

This Instrument Prepared By:  
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## **DECLARATION OF CONDOMINIUM**

**OF**

### **ZAHRADA 2, A CONDOMINIUM**

This Declaration of Condominium of Zahrada 2, a Condominium, is made, entered into and submitted this \_\_\_\_ day of \_\_\_\_\_, 202\_, by Zahrada II, LLC, a Florida limited liability company, hereinafter referred to as the “Developer,” for itself, its grantees, designees, successors, substitutes and assigns. Developer makes and agrees to the following declarations, submittal statements, terms, provisions, conditions, easements, reservations, limitations and covenants:

#### **ARTICLE I**

##### **Purpose and Submittal Statement**

The purpose of this Declaration is to submit, and the Developer hereby submits, the fee simple title to the land described in Exhibit “A” hereto and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, located on and intended for use in connection therewith to the condominium form of ownership and use in the manner provided by Chapter 718, Florida Statutes, as amended, herein referred to as the “Condominium Act” as it exists on the date of recording this Declaration, excluding therefrom, however, all public utility installations, cable television lines and other similar equipment, if any, owned by the utility furnishing services to the Condominium. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of Condominium Parcels. The acquisition of title to a Unit, or any interest in the Condominium Property, or the lease, occupancy, or use of any portion of the Condominium Property shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and shall signify agreement to be bound by its terms. No time-share estates are or will be created with respect to any Unit in the Condominium.

#### **ARTICLE II**

##### **Identification**

2.1. Name and Address. The name by which this Condominium Property is to be identified is Zahrada 2, a Condominium, and its address is 1558 4<sup>th</sup> Street, Sarasota, FL 34236.

2.2. The Land. The legal description of the Land owned by Developer in fee simple, which is hereby submitted to the condominium form of ownership, is the land lying in Sarasota County, Florida, more particularly described in Exhibit “A” attached hereto, together with and subject to the easements, encumbrances, restrictions of record and other matters set forth therein or hereinafter described in this Declaration or any of the exhibits hereto. The Developer and the

Developer's surveyor may make non-material changes and corrections in the legal description of the Land.

### **ARTICLE III** **Definitions**

3.1. Assessment. "Assessment" means a share of the funds required for the payment of Common Expenses, as well as Residential Limited Common Expenses and Commercial Limited Common Expenses, which from time to time are assessed against the Unit Owners.

3.2. Association. "Association" means Zahrada 2 Condominium Association, Inc., a Florida corporation not for profit, which is responsible for the operation and management of the Condominium, and its successors and assigns. In addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.

3.3. Board of Administration. "Board of Administration" or "Board" means the Board of Directors of the Association who are responsible for the administration and management of the Association.

3.4. Board of Directors. "Board of Directors" means the Board of Directors of the Association.

3.5. Building. "Building" means the structures on the Condominium Property in which the Units are located, and, where the context requires, the other buildings, if any, located in the Condominium, if any.

3.6. Bylaws. "Bylaws" means the Bylaws of the Association existing from time to time.

3.7. Commercial Limited Common Elements. "Commercial Limited Common Elements" mean and refer to: (a) all areas (if any) identified as such in the Plat attached hereto as Exhibit "B," (b) all access and hallways exclusively serving the Commercial Units (if any), and (c) any mechanical rooms and utility conduits exclusively serving the Commercial Units.

3.8. Commercial Limited Common Expenses. "Commercial Limited Common Expenses" shall have the same meaning given to it in Section 4.3.6 below.

3.9. Commercial Units. "Commercial Units" shall mean and refer to the Units designated by the prefix CU – as identified in the Plat attached hereto as Exhibit "B." References herein to "Units" or "Parcels" shall include the Commercial Units unless the context would prohibit or it is otherwise expressly provided. Notwithstanding anything herein to the contrary, the designation of a Unit as "Commercial" is for ease of reference only, and shall not be deemed to limit or define its permitted use.

3.10. Common Elements. "Common Elements" means the portions of the Condominium Property which are not included in the Units, and are more particularly described in Paragraph 4.2,

herein. Some components of the Condominium which are typical “Common Elements” of a condominium have instead been designated (both herein and on the Plat) as Residential Common Elements, Residential Limited Common Elements, Commercial Common Elements and/or Commercial Limited Common Elements. References herein and on the Plat to Common Elements shall include the Residential Common Elements, Residential Limited Common Elements, Commercial Common Elements and the Commercial Limited Common Elements, unless the context would prohibit, or it is otherwise expressly provided.

3.11. Common Expenses. “Common Expenses” means all expenses and assessments which are properly incurred by the Association for or relating to the Condominium and all expenses for which Unit Owners are liable to the Association. Common Expenses shall include, but are not limited to, the following:

3.11.1. Costs and expenses of administration of the Condominium and the Association and costs and expenses of maintenance, operation, repair and/or replacement of Association Property and the Common Elements (including the Limited Common Elements, except as otherwise expressly provided in this Declaration), and of all portions of the Units to be maintained by the Association, including, but not limited to:

3.11.1.1. Fire, other casualty, flood, liability, workers’ compensation and other insurance as provided herein.

3.11.1.2. Administrative costs and expenses of the Association, including professional fees and expenses.

3.11.1.3. Costs and expenses of water supply, sewage disposal and treatment service to the Common Elements and electricity to service the Common Elements and the Association Property (costs and expenses of water supply and sewage disposal and treatment service to the individual Units shall not be Common Expenses, but shall be the responsibility of individual Units), cost and expenses of pest control service to the Common Elements, cost and expense of garbage disposal and trash removal service to the Common Elements (cost and expense of garbage disposal and trash removal service to the Units shall not be Common Expenses, but shall be the responsibility of individual Units), and the costs and expenses of other utilities which are not metered to the individual Condominium Units.

3.11.1.4. Labor, materials and supplies used for or in conjunction with the maintenance, operation, repair and replacement of Association Property and the Common Elements and Limited Common Elements except as otherwise expressly provided herein.

3.11.1.5. Costs and expenses of repairing damages to the Condominium Property in excess of insurance coverage.

3.11.2. Costs and expenses of management of the Condominium, including the following:

3.11.2.1. Salary of a manager, if any, his or her assistants and agents, and related employer taxes and employee benefits, if any.

3.11.2.2. Management fees payable to an outside management company, if any.

3.11.2.3. Other expenses incurred in the management of the Condominium Property.

3.11.3. The cost and expense of acquiring, owning, managing, operating, maintaining, repairing and replacing all land, improvements and personal property owned or leased by the Association and such additional land, improvements and personal property as may be purchased by the Association through action of the Board of Administration.

3.11.4. All other costs and expenses that may be duly incurred by the Association through its Board of Administration from time to time in operating, protecting, managing and conserving the Condominium Property and in carrying out its duties and responsibilities as provided by the Condominium Act, this Declaration or the Bylaws.

3.11.5. All other costs and expenses declared Common Expenses by provisions of the Condominium Act, this Declaration or the Bylaws.

3.11.6. Any valid charge against the Condominium Property as a whole.

3.11.7. The heating and air-conditioning equipment servicing a particular Unit shall be deemed a Limited Common Element appurtenant to the Unit being served by such equipment. The cost and expense of maintaining, repairing, servicing and replacing all heating and air-conditioning equipment servicing a particular Unit, whether located within or outside of a Unit, shall not be a Common Expense, but shall be the individual expense of the Owner(s) of the Unit being served by such equipment. All lines and conduits running from any such heating and air-conditioning equipment shall also be deemed Limited Common Elements appurtenant to the Unit being served by such lines and conduits, the cost and expense of which for maintenance, repair, servicing and replacing shall be the individual expense of the Owner(s) of the Unit being served by such equipment.

3.11.8. Notwithstanding anything to the contrary, references herein to Common Expenses shall include both Residential Limited Common Expenses and Commercial Limited Common Expenses, unless the context would prohibit, or it is otherwise expressly provided.

3.12. Common Surplus. “Common Surplus” means the excess of all receipts of the Association collected on behalf of a Condominium, including, but not limited to, assessments, rents, profits, and revenues on account of Common Elements, over the Common Expenses.

3.13. Condominium. “Condominium” means all of the Condominium Property as a whole when the context so permits, as well as the meaning stated in the Florida Condominium Act.

3.14. Condominium Documents. “Condominium Documents” means this Declaration of Condominium and all recorded exhibits hereto, as amended from time to time.

3.15. Condominium Parcel. “Condominium Parcel” means a Unit together with the undivided share in the Common Elements which is appurtenant to the Unit.

3.16. Condominium Plat. “Condominium Plat” or “Plat” means the survey, plot plan and plat annexed hereto as Exhibit “B” and incorporated herein by this reference.

3.17. Condominium Property. “Condominium Property” means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights.

3.18. Declaration or Declaration of Condominium. “Declaration” means this Declaration, as it may be amended from time to time.

3.19. Developer. “Developer” means Zahrada II, LLC, a Florida limited liability company, its designees, successors, substitutes and assigns. In addition, a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business may be a Developer, but this does not include:

- a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy;
- b) A cooperative association that creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners are the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion;
- c) A bulk assignee or bulk buyer as defined in s. 718.703; or
- d) A state, county, or municipal entity acting as a lessor and not otherwise named as a developer in the declaration of condominium.

3.20. Division. “Division” means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

3.21. Improvements. “Improvements” means all structures and all portions thereof, and artificial changes to the natural environment (exclusive of landscaping), located on the Condominium Property, including, but not limited to, each building.

3.22. Institutional Lender or Institutional First Mortgagee. “Institutional Lender” or “Institutional First Mortgagee” means and shall be construed to include, but not be limited to, banks, savings and loan associations, insurance companies, mortgage bankers, mortgage brokers, agencies of the U.S. Government, the Federal National Mortgage Association (“FNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”), the Veterans Administration (“VA”) and construction lender(s) for the Condominium, and other lenders generally regarded in the lending profession as institutional lenders, including affiliates thereof, holding a mortgage on the Condominium or any portion thereof or on a Unit or Units.

3.23. Land. “Land” means the real property owned by the Developer in fee simple (and easements, if any) being submitted to condominium ownership by this Declaration as Zahrada 2, a Condominium, including airspace lying above and subterranean space lying below such surface.

3.24. Limited Common Elements. “Limited Common Elements” means those Common Elements, if any, which are reserved for the exclusive use of a certain Unit or Units to the exclusion of other Units as specified in Paragraph 4.3 herein, of this Declaration or in any Exhibits hereto. References herein and on the Plat to Limited Common Elements shall include the Limited Common Elements of both the Residential Units and the Commercial Units, unless the context would prohibit, or it is otherwise expressly provided.

3.25. Occupant. “Occupant” means a person or persons in lawful possession of a Unit, including, where the context permits or requires, the Owner or Owners thereof.

3.26. Operation. “Operation” or “Operation of the Condominium” means and includes the administration, repair, maintenance, replacement and management of the Condominium Property.

3.27. Residential Limited Common Elements. “Residential Limited Common Elements” shall mean and refer to: (a) all areas (if any) identified as such in the Plat attached hereto as Exhibit “B,” (b) all access and hallways exclusively serving the Residential Units (if any), (c) any mechanical rooms and utility conduits exclusively serving the Residential Units, and (d) all other meanings given to it in Paragraph 4.36 herein.

3.28. Residential Limited Common Expenses. “Residential Limited Common Expenses” shall have the meaning given to it in Section 4.3.5 below, and shall include, without limitation: (a) all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Residential Limited Common Elements, (b) all reserves required by the Act (to the extent not properly waived) or otherwise established by the Association with respect to any Residential Limited Common Elements, (c) the cost of the master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract, to the extent that the same shall exclusively service the Residential Units, and (d) the cost of any bulk contract for broadband, telecommunications, satellite and/or internet services, if any, to the extent that the same shall exclusively service the Residential Units.

3.29. Residential Unit. “Residential Unit” shall mean and refer to each of the Units other than the Commercial Units.

3.30. Singular, Plural, Gender. Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

3.31. Special Assessment. “Special Assessment” means any assessment levied against Unit Owners other than the assessment required by a budget adopted annually.

3.32. Surface Water Management System. “Surface Water Management System” or “Surface Water Management System Facilities” means the surface water management system located on the Condominium Property that is approved and regulated by Southwest Florida Water Management District.

3.33. Unit. “Unit” means a part of the Condominium Property which is subject to exclusive ownership, and except where specifically excluded, or the context otherwise requires, shall be deemed to include both the Residential Units and the Commercial Units.

3.34. Unit Floor Plans. “Unit Floor Plans” or “Floor Plan” means the Condominium Floor Plans for this Condominium, and annexed hereto as Exhibit “B” and incorporated herein by this reference.

3.35. Unit Owner. “Unit Owner” means a record owner of legal title to a Condominium Parcel.

3.36. Utility Services. As used in the Condominium Act and as construed with reference to this Condominium, and as used in the Declaration, Articles and Bylaws, utility services shall include, but not be limited to, electric power, gas, hot and cold water, heating, refrigeration, air-conditioning, garbage, trash and sewage disposal, cable television and internal telephone and security system, if any.

3.37. Voting Interests. “Voting Interests” means the voting rights distributed to and held by the Association’s members pursuant to the Condominium Act and this Declaration.

#### **ARTICLE IV** **Description of Condominium**

4.1. Survey, Graphic Description of Improvements and Plot Plan. A survey of the Land, a graphic description of the Improvements in which Units are located and a Condominium Plat thereof, which together with this Declaration are in sufficient detail to identify the Common Elements and each Unit and provide an accurate representation of their relative locations and approximate dimensions, appear on that certain Condominium Plat of the Condominium being recorded herewith in Condominium Book \_\_\_\_\_, at Page \_\_\_\_\_, of the Public Records of Sarasota County, Florida, a copy of which is annexed hereto as Exhibit “B,” and which Plat is hereby incorporated herein by reference. The Unit Floor Plans are depicted in Exhibit “B” to this Declaration. The configuration, location, and size of each Unit whose construction has been substantially completed as of the recording of this Declaration, and the Floor Plan for each such Unit, is shown in Exhibit “B” to this Declaration.

In the event the actual physical location of any Unit at any time does not precisely coincide with the Condominium Plat and subsequent amendments, the actual physical locations shall control over the locations, dimensions and descriptions contained in the Condominium Plat and subsequent amendments. In the event of a total or substantial destruction of a Building, the location, dimensions and descriptions of the Unit(s) contained therein as set forth in the Condominium Plat and subsequent amendments will control.

4.2 Common Elements. The Common Elements of the Condominium shall include the following:

4.2.1. The Land described herein and all Improvements thereon, except for Units as shown on the aforementioned Condominium Plat and except for the Limited Common Elements.

4.2.2. The Property and installations in connection therewith required for the furnishing of Utility Services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing installations, including easements through the Unit necessary to provide

such Utility Services; provided, however, Developer reserves the ownership of all main utility lines and equipment and all central television antenna signal distribution wires, lines and equipment that are presently in existence or later installed by Developer within the boundaries of this Condominium and reserves the right to convey the same to the Association, Sarasota County or an agency thereof, Florida Power & Light Company, other entities providing Utility Services to the Condominium, or such other person or legal entity as Developer may deem appropriate.

4.2.3. There is also appurtenant to each of the Units, easements, as needed, for encroachments benefiting such Unit resulting from minor construction deviations or variations and shifting and settling processes and easements, as needed, for storm water drainage and runoff from roofs from Units on to other Units and Common Elements. The streets, walks and other rights-of-way serving the Units as part of the Common Elements necessary to provide reasonable access to the public ways are hereby made subject to non-exclusive easements for ingress and egress for the benefit of the Units and for the benefit of the Developer, its successors and assigns for the purpose of providing vehicular and pedestrian ingress and egress to the Units and to property contiguous to the Condominium and for the purpose of installation, maintenance, repair and replacement of the utilities serving the Condominium and any property contiguous to the Condominium.

4.2.4. The vault detention system and related equipment and facilities (collectively, the "Vault System") shown and depicted on the Condominium Plat for the adjacent property referred to as Zahrada I and more particularly described in Exhibit B, shall be deemed a Common Element of the Condominium. The purpose of the Vault System is to treat and manage excess stormwater runoff. The Vault System easement shall be in favor of the Association, as well as all utility companies servicing the Condominium. Further, at the request of the Developer, the Association, and each Unit Owner, shall promptly consent, sign and deliver an easement or other agreement that shall permit any adjacent property owner to connect to and utilize the Vault System (the "Shared Use Agreement"), upon terms and conditions that are deemed acceptable to the Developer in its sole and absolute discretion. No Unit Owner or the Association shall have any right or standing to object to a Shared Use Agreement that is approved by the Developer for any reason.

4.3. Limited Common Elements. In addition to the areas designated on the Plat as Limited Common Elements, the following shall be deemed to be Limited Common Elements, the use of which shall be limited to those Unit Owners to whom such use is assigned by or pursuant to the provisions of this Declaration, amendments thereto, or assignments executed by the Developer or by the Association:

4.3.1. Entry Areas. Each entry area shown on the Condominium Plat as a Limited Common Element shall be a Limited Common Element reserved for the exclusive use of the Unit which it adjoins, as designated on the Condominium Plat.

4.3.2. Windows, Screens and Doors. All windows, screens and doors and garage doors, including all hardware, locks and framings therefore, serving a Unit that are located outside the boundaries of the Unit shall be Limited Common Elements, reserved for the exclusive use of the Unit.

4.3.3. Porches, Balconies, Planters, and Lanais. Any porch, balcony, planter, or lanai attached to and serving exclusively a Unit shall be deemed a Limited Common Element as shown and depicted on the Condominium Plat. The Unit Owner shall be responsible for all



maintenance, cleaning, repair, replacement and painting of such areas. No porch or lanai may be carpeted, covered or enclosed in any way without the prior written approval of the Board of Administration. The maintenance, repair and replacement of such approved carpeting, covering or enclosure shall be the responsibility of the Unit Owner. Maintenance, repair and replacement of screening, where permitted, shall be the responsibility of the Unit Owner. Each Unit Owner shall ensure that its Limited Common Element planter, and all landscaping that is included within such areas, are maintained in a neat, clean and orderly condition. The Board of Administration may promulgate certain rules and regulations governing the use and maintenance of such Limited Common Element porches, balconies, planters, s and lanais, as well as the height and type of landscaping that may be installed in any such planters, from time to time. In the event that any Unit Owner shall fail to maintain its Limited Common Element porch, balcony, planter, or lanai to the standard required by the Board of Administration, then the Board of Administration shall have the right to maintain the same on behalf of the applicable Unit Owner, as well as have the right to institute a lien against any such Owner's Unit to ensure the repayment of all amounts expended by the Board in curing such failure or enforcing the terms and conditions of the Condominium Documents, to the extent permitted by applicable Florida law.

4.3.4. Parking Spaces, Stairways, and Elevators. Each Residential Unit shall be assigned not less than one (1) specific parking space located within the interior of the shared parking area of the Condominium, as more particularly shown and identified on Exhibit "B". Each assigned parking space shall be deemed a Residential Limited Common Element appurtenant to the Residential Unit to which it is assigned, and shall be maintained and repaired by the Association, the expense of which shall be a Residential Limited Common Expense. With the exception of any stairway located within a Unit, each stairway and elevator shown on Exhibit "B" attached hereto shall be deemed a Residential Common Element, for which maintenance and repairs shall be the responsibility of the Association, as a Residential Common Expense. No Commercial Unit shall have the right to access or use any parking space, stairway, or elevator located within the Condominium. Parking for the Commercial Units will be limited to publicly available parking and street parking outside the perimeter of the Condominium. Each Residential Unit Owner acknowledges and agrees that a portion of the parking facilities, stairways, and elevators may be located below the federal flood plain, and, by accepting the assignment of a parking space and elevator, each Owner, for such Owner and the Owner's tenants, guests and invitees, hereby expressly assumes any responsibility for loss, damage or liability resulting therefrom.

4.3.5. Others. Any part of the Common Elements that is connected to and exclusively serves a single Unit, and is specifically required in this Declaration to be maintained, repaired or replaced by, or at the expense of, the Unit Owner, shall be deemed a Limited Common Element, whether specifically described above or not.

4.3.6. Residential Limited Common Elements. The Residential Limited Common Elements shall be deemed Limited Common Elements appurtenant to each and every of the Residential Units (to the exclusion of the Commercial Units). Except only as provided below, all of the costs of operating, maintain, insuring, repairing, replacing and altering the Residential Limited Common Elements (the "Residential Limited Common Expenses") shall be borne solely by the Residential Unit Owners. Without limiting the generality of the foregoing, the Residential Limited Common Expenses shall include, without limitation, all sums described in Section 3.27 above, and: (i) any and all utility charges associated with the Residential Limited Common Elements (and if same are not separately metered, the Association shall make a reasonable allocation for such

purposes), (ii) costs for landscaping, maintenance and replacement in, on and around the Residential Limited Common Elements, (iii) costs for repairs to pavers or other ground or floor coverings, and (iv) the cost of all personnel assisting in the operation and/or maintenance of the Residential Limited Common Elements. The Residential Limited Common Expenses shall not, however, include, any necessary repairs, maintenance, replacements or alterations to the structural components of the Building, or any roofing or waterproofing membranes of the Building (all of which shall be deemed a general Common Expense, and allocated to both the Residential and Commercial Units). The Residential Limited Common Expenses shall be assessed against each of the Residential Units, with each bearing a fractional portion thereof as described on Exhibit "C," attached hereto. The Residential Limited Common Elements shall be maintained by the Association.

4.3.7. Commercial Limited Common Elements. The Commercial Limited Common Elements shall be deemed Limited Common Elements appurtenant to each and every of the Commercial Units (to the exclusion of the Residential Units). Except only as provided below, all of the costs of operating, maintaining, insuring, repairing, replacing and altering the Commercial Limited Common Elements (the "Commercial Limited Common Expenses") shall be borne solely by the Commercial Unit Owners. Without limiting the generality of the foregoing, the Commercial Limited Common Expenses shall include, without limitation: (i) any and all utility charges associated with the Commercial Limited Common Elements (and if the same are not separately metered, the Association shall make a reasonable allocation for such purposes), (ii) the costs of all personnel assisting in the operation and/or maintenance of the Commercial Limited Common Elements, and (iii) any and all costs related to trash compacting and/or recycling from any portion of the Commercial Limited Common Elements and/or solely attributable to the Commercial Units (if any), whether lease payments (if such equipment is leased) or otherwise. The Commercial Limited Common Expenses shall be assessed against each of the Commercial Units, with each bearing a fractional portion thereof as described on Exhibit "C," attached hereto. The Commercial Limited Common Elements shall be maintained by the Association. Notwithstanding anything to the contrary, any manager and/or personnel hired or retained to administer the Commercial Limited Common Elements shall be subject to the prior written approval of a majority of the Commercial Unit Owners and shall serve at the direction of the Commercial Unit Owners (as directed by the affirmative action of a majority of the Commercial Unit Owners). Similarly, the Association shall, if so instructed by a majority of the Commercial Unit Owners, hire and retain a manager and/or other personnel (said manager and/or personnel to be designated by a majority of the Commercial Unit Owners) and/or enter into contracts and/or agreements for services that shall benefit the Commercial Units, provided that said manager and/or personnel and or contracts and/or agreements shall serve only the Commercial Units and/or the Commercial Limited Common Elements, and the costs of same shall be deemed a Commercial Limited Common Expense.

4.4. Easements. Each of the following easements are hereby granted, reserved and otherwise created in favor of the Developer, its grantees, successors and assigns, and the Unit Owners and other Occupants of Units in this Condominium and their guests and invitees (and in favor of public or private utility companies serving the Condominium, but as to such utility companies only where expressly specified in the Condominium Plat or by separate instrument executed by the Association and of record or recorded subsequent to the date hereof) and are covenants running with the title to the Condominium Property, and notwithstanding any of the other provisions of this Declaration, may not be amended or revoked and shall survive the termination of the Condominium and the exclusion of any of the Land of the Condominium from the Condominium to the extent reasonably required to enable the companies to provide their respective services.

4.4.1. Utilities and Drainage. Drainage easements and easements for all water, sewer, electrical, telephone, cable T.V. and other utility lines, vaults, mains and drainage ditches, lines and structures, previously, now or hereafter providing service to the Condominium and/or the Units, the installation, repair, maintenance and replacement thereof and as may subsequently be required for utility services in order to adequately serve the Condominium and/or all Units. Specifically, and notwithstanding anything herein to the contrary, easements shall exist through a Unit to access the below-ground vault shown and depicted on Plat (the "Vault"). The Vault and other utility easements referenced herein are and shall also be in favor of all utility companies servicing the Condominium to the extent reasonably required to enable the companies to provide their respective services.

4.4.2. Pedestrian and Vehicular Traffic. For pedestrian traffic over, through and across all sidewalks, jogging paths, bicycle paths, other paths, walks and lanes, as the same may from time to time exist upon the Common Elements, and, for vehicular traffic over, through and across the private streets, roads and drives, and such other portions of the Common Elements as may from time to time be paved and intended for such purposes, but the same shall not give or create in any person the right to drive or park upon any portions of the Condominium Property except those intended to be used for such purposes and reasonably suited therefor. This easement shall also be in favor of police, fire, emergency and service personnel while providing services to the Condominium or the Unit Owners. This easement shall not include those areas designated as Limited Common Elements.

4.4.3. Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements, (ii) settling or shifting of the Improvements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.

4.4.4. Support and Use for Party Walls. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements. Where a common or equal wall serves two (2) or more Units, each Unit so served shall have a non-exclusive easement of use and support of such party wall.

4.4.5. Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns ) shall have the right, in its and their sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, provided such activity does not prevent or unreasonably interfere, in the opinion of the Developer, with the use or enjoyment by the Unit Owners of the Condominium Property.

4.4.6. Sales and Promotional Activity. For as long as there are any unsold Units in the Project, the Developer, its designees, successors and assigns, shall have the right to use any such Units and all parts of the Common Elements for model apartments and sales/administrative offices, to show model apartments and any unsold Units and the Common Elements to prospective purchasers and tenants, to erect on the Condominium Property signs and other promotional display materials, to advertise Units for sale or lease and for any other similar purposes the Developer deems appropriate in its sole opinion.

4.4.7. Maintenance and Repairs. An easement and right of the Association or its designees to enter over, through and upon all the Condominium Property for the purpose of maintaining, repairing and replacing any portions of the Condominium that are the responsibility of the Association; provided, however, that entry into a Unit, except in the case of an emergency, shall be permitted only with the consent of the Unit Owner or pursuant to legal process.

4.4.8. Reservation of Additional Rights in Developer. Until such time as Developer has completed the Condominium together with the construction of all permitted improvements, and sold all of the Units contained within the Condominium Property, easements, including but not necessarily limited to, ingress and egress, utilities and drainage easements are hereby reserved and shall exist through, in, over and upon the Condominium Property as may be required, convenient or desirable by Developer for the completion of the contemplated development of the Condominium and the permitted improvements thereupon, and the sale of the Units.

4.4.9. Commercial Unit Easements. A non-exclusive easement is hereby reserved over, through and across all necessary portions of the Condominium to and in favor of the Owners from time to time of the Commercial Units, and their guests, tenants, employees and invitees, to allow for and permit reasonable pedestrian ingress and egress to and from the Commercial Units. Further, an easement is hereby reserved over, under, through and across those portions of the Condominium Property (if any) identified on the Plat attached hereto as Exhibit "B," to and in favor of the Owners from time to time of the Commercial Units, and their guests, tenants, employees and invitees.

4.5. Association's Right to Amend and Create Additional Easements. The Association shall at all times have the right, power and authority to declare and create, convey and dedicate, modify and amend, from time to time, without joinder and consent of any Unit Owner, mortgagee, or lienor, reasonable easements over, upon, in and through the Condominium Property for drainage, utility or other purposes and for ingress and egress provided, however, that at the time of the creation of such easements and at the time of the modification or Amendment of any such easements, such easements and such modifications and Amendments shall not unreasonably interfere with the peaceful and lawful use and enjoyment of the Condominium Property and the Units by the Unit Owners.

4.6. Amendment to Declaration to Reflect Substantial Completion. All persons having any interest or rights in or acting with reference to this Condominium, whether as contract purchasers, grantees, mortgagees, lienors or otherwise, acknowledge and agree that if, at the time of the execution and recording of this Declaration and the Exhibits attached hereto and the Condominium Plat, the Condominium or any part thereof is not substantially completed, they irrevocably agree for themselves and their heirs, grantees, personal representatives, successors and assigns that the Developer by itself has the right to amend this Declaration and the Exhibits as may

be necessary or desirable from time to time to identify, locate dimensions, and submit the improvements, Units and Common Elements as and when the construction of each portion thereof is substantially completed. At such time as the construction of the Condominium or any portion thereof is substantially completed, the Declaration shall be amended to reflect such substantial completion and to include the certificate(s) required by the Florida Condominium Act. Such an Amendment when signed and acknowledged by the Developer shall constitute an Amendment to this Declaration, without approval of the Association, other Unit Owners or contract vendees, lienors or mortgagees of Units or of the Condominium or any other person, whether or not elsewhere required for an Amendment.

4.7 Common Boundary and Easement Agreement. *To be revised.*

## **ARTICLE V**

### **The Units**

5.1. The Units. The Units of the Condominium are more particularly described in this Declaration and in the Condominium Plat attached as Exhibit “B” to this Declaration, and the rights and obligations of the Unit Owners are established as provided herein.

5.2. Unit Identification. There shall be a total of eighteen (18) Residential Units and four (4) Commercial Units (which may be further subdivided as provided for herein) located within one (1) building. The Residential Units in the Condominium shall be known as Units: 202, 204, 206, 208, 210, 212, 214, 216, 302, 304, 306, 308, 402, 404, 406, 408, 502, and 504. The Commercial Units in the Condominium shall be known as Units: 102, 104, 106, and 108.

5.3. Unit Boundaries. Each Unit shall include that part of the Building containing the Unit which lies within the boundaries of the Unit, which boundaries shall be determined in the following manner:

5.3.1. Upper and Lower Boundaries. The upper and lower boundaries of the Units shall be the following boundaries extended as horizontal planes, when necessary, to intersect with the perimetrical boundaries described below.

5.3.1.1. The upper boundaries shall be the lower surface of the unfinished ceiling slab.

5.3.1.2. The lower boundaries shall be the upper surface of the unfinished floor slab.

5.3.2. Perimetrical Boundaries. The perimetrical boundaries of Units shall be the following boundaries extended as vertical planes when necessary to intersect with the upper and lower boundaries described above.

5.3.2.1. Exterior Building Walls. The perimetrical boundaries shall be the inner most unfinished surface of the exterior wall of the building containing such Unit.

5.3.2.2. Interior Building Walls. The perimetrical boundaries shall be the inner most unfinished surface of the interior walls separating units.

5.3.3. Boundaries - Further Defined. The boundaries of the Unit shall not include all of those spaces and improvements lying within the undecorated and/or unfinished inner surfaces of the perimeter walls and those surfaces above the undecorated finished ceilings of each Unit, and those surfaces below the undecorated finished floor of each unit, and further shall not include those spaces and improvements lying within the undecorated and/or unfinished inner surfaces of all interior bearing walls and/or bearing partitions, columns or any other portion of the building which contributes to its support.

5.3.4. Apertures. Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the Unit shall extend to the interior unfinished surfaces of the coverings of such openings, and their frameworks thereof. Therefore, windows, doors, screens and all framings, casings and hardware therefor, are excluded from the Unit, and shall be maintained, repaired and replaced by the Association as a Common Expense.

5.3.5. Utilities. The Unit shall not be deemed to include any pipes, wiring, ducts or other utility installations that are physically within the above-described boundaries, but which serve other units or the Common Elements. Such utility installations shall be Common Elements.

5.3.6. Exceptions. In cases not specifically covered in this Section 5.3., or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth in Exhibit "B" to this Declaration shall control in determining the boundaries of a unit, except the provisions of 5.3.5. above shall control over Exhibit "B."

5.4. Appurtenances to Each Unit. The owner of each Unit shall have certain rights and own a certain interest in the Condominium Property, including, without limitation, the following:

5.4.1. An undivided ownership share in the Land and other Common Elements and the Common Surplus, as specifically set forth herein.

5.4.2. Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "D" and "E" respectively.

5.4.3. The exclusive right to use the Limited Common Elements reserved for the Unit, and the non-exclusive right to use the Common Elements.

5.4.4. Other appurtenances as may be provided by law or by this Declaration and its exhibits.

5.5. Ownership of Common Elements and Common Surplus. When there is a purchase of a Condominium Unit in this Condominium, the Unit Owner becomes vested in a fee simple interest in and to the subject Condominium Unit. Each residential Unit shall share in the ownership of and the responsibility for the Common Elements, Common Surplus and Common Expenses of the Condominium based upon the total square footage of each residential Unit in uniform relationship to the total square footage of each other residential Unit in the Condominium, as more particularly and set forth in Exhibit "C," attached hereto.

5.6. Air Conditioning and Heating. In the event a heating and air conditioning system serving only one Unit is located outside the boundaries of the Unit, then such equipment shall be deemed to be a Limited Common Element reserved for the exclusive use of such Unit, and the maintenance, repair and replacement shall be the responsibility and obligation of the Unit Owner served by such equipment.

5.7. Restraint Upon Separation and Partition. The undivided share of ownership in the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or encumbered separately from the Unit and passes with the title to the Unit, whether or not separately described. No Unit Owner may maintain an action for partition of the Common Elements. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to the Units.

5.8. Liability for Common Expenses. The owner of each Unit shall be liable for a proportionate share of the Common Expenses, such share being the same as the undivided share of the Common Elements appurtenant to the Unit.

5.9. Alteration of Boundaries by Developer. The Developer hereby reserves the absolute right, in its sole discretion, without the consent or approval of any Unit Owner(s), mortgagees(s) or other lienors, contract vendee(s), the Association or any other person(s), to modify, move, alter, amend or change the boundaries of any Units owned by the Developer (including any Residential or Commercial Units owned by the Developer) in such a manner as to, among other things, include additional rooms or spaces in one Unit and exclude them from the other Unit, and to increase the size of one such Unit and to decrease the size of the other, and to combine two abutting Units into one Unit, or subdivide any existing Residential or Commercial Unit into two separate Units, provided the Developer shall own all such Units and if any such Units are encumbered shall have obtained the consent of the mortgagee thereto. Notwithstanding anything contained herein to the contrary, no amendment to this Declaration may change the configuration or size of any Unit owned by an owner other than the Developer in any material fashion unless the record owner of the Unit, and all record owners of liens affecting said Unit, and at least a majority of the record owners of all other Units, consent to the amendment.

The Developer also reserves the absolute right, in its sole discretion, without the consent or approval of any Unit Owner(s), mortgagee(s) or other lienor(s), contract vendee(s), the Association or any other person(s), to change, alter, modify or amend the interior design arrangement, number of rooms and layout of all Units, so long as the Developer owns and has not encumbered the Units so altered, or, if encumbered, has obtained the consent of such mortgagee to such change, alteration, modification or Amendment.

5.10. Amendment of Declaration by Developer. The Developer shall reflect any change, modification, alteration or Amendment in the boundaries of any such Units owned by the Developer, or any change in the interior design, layout or arrangement of Units owned by the Developer, or any combination of two or more Units into one Unit, or any subdivision any existing Residential or Commercial Unit into two separate Units (all as described in Article 5.9 above), by filing an Amendment to the Condominium Plat prepared by a licensed Florida surveyor and an Amendment to the Condominium Declaration.

In the event such an Amendment changes the boundary lines between two (2) abutting Units, or shall subdivide any existing Residential or Commercial Unit into two separate Units, then such Amendment to the Declaration shall redistribute the interest in the Common Elements and share of the Common Surplus accordingly.

In the event the Developer by such Amendment combines two or more Units to create one new and larger Unit, the interest in the Common Elements and the Common Surplus and the share of the Common Expenses previously assigned and appurtenant to the Units being combined shall be appropriately recalculated by the Developer and assigned to the new and larger Unit.

Such Amendment to the Declaration shall be executed with the formality required by law for the execution of a deed, need be signed by the record owner(s) of the Unit(s), the mortgagee(s) holding a mortgage on the Unit(s), and at least a majority of all other unit owners affected, and shall be filed and recorded in the Public Records of Sarasota County, Florida, and shall be effective from and after the date it is file and recorded.

Such Amendment to the Condominium Plat need be executed only by a licensed Florida Land Surveyor, and shall be filed in the Condominium Plat Book of Sarasota County, Florida.

## **ARTICLE VI**

### **Use and Occupancy Restrictions**

6.1. Use and Occupancy Restrictions. In order to provide for the congenial and harmonious use and occupancy of the Condominium Property and to protect the value of the Units, the use and occupancy of the Condominium Property and each Unit shall be in accordance with the provisions hereinafter set forth.

6.2. Occupancy and Use of Units. Each of the Residential Units shall be used and occupied as a single-family residence only, except as may be otherwise herein expressly provided. Under no circumstances may more than one family reside in a Residential Unit at one time.

6.3. Corporations, Partnerships and Other Entities. The sale transfer or lease of a Residential Unit to a corporation, partnership, trust or other entity shall be conditioned upon the prior designation by the purchaser, transferee or tenant, as the case may be, of the one single family or individual that will use the Residential Unit as a single-family residence. No transient or general tourism type use of a Residential Unit by a corporation, partnership, trust or other entity shall be permitted. The single family or individual designated as the user and occupant of the Residential Unit owned by a corporation, partnership, trust or other entity shall not be changed more than twice during any one calendar year except in connection with the approved sale, transfer or lease of the Residential Unit. Use of a Residential Unit owned by a corporation, partnership, business, trust or other entity by others than the designated single family or individual shall be subject to the same restrictions and limitations contained in the Declaration and/or the Rules and Regulations of the Association on the leasing, lending and/or loaning of Residential Units that are applicable to the other Residential Units.

6.4. Subdivision of Units Prohibited. Except as expressly reserved to the Developer, no Residential may be divided or subdivided for purposes of sale, transfer or lease.



6.5. Prohibitions. No owner, tenant or other occupant of a Unit shall:

6.5.1. Paint or otherwise change the appearance of the exterior of the Unit or the Building or of any exterior wall, door, window, screen patio, balcony, terrace or any other exterior surface; place any sunscreen, blinds or awning on any terrace or exterior surface or opening without prior written approval of the Board; place any draperies, blinds or curtains at or over the windows or doors of any Unit without a solid, light color exterior liner acceptable to the Board; tint, color or otherwise treat or apply anything to any window or door which will adversely or materially change or affect the uniform exterior appearance of the Building in the opinion of the Board; plant, place or maintain any plant or Landscaping outside of a Unit except upon prior written approval of the Board and except for designated planting decks, if any, shown on the Condominium Plat annexed hereto as Exhibit "B"; erect or install any exterior lights or signs; place any signs or symbols in or on windows or doors; erect, place or attach any structures or fixtures within or to the Common Elements; nor any of the foregoing without the prior written consent of the Board. Notwithstanding the foregoing, each Residential Unit Owner may paint and otherwise reasonably decorate its Limited Common Element deck and outdoor amenity areas, without the prior approval of the Board; provided, however, that any such paint and decoration is not readily observable to the general public or other Owners within the Condominium, and is otherwise acceptable in the reasonable opinion of the Board.

6.5.2. Except as otherwise provided for herein, make any structural alterations to any Unit or to the Common Elements provided, however, this shall not prevent the erection, removal or modification of non-support carrying interior partitions wholly within the Unit; nor fasten any fixtures, or objects to walls, floors or ceilings that would damage any structural portions of the Common Elements or utilities or electrical lines or heating or air conditioning ducts or mains;

6.5.3. Fail to conform to and abide by the Declaration and Bylaws and the uniform Rules and Regulations in regard to the use of the Units, the Association Property and the Common Elements which may be adopted from time to time by the Board, or fail to allow the Association to enter the Unit at any reasonable time, when necessary for maintenance, repair or replacement of Common Elements or emergency repairs necessary to prevent damage to Common Elements or another unit(s).

6.5.4. Erect, construct or maintain any wires, aerials, antennas, satellite dishes, receiving dishes, garbage or refuse receptacles or other equipment or structures on the exterior of the Building or the Unit or on any of the Common Elements, except with the prior written consent of the Board.

6.5.5. Obstruct ingress or egress to the other Units or the Common Elements.

6.5.6. Hang or display any laundry, garments or other unsightly items or objects which are visible outside of the Unit.

6.5.7. Allow anything to remain in the Common Elements which would be unsightly or hazardous.

6.5.8. Allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles provided therefor, and each Unit, the Association Property and the Common Elements shall at all times be kept in a clean, safe and sanitary condition.

6.5.9. Make use of the Common Elements and/or Association Property in such a manner as to abridge the equal rights of the other Unit Owners to their use and enjoyment, except as otherwise expressly provided herein and except for the Limited Common Elements as herein provided.

6.5.10. Subject a Unit to a partition action in any court and all Unit Owners do by their acceptance of a conveyance of such Unit, waive any right to maintain or bring such an action.

6.5.11. Park, maintain or keep commercial vehicles, trucks, campers, trailers, mobile homes, motor homes, recreational vehicles, and similar vehicles in any parking area or elsewhere in the Condominium, except those that are necessary to service or do business with the Commercial Units, or other service vehicles during the time their occupants are actually serving a Unit or the Common Elements; provided, however, this shall not prevent small sailboats, windsurfers and similar water-oriented recreational equipment from being stored in the Owner's enclosed parking garage or elsewhere with the prior written approval of the Board and subject to rules and regulations governing such storage adopted by the Board; nor shall this prevent the maintenance and parking of such vehicles as may be essential and necessary to transport handicapped persons such as their wheelchairs or other similar devices. This section shall not relate to, nor prevent, any Owner from parking a motorcycle and/or moped in the Owner's designated parking garage in the Condominium.

6.5.12. Use any garage, terrace, landing or stairway or the Common Elements for outdoor cooking of any nature, except balconies appurtenant to a Unit and those areas, if any, designated by the Board for such purposes and designated by this Declaration for such use.

6.5.13. Permit the installation of any objects or flooring in a Unit the weight of which (together with any padding or insulating materials), would exceed the approved load limit for the area involved.

6.5.14. Install or permit the installation of storm or other shutters, awnings, shades or coverings over exterior windows, glass doors or other exterior surfaces without the prior written approval of the Board of Directors. Notwithstanding the foregoing, Hurricane Shutters may be installed pursuant to Hurricane Shutter Specifications promulgated by the Board, or otherwise permitted under the Florida Condominium Act.

6.5.15. Notwithstanding anything else contained herein to the contrary, any Unit Owner may display one portable, removable United States flag in a respectful way, pursuant to Florida Statute Section 718.113(4), and on Armed Forces' Day, Memorial Day, Flag Day, Independence Day and Veterans' Day may display in a respectful way portable, removable official flags, not larger than 4½' x 6' which represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard.

6.5.16. No Commercial Unit shall be used or leased for any of the following purposes: restaurant; bar, night club; coffee shop; massage parlor unless incidental to a hair salon or spa use; the storage of food or beverage other than for use by the occupants thereof; any other

activity which creates noise which may be heard outside of the Commercial Unit; gaming including bingo and video games; lingerie parlors or businesses exhibiting nude dancers/staff/models; adult book stores; sale of sexually oriented materials; palm readers, astrologers, or other occult sciences; violation of governmental rules and regulations; or the keeping pets or animals within a Commercial Unit other than temporarily and accompanied by a business patron. The provisions of this Section 6.5.16 shall only apply to the Commercial Units located within the Condominium.

6.5.17. Notwithstanding anything else contained herein to the contrary, a Unit Owner is permitted to attach on the mantel or frame of the door of a Unit a religious object not to exceed the 3” wide x 6” length x 1.5” deep.

6.6. Pets Restricted. Residential Unit Owners and the tenants or occupants of the Residential Unit may keep and maintain two (2) household pets per Residential Unit. No Unit Owner, tenant or occupant of the Unit thereof may keep or maintain any additional pets or animals in a Unit, the Condominium Property, or on the Common Elements, without the prior written consent of the Board. Consent, if given, may be revoked at any time. No pets shall be allowed to roam free upon the Condominium Property, or otherwise become a nuisance to the other Unit Owners. Further, all pets must be leashed at all times when not located in the Residential Unit. No goats, pigs, chickens, pigeons, livestock, or any other obnoxious animals, fowl or reptiles shall be kept or permitted to be kept as household pets. If, in the reasonable opinion of the Board, a permitted pet has become a nuisance, then the Board shall provide written notice to the Owner of the problem and the requested action to be taken by the Owner of such pet. The Board shall have the right to require the pet to be removed permanently from the Condominium Property upon the Owner’s receipt of not less than three (3) written notices concerning the same pet and issue, and the Owner’s failure to adequately address the issue, to the Board’s reasonable satisfaction, within thirty (30) days of the Owner’s receipt of the third and final written notice to the Unit Owner. No Commercial Unit Owner, tenant or occupant of a Commercial Unit shall be permitted keep or maintain any pets within their Commercial Unit, unless temporarily and accompanied by a business patron.

6.7. Common Elements. The Common Elements shall be used only for the purpose for which they are intended in the furnishing of services and facilities for the enjoyment of the Units and their occupants and as otherwise herein provided.

6.8. Nuisances. No nuisance as defined by the Association shall be allowed upon the Condominium Property. Nor shall any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents be allowed, except for the sales, administrative, marketing and promotional activities of the Developer.

6.9. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

6.10. Leasing or Loaning of Residential Units. Leasing or renting of a Residential Unit by a Residential Unit Owner is not prohibited but is restricted. No portion of a Residential Unit, other than an entire Residential Unit, may be rented. The minimum lease term is ninety (90) consecutive days, and no Residential Unit may be leased more than three (3) times in any calendar year, with the commencement date of the lease determining the year in which the lease is made. No lease may begin sooner than thirty (30) days after the commencement of the last lease. In no event shall

a Unit be licensed as a public lodging establishment or advertised or leased in such manner so as to cause the Unit or the Condominium to be classified as a public lodging establishment under Chapter 509, Florida Statutes. Notwithstanding anything contained herein to the contrary, nothing herein or in the remainder of this Declaration shall serve to create or constitute a Resort Condominium or Public Lodging Establishment under Florida law.

The lease of a Residential Unit for a term of six (6) months or less may be subject to a tourist development tax assessed pursuant to Section 125.0104, Florida Statutes. A Residential Unit Owner leasing his or her Unit for a term of six (6) months or less agrees, and shall be deemed to have agreed, for such Residential Unit Owner, and his or her heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, and all other Unit Owners, harmless from and to indemnify them for any and all costs, claims, damages, expenses or liabilities whatsoever arising out of the failure of such Residential Unit Owner to pay any applicable tourist development tax, and/or any other tax or surcharge imposed by the State of Florida with respect to rental payments or other charges due under the lease, and such Residential Unit Owner shall be solely responsible for and shall pay to the applicable taxing authority, prior to delinquency, the tourist development tax and/or any other tax or surcharge due with respect to rental payments or other charges due under the lease.

Every lease of a Residential Unit shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto), and any and all current or subsequent rules and regulations of the Association, if any. The Residential Unit Owner shall be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Elements resulting from acts or omissions of any tenant (as determined in the sole discretion of the Association), and to pay any claim for injury or damage to the Condominium caused by the negligence of the tenant, and special Assessments may be levied against the Residential Unit Owner therefor.

The Association may by rule and regulation require any Residential Unit Owner desiring to rent or lease a Residential Unit to submit in writing to the Association a letter setting forth the name of the lessee, and supply such information as may be required by the Association. All leases shall be, as are hereby made, subordinate to any lien filed by the Association, whether prior to or subsequent to such lease.

The Board of Administration of the Association may by rule and regulation restrict and limit the loaning or lending of Residential Units by the Residential Unit Owners. Tenants may not loan or lend the Residential Unit they are renting.

During the period of time that a Residential Unit is leased or loaned to others, the Residential Unit Owner and the Residential Unit Owner's family or guests shall not have the right to use or occupy the Association Property or Common Elements of the Condominium except as a guest in the presence of the tenant or occupant of the Residential Unit.

Except as otherwise specifically provided for herein, this Section 6.10 shall not apply to any Commercial Units, and the Commercial Units may be leased on any terms that may be desired by the Commercial Unit Owners.

6.11. Surface Water Management System Facilities Restrictions. No construction activities may be conducted relative to any portion of the Surface Water Management System Facilities. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Surface Water Management System Facilities. If the project includes a wetland mitigation area, as the same is defined in section 1.7.24 of Southwest Florida Water Management District's Basis of Review, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the Southwest Florida Water Management District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the Southwest Florida Water Management District in the Environmental Resource Permit issued by the Southwest Florida Water Management District may be conducted without specific written approval from the Southwest Florida Water Management District. The operation and maintenance of the Surface Water Management System Facilities, as well as the reinspection reporting, shall be performed in accordance with the terms and conditions of the Environmental Resource Permit issued by the Southwest Florida Water Management District. The Southwest Florida Water Management District has the right to take enforcement measures, including a civil action for injunction and or penalties, against the Association to compel it to correct any outstanding problems with the Surface Water Management System Facilities. The restrictions shall be in effect for at least 25 years, with automatic renewal periods thereafter.

6.12. Rules and Regulations. Uniform Rules and Regulations concerning the use of the Units the Association Property and the Condominium Property, including the Project's recreational facilities, if any, may be made and amended from time to time by the Association, in the manner provided in the Articles or Bylaws. Copies of such Rules and Regulations and amendments thereto shall be furnished by the Association to all Unit Owners, occupants and Institutional Lenders on request.

6.13. Proviso. Notwithstanding anything herein contained, until Developer has sold and/or transferred all of the Units in the Condominium, neither the Unit Owners nor the Association nor the use of the Condominium Property shall interfere with the sale or lease of the Units. Developer may make such use of the unsold Units and Common Elements as may facilitate such completion and sale or lease, including, but not limited to, maintenance of a sales office, a model, the showing of the property, the display of signs, and the right to have a rental/lease program if economic conditions so warrant.

## ARTICLE VII

### **Maintenance, Repair, Replacement; Additions, Alterations and Improvements**

7.1. Maintenance, Repair, Replacement, Additions, Alterations and Improvements. The responsibility for the maintenance, repair and replacement of the Condominium Property and restrictions upon additions, alterations and improvements thereto shall be as hereinafter provided.

7.2. Maintenance, Repair and Replacement by the Association. Except as otherwise specifically provided for herein, the Association shall maintain all Common Elements of the

Condominium Property, and shall maintain, repair and replace, as part at the Association's Common Expenses:

7.2.1. All portions of a Unit (except interior surfaces and coverings) contributing to the support of the Building in which the Unit is located, which portions shall include, but not be limited to, exterior walls and interior demising or party walls of the Building, roofs, structural components, floor and ceiling joists and slabs, load-bearing columns and load-bearing walls.

7.2.2. All conduits, ducts, plumbing, pipes, wiring and other facilities for the furnishing of utility services contained in the portions of a Unit to be maintained by the Association, and all such conduits, ducts, plumbing, pipes, wiring and other facilities contained within a Unit that service part or parts of the Condominium other than or in addition to the Unit within which they are contained.

7.2.3. All air conditioning and heating equipment providing service to the Common Elements, and, the master cooling tower and appurtenant facilities and equipment, if any, but not the heating and air-conditioning equipment serving only a particular Unit.

7.2.4. All exterior surfaces, including windows, doors, screens and glass, as well as all framings, casings and hardware therefor, shall be maintained by the Association as a Common Expense.

7.2.5. All incidental damage caused to a Unit by the work procured on behalf of the Association shall be repaired promptly at the expense of the Association.

7.2.6. All grounds, landscaping, and recreational facilities and amenities throughout the Condominium. However, notwithstanding the foregoing, each Residential Unit Owner shall be responsible for maintaining all plants and landscaping contained within such Owner's Limited Common Element planter, at its sole cost and expense.

7.2.7. Notwithstanding anything to the contrary, whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of ten percent (10%) of the then applicable budget of the Association in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the voting interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing in the aggregate ten percent (10%) of the then applicable budget of the Association or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. In addition, whenever, in the judgment of the Board of Directors, the Residential Limited Common Elements shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of ten percent (10%) of the then applicable budget of the Association in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Residential Units' voting interests represented at a meeting at

which a quorum is attained. Any such additions, alterations or improvements to such Residential Limited Common Elements costing in the aggregate ten percent (10%) of the then applicable budget of the Association or less in a calendar year may be made by the Association without approval of the Residential Unit Owners. The cost and expense of any such additions, alterations or improvements to the Residential Limited Common Elements shall constitute a part of the Residential Limited Common Expenses, and shall be assessed to the Residential Unit Owners, as a Residential Limited Common Expense.

7.2.8. Whenever, in the judgment of the Board of Directors, the Commercial Limited Common Elements shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of ten percent (10%) of the then applicable budget of the Association in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Commercial Units' voting interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Commercial Limited Common Elements costing in the aggregate ten percent (10%) of the then applicable budget of the Association or less in a calendar year may be made by the Association without approval of the Commercial Unit Owners. The cost and expense of any such additions, alterations or improvements to the Commercial Limited Common Elements shall constitute a part of the Commercial Limited Common Expenses, and shall be assessed to the Commercial Unit Owners, as a Commercial Limited Common Expense. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

7.2.9. The Association shall be responsible for the payment of all municipal charges for potable water, waste water, and fire service fees and charges that are assessed against the Condominium from time to time (collectively, the "Municipal Assessments"). The Association may either separately assess each Unit Owner for its equitable share of the Municipal Assessments (as determined in the reasonable discretion of the Association from time to time), or may determine the amount of each Unit Owner's share of the Municipal Assessments by virtue of a separate utility meter for each Unit, which may be installed and maintained by the Association in its discretion.

7.2.10. To the extent required by the City of Sarasota (or other applicable municipal agency), the Association shall maintain the trees and landscaping located on the north side of the adjacent right-of-way to the Condominium, the area of which is more particularly shown and identified on the Plat (the "Adjacent Landscaping Area"). The Adjacent Landscaping Area is not located on the Condominium Property, but shall nonetheless be preserved and maintained by the Association as a Common Expense. In lieu of directly paying the cost of the maintenance, upkeep and irrigation of the Adjacent Landscaping Area directly, the Association may (in its discretion) reimburse the owner of the Adjacent Landscaping Area for the reasonable cost of same.

7.3. Maintenance, Repair and Replacement By the Unit Owner. The obligation and responsibility of each Unit Owner for maintenance, repairs and replacement, at the Unit Owner's sole cost and expense, shall be as follows:

7.3.1. To maintain, repair and replace, all portions of the Unit (except the portions to be maintained, repaired and replaced by the Association), including, but not limited to, paint,

finishes, floor coverings, wall and/or ceiling coverings, wallpaper and decoration of all interior walls, floors and ceiling coverings, all built-in shelves, cabinets, counters, storage areas and closets; all refrigerators, stoves, ovens, disposals, dishwashers, and other kitchen equipment; all appliances in the Unit; all bathroom fixtures, equipment and apparatus; all landscaping and plants located within the interior of a Unit; all doors and windows including sliding glass doors, except those that are designated as Limited Common Elements; all non-load bearing and non-structural room partitions and dividers; and all furniture, furnishings and personal property contained within the Unit. In the event an Owner fails to properly maintain and repair the Unit or fulfill the obligations under this Article, the Association, at the direction of the Board of Administration, may make such repairs as the Board may deem necessary and the cost thereof shall be recovered from such defaulting Unit Owner. The Association shall be entitled in any action for collection from such Unit Owner to recover the cost of any repairs it shall make, plus interest at the highest lawful rate per annum and reasonable attorneys' fees and expenses incurred by the Association in the collection thereof. Such work shall be done without disturbing the rights of other Unit Owners.

7.3.2. To regularly service, inspect, and maintain such air conditioning and heating system in a clean and good working order and to repair and replace the air conditioning and heating system that services the Unit or Units, located in the Unit or outside the Unit, and the conduits and lines from such equipment to the Unit.

7.3.3. Each Unit Owner shall promptly report to the Association any defects, damage or need for repairs for which the Association is responsible that comes to the attention of the Unit Owner.

7.4. Additions, Alterations or Improvements by the Unit Owners. The following restrictions shall apply to additions, alterations, and improvements by any Unit Owners:

7.4.1. No Unit Owner shall make any additions, alterations or improvements in or to the Common Elements, or to any Limited Common Element, unless otherwise provided herein specifically to the contrary.

7.4.2. No Unit Owner shall paint or otherwise decorate or change the appearance or architecture of all or any portion of the exterior of the Building, the Unit or the Limited Common Elements or Common Elements without the prior written consent of the Board of Administration, except as may be otherwise expressly provided herein.

7.4.3. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such additions, alterations or improvements in such Unit Owner's Limited Common Elements within thirty (30) days after such request and all additional information requested by the Board is received, and the failure to so answer within the stipulated time shall constitute the Board's consent, provided that during such period, the Board shall have the absolute right, with or without cause, to reject any such request.

7.4.4. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise.



7.4.5. Once approved by the Board, such approval may not be revoked thereafter.

7.4.6. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed for such Owner, and his heirs, personal representatives, successors and assigns, to indemnify and hold the Association and all other Unit Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom, and such Unit Owner shall be solely responsible for the maintenance, repair, replacement and insurance thereof as may be required by the Association.

7.4.7. If the Owner fails to construct the addition, alteration or improvement in the manner approved, the Owner shall be obligated to make all corrections necessary and if such Owner fails to do so, the Association, upon notice to the Owner, may make such corrections and demand payment from such Owner all the cost of such correction and to seek collection therefrom upon nonpayment.

7.4.8. The Board may appoint an Architectural Control Committee to assume the foregoing functions on behalf of the Board.

7.5. Additions, Alterations or Improvements by Commercial Unit Owners. Notwithstanding anything to the contrary set forth in Section 7.4 or other portions hereof, the Developer and each Commercial Unit Owner shall have the right, without the consent or approval of the Board of Directors or other Unit Owners, to make alterations, additions or improvements to the interior of any Commercial Unit owned by it or them (including, without limitation, the removal of interior - non-structural - walls, windows, doors, floors, ceilings and other non-structural portions of the improvements, and/or the installation of interior divider walls and/or signs). Further, Developer reserves the right, without the consent or approval of the Board of Directors or other Unit Owners, to combine or subdivide the Commercial Units from time to time in accordance with Sections 5.9 and 5.10 hereof. The Commercial Unit Owner making or causing to be made any such additions, alterations or improvements to the interior of its Commercial Unit 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, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof.

## **ARTICLE VIII**

### **Assessments**

8.1. Assessments. The Association has the power to levy and collect Assessments against each Unit Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including, but not limited to, regular Assessments for each Unit's share of the Common Expenses as set forth in the annual budget, assessments levied by the Association against the Residential Units to meet the Residential Limited Common Expenses, and assessments levied by the Association against the Commercial Units to meet the Commercial Limited Common Expenses, and Special Assessments for non-recurring or unbudgeted Common Expenses. The Association may also levy special charges against any individual Unit for any amounts other than Common Expenses which are properly chargeable