hotel Parcel Owner.

**(SIGNATURES APPEAR ON THE FOLLOWING PAGE)**

**IN WITNESS WHEREOF**, Declarant has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the \_\_\_\_ day of \_\_\_\_, 20\_\_.

Signed, sealed and delivered  
in the presence of:

**PRIMELAND REAL ESTATE  
DEVELOPMENT, LLC**, a Florida limited  
liability company

By: Primeland Enterprises LLC (??? Not on Sunbiz), a  
Florida limited liability company, its  
managing member

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

[KAREN COSTA]

Print Name: \_\_\_\_\_

Address: 6965 Piazza Grande Ave Ste 314  
Orlando, FL 32835

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

[MARLI QUADROS]

Print Name: \_\_\_\_\_

Address: 6965 Piazza Grande Ave Ste 314  
Orlando, FL 32835

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF ORANGE        )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by \_\_\_\_\_, \_\_\_\_\_ of **Primeland Enterprises LLC**, a Florida limited liability company, the managing member of **Primeland Real Estate Development, LLC**, a Florida limited liability company, freely and voluntarily under authority duly vested in them. Each are personally known to me.

(Notarial Seal)

\_\_\_\_\_  
Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**JOINDER OF ASSOCIATION**

**SYCAMORE RESORT CONDOMINIUM ASSOCIATION, INC.**, a not-for-profit Florida corporation (the "**Association**"), hereby joins in and agrees to accept all of the benefits and duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and exhibits attached to this Declaration.

IN WITNESS WHEREOF, the Association has caused these presents to be signed by its proper officer and its corporate seal to be affixed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witnessed by:

**SYCAMORE RESORT CONDOMINIUM ASSOCIATION, INC.**, a Florida not for profit corporation

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
[INSERT NAME]

Address: 401 E. Las Olas Boulevard, Suite 1870  
Fort Lauderdale, FL 33301

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF BROWARD        )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization by \_\_\_\_\_, \_\_\_\_\_, as President of **SYCAMORE RESORT CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not for profit, on behalf of the corporation. He or she is personally known to me or has produced \_\_\_\_\_ as identification.

(Notarial Seal)

\_\_\_\_\_  
Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**JOINDER OF HOTEL PARCEL OWNER**

**PRIMELAND REAL ESTATE DEVELOPMENT LLC**, a Florida limited liability company, (the "**Hotel Parcel Owner**"), hereby joins in, consents to, and approves the provisions of this Declaration and exhibits attached to this Declaration and agrees to accept all the benefits, duties and responsibilities imposed upon it by this Declaration and its exhibits.

IN WITNESS WHEREOF, the Hotel Parcel Owner has caused these presents to be signed by its proper officer and its corporate seal to be affixed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed, sealed and delivered  
in the presence of:

**PRIMELAND REAL ESTATE  
DEVELOPMENT LLC**, a Florida limited  
liability company

By: Primeland Enterprises LLC , a  
Delaware limited liability company, its  
managing member

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

[KAREN COSTA]

Print Name: \_\_\_\_\_

Address: 6965 Piazza Grande Ave Ste 314  
Orlando, FL 32835

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

[MARLI QUADROS]

Print Name: \_\_\_\_\_

Address:6965 Piazza Grande Ave Ste 314  
Orlando, FL 32835

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF ORANGE        )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization by \_\_\_\_\_,  
\_\_\_\_\_ of **Primeland Enterprises LLC**, a Delaware limited liability company, the  
managing member of **Primeland Real Estate Development, LLC**, a Florida limited liability company,  
freely and voluntarily under authority duly vested in them. He or she is personally known to me or has  
provided \_\_\_\_\_ as identification.

(Notarial Seal)

\_\_\_\_\_  
Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PHASE A**



**EXHIBIT "B"**

**LEGAL DESCRIPTION OF SUBSEQUENT PHASES**

**EXHIBIT "C"**

**PLOT PLAN AND SURVEY**

**EXHIBIT "D"**

**CERTIFIED COPY OF ARTICLES OF INCORPORATION  
OF  
SYCAMORE RESORT CONDOMINIUM ASSOCIATION, INC.**