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CORPORATION SERVICE COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 830286 134074A

AUTHORIZATION :

COST LIMIT : \$ 78.75

Patricia Pigato

ORDER DATE : August 2, 2004

ORDER TIME : 10:48 AM

ORDER NO. : 830286-005

CUSTOMER NO: 134074A

CUSTOMER: Albert J. Vitto, Iii
Saraga & Lipshy, P.a.

201 Northeast First Avenue

Delray Beach, FL 33444

DOMESTIC FILING

NAME: THE RIVER PRESERVE RIVERFRONT
CONDOMINIUM ASSOCIATION, INC.

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION
 CERTIFICATE OF LIMITED PARTNERSHIP
 ARTICLES OF ORGANIZATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

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 CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Sara Lea - EXT. 2914

EXAMINER'S INITIALS: _____

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

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

We the undersigned, with other persons being desirous of forming a corporation not for profit, under the provisions of Chapter 617, Florida Statutes, do agree to the following:

ARTICLE I - NAME

The name of the corporation is THE RIVER PRESERVE RIVERFRONT CONDOMINIUM ASSOCIATION, INC., whose address is 9891 U.S. Highway 1, Sebastian, FL 32958 For convenience the corporation shall be referred to in this instrument as the "Association".

ARTICLE II - PURPOSE

The Association is organized as a corporation not for profit under the terms and provisions of Chapter 617, Florida Statutes, and a condominium association, as referred to and authorized by Section 718.111 Florida Statutes. The purpose for which the corporation is organized is to provide the entity responsible for the operation of a condominium in Indian River County, Florida known as THE RIVER PRESERVE RIVERFRONT, A CONDOMINIUM ("Condominium"). The Declaration of Condominium, and any amendments thereto whereby said Condominium has been or will be created, are herein called the "Declaration".

**ARTICLE III - QUALIFICATION OF MEMBERS
AND MANNER OF ADMISSION**

Section 1. The members of the Association shall constitute all the record owners of residential condominium units in the Condominium. After receiving the approval of the Association, as required under the Declaration, change of membership may be made by recording in the Records of Indian River County, Florida, a deed or other instrument establishing record title to a condominium unit and the delivery to the Association of a certified copy of such instrument. The owner designated by such instrument thus becomes a member of the Association and the membership of the prior owner of such condominium unit shall thereupon be terminated.

Section 2. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner whatsoever except as an appurtenance to his condominium unit.

Section 3. The owner of each condominium unit shall be entitled to at least one (1) vote as a member of the Association. The exact number of votes to be cast by owners of a condominium unit and the manner of exercising voting rights shall be determined by the By-Laws of the Association.

ARTICLE IV - CORPORATE EXISTENCE

The Association's existence shall commence upon the filing of these Articles of Incorporation with the Secretary of State, State of Florida.

ARTICLE V - CORPORATE EXISTENCE

The affairs of the Association shall be managed by its Board of Directors. The directors and officers may lawfully and properly exercise the powers of the corporation, notwithstanding the fact that some or all of them who may be directly or indirectly involved in the exercise of such powers and in the negotiations and/or consummation of the agreements executed pursuant to such powers are some or all of the persons with whom the corporation enters into such agreements or who some or all of the proprietary interest the entity or entities with whom the corporation enters into such agreements. Disclosure of such agreements by setting forth the same in the Declaration and/or the Amended Declaration of the Condominium, as initially declared or subsequently redeclared or amended shall stand as an absolute confirmation of such agreements and the valid exercise by the directors and officers of the corporation of the powers pertinent thereto.

ARTICLE VI - BOARD OF DIRECTORS

Section 1. The business affairs of this corporation shall be managed by the Board of Directors.

Section 2. This corporation shall have three (3) members of the Board initially. The number of directors may be changed from time to time as provided by the By-Laws, but their number may never be less than three (3).

Section 3. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

Section 4. The first election of directors shall not be held until owners other than the Developer own fifteen percent (15%) or more of the units in the Condominium that will ultimately be operated by the Association. The directors named in these Articles shall serve until the first election of directors and any vacancies in their number occurring before the first election shall be filled by the remaining directors.

Section 5. Directors need not be members of the Association.

Section 6. The names and addresses of the initial Board of Directors are follows:

MITCHELL B. MALVAN
9891 U.S. Highway 1
Sebastian, FL 32958

ROGER SMIGIEL
9891 U.S. Highway 1
Sebastian, FL 32958

BONNIE E. MALVAN
9891 U.S. Highway 1
Sebastian, FL 32958

ARTICLE VII - OFFICERS

Section 1. The officers of the corporation shall be a President, a Vice President, a Secretary, a Treasurer and such number of Vice Presidents and other officers as may be provided in the By-Laws.

Section 2. The names of the persons who are to serve as officers of the Association until their successors are elected by the Board of Directors are as follows:

<u>OFFICE</u>	<u>NAME</u>
President/Treasurer	Mitchell B. Malvan
Vice President	Roger Smigiel
Secretary	Bonnie E. Malvan

Section 3. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors.

Section 4. The officers shall have such duties, responsibilities, and powers as provided by the By-Laws and by Chapter 718, Florida Statutes.

ARTICLE VIII - SUBSCRIBER

The names and addresses of the subscriber of these Articles of Incorporation are as follows:

MITCHELL B. MALVAN
9891 U.S. Highway 1
Sebastian, FL 32958

I the undersigned, being the subscriber hereto, do hereby subscribe to these Articles of Incorporation, and in witness whereof, I have set out my hand and seal this 29th day of July, 2004

WITNESSES:

[Signature]

Roger Smigal

Please Print Name

[Signature]

Leslie Lang

Please Print Name

By: M.B. Malvan
Mitchell B. Malvan

STATE OF FLORIDA }
COUNTY OF INDIAN RIVER }

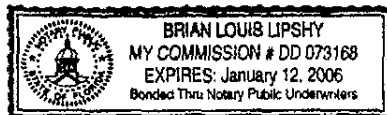
The foregoing instrument was acknowledged before me this 29th day of July, 2004, by Mitchell B. Malvan. He is personally known to me or has produced as identification.

[Signature]
NOTARY PUBLIC

Name: _____

Serial #: _____

My Commission Expires: _____



ACKNOWLEDGMENT OF REGISTERED AGENT

Having been named to accept service of process for THE RIVER PRESERVE RIVERFRONT CONDOMINIUM ASSOCIATION, INC. at the place designated in this Certificate, hereby accept to act in this capacity and I further agree to comply with the provisions of said Act relative to keeping open said office.



Registered Agent
Mitchell B. Malvan
9891 U.S. Highway 1
Sebastian, FL 32958

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Prepared By:
Brian Louis Lipshy, Esquire
SARAGA & LIPSHY, P.A.
201 N.E. First Avenue
Delray Beach, FL 33444
(561) 330-0660

Record and Return To:
Brian Louis Lipshy, Esquire
SARAGA & LIPSHY, P.A.
201 N.E. First Avenue
Delray Beach, FL 33444
(561) 330-0660

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

1. Submission Statement

1.1 Vero Island Properties, Inc., hereinafter called "Developer" for itself, its successors, grantees and assigns, being the holder of fee simple title to the real property described in Exhibit "2", attached hereto and made a part hereof, hereby states and declares that the property described on Exhibit "2", is submitted to condominium ownership, pursuant to the requirements of Chapter 718, Florida Statutes, which is in effect at the time of this submission, hereinafter sometimes referred to as "Condominium Act", the provisions of which are hereby incorporated by reference as if fully set forth herein, and does hereby file for record the Declaration of Condominium.

1.2 All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitude upon the land as the case may be, shall be non-exclusive and perpetual unless sooner terminated as provided herein, or in the Condominium Act, and shall be binding upon all unit owners as hereinafter defined, and their grantees, devisees, or mortgagees, their heirs, personal representatives, successors and assigns; and all parties claiming by, through or under such persons agree to be bound by the provisions hereof and the By-Laws of the Association. Both the burdens imposed and the benefits granted shall run with each Unit and interest in the common elements.

2. Name and Address

2.1 The name of the condominium is The River Preserve Riverfront, A Condominium.

2.2 The name of the Association of Unit owners is The River Preserve Riverfront Condominium Association, Inc., a Florida not for profit corporation.

2.3 The resident or registered agent designated to receive service of process upon the association is Mitchell B. Malvan, whose address is 9891 US Highway 1, Sebastian, FL 32958.

3. Land

The land comprising this condominium is described on Exhibit "2", attached hereto and made a part hereof, as if fully set forth herein.

4. Definitions

The terms used in this Declaration and in its Exhibits, including the By-Laws of the Association, shall be defined in accordance with the provisions of Section 718, Florida Statutes, and as follows unless the context otherwise requires:

4.1 "Assessment" means a share of funds required for payment of common expenses which from time to time is assessed against the Owner.

4.2 "Association" means the corporate entity described in Paragraph 2.2 hereof, and its successors, which is responsible for the operation of the condominium.

4.3 "Board of Directors" means the board of administrators or their representative body responsible for administration of the Association.

4.4 "By-Laws" means the By-Laws for the government of the Association, as amended from time to time.

4.5 "Condominium Act" means Chapter 718, Florida Statutes in existence on the date of recording of this Declaration, unless the context states otherwise.

4.6 "Common Elements" means the portions of the condominium property not included in the Units.

4.7 "Common Expenses" means the expenses and assessments properly incurred by the Association for the condominium.

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- 4.8 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the condominium, including, but not limited to, assessments, rents, profits and revenues on account of the common elements, over the amount of common expenses.
- 4.9 "Community Association" means River Preserve Community Association, Inc., a Florida Corporation not for profit, its successors, assigns and legal representatives as more particularly described in Article 36 herein.
- 4.10 "Community Association Property" means all property, real or personal, owned or leased by the Community Association, or dedicated by a recorded subdivision plat to the Community Association for the use and benefit of the Owners.
- 4.11 "Condominium" means that form of ownership of condominium property under which Units are subject to ownership by one or more Owners, and there is appurtenant to each Unit, as a part thereof, an undivided share in the common elements.
- 4.12 "Condominium Parcel" means a Unit together with the undivided share in the common elements which is appurtenant to the Unit.
- 4.13 "Condominium Property" means and includes the lands that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all rights appurtenant thereto intended for use in connection with the condominium.
- 4.14 "Declaration of Condominium" means the instrument or instruments by which a condominium is created, and such instrument or instruments as they are from time to time amended. Throughout this instrument "Declaration of Condominium" shall be called the "Declaration".
- 4.15 "Developer" means a person or entity who creates a condominium and who offers condominium parcels owned by him for sale or lease in the ordinary course of business, except that the term "Developer" shall not include the Owners or lessees of Units in condominiums who offer the Units for sale or lease or their leasehold interests for assignment when they have acquired or leased their Units for their own occupancy.
- 4.16 "Lease" means the grant by an Owner of a temporary right of use of the Owner's Unit for valuable consideration.
- 4.17 "Limited Common Elements" means and includes those common elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units.

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- 4.18 "Member" or "Member of the Association" means a record Owner of a Unit.
- 4.19 "Mortgagee" means a bank, saving and loan association, insurance company, mortgage company or other like business entity and all purchase money first mortgagees. The term "mortgagee" shall also be deemed to mean "institutional mortgagee" and "institutional first mortgagee", and vice versa.
- 4.20 "Operation" or "Operation of Condominium", means and includes the administration and management of the condominium property.
- 4.21 "Properties" means the Condominium Property (Units, common elements and limited common elements) and Association Property.
- 4.22 "Plans and Specifications" means the plans and specifications prepared for the Buildings and improvements.
- 4.23 "Rules and Regulations" means those rules and regulations promulgated from time to time by the Board of Directors, governing the use of the Properties, including the Units, and the operation of the Association.
- 4.24 "Unit" means a part of the condominium property which is to be subject to private ownership, as designated on exhibits attached to and made a part of this Declaration.
- 4.25 "Unit Owner" or "Owner of the Unit" means the Owner of a condominium parcel.
- 4.26 "Utility Service" means, as the case may be, electric power, gas, hot and cold water, heating, refrigeration, air conditioning, telephone, cable television, garbage and sewage disposal.
- 4.27 "Voting Certificate" means a document which designates one of the record title Owners, *or the corporate, partnership or entity representative who is authorized to vote on behalf of a condominium Unit owned by more than one person or by an entity.*
- 4.28 "Voting Interest" means the voting rights distributed to the association members pursuant to the Florida Condominium Act, and as set forth in Article 22 of this Declaration.

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

5. Description of Condominium Property and Improvements: Survey and Plans; Phasing Plan.

5.1 The Developer proposes to construct thirty (30) residential Units and associated improvements. This will be a five (5) phase Condominium in accordance with Florida Statute 718.403. Phases I and II shall be initially submitted with this Declaration. Phase I described in Exhibit "2" attached to and made part of this Declaration is a residential phase to consist of six (6) Units in one (1) building and certain commonly used facilities, which include parking areas, landscaping and six (6) garages. Phase II described in Exhibit "2" attached to and made a part of this Declaration is a residential phase, to consist of six (6) Units in one (1) building and certain commonly used facilities, which include parking areas, landscaping and six (6) garages. Phase III described in Exhibit "2" attached to and made a part of this Declaration is a residential phase to consist of six (6) Units in one (1) building and certain commonly used facilities, which include parking areas, landscaping and six (6) garages which may be submitted to the condominium form of ownership, if submitted, shall become part of the Condominium. Phase IV described in Exhibit "2" attached to and made a part of this Declaration is a residential phase, to consist of six (6) Units in one (1) building and certain commonly used facilities, which include parking areas, landscaping and six (6) garages which may be submitted to the condominium form of ownership, if submitted, shall become part of the Condominium. Phase V described in Exhibit "2" attached to and made a part of this Declaration is a residential phase, to six (6) Units in one (1) building and certain commonly used facilities, which include parking areas, landscaping and six (6) garages, which may be submitted to the condominium form of ownership, if submitted, shall become part of the Condominium.

5.2 THE DEVELOPER RESERVES THE RIGHT TO MAKE NONMATERIAL CHANGES IN THE LEGAL DESCRIPTION OF ANY PHASE.

5.3 The Developer specifically intends to sell Units as fee simple estates. The Developer reserves the right, however, to leased the Units but will not convey the Units in fee simple subject to lease.

5.4 Unit Boundaries. Each Unit shall include that part of the building that lies within the following boundaries, the boundaries being part of the Unit:

- A. Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their intersections with the perimetrical boundaries:
 - 1. Upper Boundaries. The horizontal plane immediately adjacent to but not including the topside of the drywall ceiling of the Unit.
 - 2. Lower Boundaries. The horizontal plane immediately adjacent to but not including the concrete floor slab of the Unit

- B. Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the backside of the drywall walls bounding the Unit, extended to their intersections with each other and with the upper and lower boundaries and includes the patios.
- C. Apertures. Where there are apertures in any boundary, including without limitation, windows and doors, the boundaries shall extend to the interior unfinished surfaces of such apertures and their frameworks. Surfaces made of glass or other transparent material and all framing, casing and hardware, shall be excluded from the Unit, except that the sliding glass door onto the patio and the patio screened enclosure are part of the Unit.
- D. Air-conditioning and heating equipment. The air conditioning/heating Unit, including the handling equipment, and appurtenances and line serving only one Unit, are deemed part of the Unit.
- E. Proviso. Any portions of the Condominium property referred to in Exhibit "2" as common elements shall not be part of the Unit.

In cases not specifically covered in this Article 5.4 in any case of conflict or ambiguity, the graphic depictions of the Unit and boundaries set forth in Exhibit "2" to the Declaration shall control in determining the boundaries of a Unit, except that the provisions of Article 5.4.E above shall control over said exhibits.

5.5 Phasing Plan.

- A. Phasing. The number of Units to be included in Phase I is 6 Units; the number of Units to be included in Phase II is 6 Units; the number of Units to be included in Phase III is 6 Units; the number of Units to be included in Phase IV is 6 Units and the number of Units to be included in Phase V is 6 Units.
- B. Phase I. Phase I is submitted to this Declaration at this time.
 - 1. Survey, Plot Plans and Floor Plans. The Survey, plot plans and floor plans of all Units in Phase I, including their identification number, locations and dimensions, are attached to and made a part of this Declaration as Exhibit "2".
 - 2. Number and approximate size of Units. There shall be six (6) Units situated in one (1) building which is both a minimum and maximum number of Units in the phase. Four (4) of the Units located in Building 3 (as identified in Exhibit "2") are approximately 2,523 square feet of air conditioned living space and two (2) of the Units (as identified in Exhibit "2") are approximately 2,547 square feet of air

conditioned living space.

3. Each Unit's Percentage of Ownership. Each Unit's percentage of ownership in the common elements or common surplus in Phase I shall be as set forth in Exhibit "3".
4. Recreational Facilities. There are no recreational facilities in Phase I other than those provided by the Community Association.
5. Membership Vote and Ownership in the Association. Each Unit shall have one full membership vote in the Association, with there being six (6) votes in Phase I. Owners of each Unit shall have the same ownership in the Association as the Owners of all other Units.
6. No Time Share Estates. NO TIME SHARES ESTATES WILL BE CREATED WITH RESPECT TO THIS PHASE.

C. Phase II. Phase II is submitted to this Declaration at this time.

1. Survey, Plot Plans and Floor Plans. The Survey, plot plans and floor plans of all Units in Phase II, including their identification number, locations and dimensions, are attached to and made a part of this Declaration as Exhibit "2".
2. Number and approximate size of Units. There shall be six (6) Units situated in one (1) building which is both a minimum and maximum number of Units in the phase. Four (4) of the Units located in Building 4 (as identified in Exhibit "2") are approximately 2,523 square feet of air conditioned living space and two (2) of the Units (as identified in Exhibit "2") are approximately 2,547 square feet of air conditioned living space.
3. Each Unit's Percentage of Ownership. Each Unit's percentage of ownership in the common elements or common surplus in Phase II shall be as set forth in Exhibit "3".
4. Recreational Facilities. There are no recreational facilities in Phase II other than those provided by the Community Association.
5. Membership Vote and Ownership in the Association. Each Unit shall have one full membership vote in the Association, with there being six (6) votes in Phase II. Owners of each Unit shall have the same ownership in the Association as the Owners of all other.

6. No Time Share Estates. NO TIME SHARES ESTATES WILL BE CREATED WITH RESPECT TO THIS PHASE.

D. Phase III. Phase III is NOT being added to this Declaration at this time. If added, this Phase will be added by an amendment to this Declaration.

1. Survey, Plot Plans and Floor Plans. The Survey, plot plans and floor plans of all Units in Phase III, including their identification number, locations and dimensions, are attached to and made a part of this Declaration as Exhibit "2".
2. Number and approximate size of Units. There shall be six (6) Units situated in one (1) building which is both a minimum and maximum number of Units in the phase. Four (4) of the Units located in Building 5 (as identified in Exhibit "2") are approximately 2,523 square feet of air conditioned living space and two (2) of the Units (as identified in Exhibit "2") are approximately 2,547 square feet of air conditioned living space.
3. Each Unit's Percentage of Ownership. Each Unit's percentage of ownership in the common elements or common surplus in Phase III shall be as set forth in Exhibit "3".
4. Recreational Facilities. There are no recreational facilities in Phase III other than those provided by the Community Association.
5. Membership Vote and Ownership in the Association. Each Unit shall have one full membership vote in the Association, with there being six (6) votes in Phase III. Owners of each Unit shall have the same ownership in the Association as the Owners of all other.
6. No Time Share Estates. NO TIME SHARES ESTATES WILL BE CREATED WITH RESPECT TO THIS PHASE.
7. Estimated Completion Date. It is estimated that Phase III shall be added on or before December 31, 2006.
8. Reservations. THE DEVELOPER RESERVES THE RIGHT NOT TO ADD PHASE III.

E. Phase IV. Phase IV is NOT being added to this Declaration at this time. If added, this Phase will be added by an amendment to this Declaration.

1. Survey, Plot Plans and Floor Plans. The Survey, plot plans and floor plans of all Units in Phase IV, including their identification number, locations and dimensions, are attached to and made a part of this Declaration as Exhibit "2".
2. Number and approximate size of Units. There shall be six (6) Units situated in one (1) building which is both a minimum and maximum number of Units in the phase. Four (4) of the Units located in Building 6 (as identified in Exhibit "2") are approximately 2,523 square feet of air conditioned living space and two (2) of the Units (as identified in Exhibit "2") are approximately 2,547 square feet of air conditioned living space.
3. Each Unit's Percentage of Ownership. Each Unit's percentage of ownership in the common elements or common surplus in Phase IV shall be as set forth in Exhibit "3".
4. Recreational Facilities. There are no recreational facilities in Phase IV other than those provided by the Community Association.
5. Membership Vote and Ownership in the Association. Each Unit shall have one full membership vote in the Association, with there being six (6) votes in Phase IV. Owners of each Unit shall have the same ownership in the Association as the Owners of all other.
6. No Time Share Estates. NO TIME SHARES ESTATES WILL BE CREATED WITH RESPECT TO THIS PHASE.
7. Estimated Completion Date. It is estimated that Phase IV shall be added on or before December 31, 2007.
8. Reservations. THE DEVELOPER RESERVES THE RIGHT NOT TO ADD PHASE IV.

F. Phase V. Phase V is NOT being added to this Declaration at this time. If added, this Phase will be added by an amendment to this Declaration.

1. Survey, Plot Plans and Floor Plans. The Survey, plot plans and floor plans of all Units in Phase V, including their identification number, locations and dimensions, are attached to and made a part of this Declaration as Exhibit "2".

2. Number and approximate size of Units. There shall be six (6) Units situated in one (1) building which is both a minimum and maximum number of Units in the phase. Four (4) of the Units located in Building 7 (as identified in Exhibit "2") are approximately 2,523 square feet of air conditioned living space and two (2) of the Units (as identified in Exhibit "2") are approximately 2,547 square feet of air conditioned living space.
3. Each Unit's Percentage of Ownership. Each Unit's percentage of ownership in the common elements or common surplus in Phase V shall be as set forth in Exhibit "3".
4. Recreational Facilities. There are no recreational facilities in Phase V other than those provided by the Community Association.
5. Membership Vote and Ownership in the Association. Each Unit shall have one full membership vote in the Association, with there being six (6) votes in Phase V. Owners of each Unit shall have the same ownership in the Association as the Owners of all other.
6. No Time Share Estates. NO TIME SHARES ESTATES WILL BE CREATED WITH RESPECT TO THIS PHASE.
7. Estimated Completion Date. It is estimated that Phase V shall be added on or before March 31, 2008.
8. Reservations. THE DEVELOPER RESERVES THE RIGHT NOT TO ADD PHASE V.

6. Easements.

Each of the easements and easement rights referred to in this Section 6, is reserved through the Properties and is a covenant running with the land in the Condominium, and notwithstanding any other provisions of this Declaration, shall survive the removal of any of the Properties from the Condominium. None of the easements specified in this Section 6 may be encumbered by any leasehold or lien other than those on the Units. Any lien encumbering these easements shall automatically be subordinate to the rights of the Owners with respect to such easements. The following easements lie in addition to those provided for in the Condominium Act:

6.1 Encroachments. If any Unit encroaches upon any of the common elements or Association Property for any reason other than the intentional act of an Owner, or if any common elements or Association property encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

6.2 Ingress and Egress. A non-exclusive easement shall exist in favor of each Owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements and Association property as from time to time may be intended and designated for such purposes and use, and for vehicular and pedestrian traffic, over, through, and across such portions of the common elements and Association property as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

6.3 Maintenance, Repair and Replacement. Easements through the Units, common elements and Association property for maintenance, repair and replacements.

6.4 Utility Service and Drainage Easements.

- A. There is hereby created a blanket easement upon, across, over through and under the Properties for the installation, replacement, repair and maintenance of all utility and service lines and systems and drainage, including but not limited to electric, gas, water, sewer, telephone, electric, cable television, security, and surveillance or communication lines and systems. By virtue of this easement it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain such facilities and equipment on the Properties, to excavate for such purposes and to affix and maintain wires, circuits, and conduits on the Units, providing the disturbed areas are restored to the condition in which they were found and that an easement does not prevent or unreasonably interfere with the use of the Units. Except as otherwise provided in Article 5.4.B below, no sewer, electrical lines, water lines, or other utility service lines or facilities for such utilities and no cable or communication lines and systems or drainage systems may be installed or relocated on the Properties except as are approved by the Developer. The Developer may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred. Utility as referred to herein means a public or private utility. The Developer reserves the right to modify or relocate the above-referenced easements.
- B. Once the Developer closes upon the sale of the last Unit in the condominium, the powers vested in the Developer under Article 6.4(A) above shall terminate, and shall then vest in the Association. Such powers shall be exercised by the Board of Directors in its reasonable discretion without the need for joinder of any Owner.
- C. The Developer under Article 6.4(A) and the Association under Article 6.4(B) above, or its designee, shall have a right to remove any improvements interfering with or impairing such facilities or easements herein reserved. No

Owner shall do anything anywhere on his Unit that interferes with or impairs or may interfere with or impair, the provision of such utility or other services or the use of these easements.

6.5 Public Services. Emergency, regulatory, law enforcement and other public services in the lawful performance of their duties upon the Condominium property.

6.6 Special Easements Reservation. The Developer reserves for itself and any of its successors, assigns or legal representatives, a blanket easement for ingress and egress, public and private utilities, or drainage, and for any developmental purposes over added Phases in favor of the un-added Phase. Said easements shall be appurtenant to and shall burden added Phases and shall not be limited by definition or description, provided that the easement or its use shall not compromise, alter or affect any zoning or zoning compliance of the Properties or create an unreasonable burden or nuisance upon added Phases. The Developer or other Owners of the un-added Phase served by this easement shall be responsible for any disrepair of that portion of added Phases to the extent that such disrepair is a direct result of the use of the easements by the developer or other Owners of the added Phase. Nothing in this easement shall be deemed to prescribe the formulation of a specific legal description of this easement. This easement shall automatically terminate when or if all Phases are added to the Condominium. In addition to the foregoing, to the extent that some but not all Phases are added, then the Developer reserves for itself and any of its successors, assigns or legal representatives, a blanket easement for ingress and egress, public and private utilities, or drainage, and for any developmental purposes over all phases which have been added to the condominium. Said easements shall be appurtenant to and shall burden the added phases and shall not be limited by definition or description, provided that the easement or its use shall not compromise, alter or affect any zoning or zoning compliance of the properties or create an unreasonable burden or nuisance upon the added phases. The Developer or other Owners of the un-added phases served by this easement shall be responsible for any disrepair of that portion of the added phases, to the extent that such disrepair is a direct result of the use of the easement by the Developer or other Owners of the added phases. Nothing in this easement shall be deemed to prescribe the formulation of a specific legal description of such easement, which shall automatically terminate when all phases have been added to the Condominium.

7. Indemnification of Units, Shares in Common Elements of Common Expenses, Voting Rights.

7.1 The land described on Exhibit "2", and the improvements thereon, together with common elements constitute the condominium property. All Floor Plans and Site Plans and all legends and notes thereon contained are incorporated herein and made a part hereof by reference and said plans have been certified in the manner required by the Condominium Act and are attached hereto.

7.2 The undivided interest owned by each Unit Owner in the common elements is set forth on Exhibit 3 attached hereto. The percentage assigned each Unit shall be the basis upon which assessments are made as provided for in Article 25 herein.

7.3 Subject to any provisions of the By-Laws of the Association applicable thereto, a Unit Owner is entitled to one vote for each Unit owned. The vote of any Unit owned jointly, by the entireties, by a corporation or by any other entity shall be exercised in accordance with the By-Laws, it being understood that each Unit is entitled to one vote only.

8. Condominium Parcels, Appurtenances, Possession and Enjoyment

8.1 The condominium parcel is a separate parcel of real property, owned in fee simple or any other estate of real property recognized by law.

8.2 There shall pass with a Unit as appurtenances thereto:

- (1) An undivided share in the common elements.
- (2) The right to use such portion of the common elements as provided for herein.
- (3) An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or constructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.
- (4) An undivided share in the common surplus.
- (5) Membership in the Association designated herein, with the full voting rights appertaining thereto.

8.3 The Owner of a Unit is entitled to the exclusive possession of his Unit. He shall be entitled to use the common elements in accordance with the purposes for which they are intended but no such use shall hinder or encroach upon the lawful rights of the Owners of other Units. There shall be a joint use of the common elements and a joint mutual non-exclusive easement for that purpose is hereby created.

9. Restraint Upon Separation & Partition of Common Elements

9.1 The undivided share in the common elements which is appurtenant to a Unit shall not be separated there from and shall pass with the title to the Unit, whether or not separately described.

9.2 A share in the common elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit.

9.3 The shares in the common elements appurtenant to Units shall remain undivided, and no action for partition of the common elements shall be brought.

10. Common Elements

10.1 Common elements include within their meaning the following items:

- (1) The land on which the improvements are located and any other land included in the condominium property, whether or not contiguous.
- (2) All parts of the improvements which are not included within the Unit.
- (3) Garages assigned pursuant to paragraph 15.1(4) of the Declaration excluding the interior surfaces (including attachments made by the Owner); hardware, garage door entry system, and electrical.
- (4) Easements through Units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to Units and the common elements.
- (5) An easement of support in every portion of a Unit which contributes to the support of the building.
- (6) Installations for the furnishings of utility services to more than one Unit or to the common elements or to a Unit other than the Unit containing the installation.
- (7) The property and installation in connection therewith required for the furnishing of services to more than one Unit or to the common elements.
- (8) Lighting fixtures utilized to illuminate the common elements.
- (9) Elevators located in the condominium building.
- (10) Stairways located in the condominium building used as a means of ingress and egress.
- (11) Any portion or portions of the condominium property designated a limited common element, reserved for the use of a certain condominium Unit or Units to the exclusion of other Units, and any portion or portions of the condominium property not included in a Unit.

10.2 A person having interest under a mortgage of record that encumbers any portion of the common elements which is not satisfied prior to the recordation of this Declaration shall join in the execution of this Declaration; provided, however, in lieu of joining in the execution of this Declaration, any mortgagee may execute an appropriate consent or subordination agreement with the formalities required for deeds.

11. Amendment of Declaration

11.1 This Declaration may be modified or amended by notice of the subject matter of the proposed amendment being included in the notice of any meeting at which a proposed amendment is considered. An amendment may be proposed by either the Board of Directors or by fifty-one percent (51%) of the members of the Association. A resolution adopting a proposed amendment must bear the approval of not less than sixty-five (65%) of the entire membership of the Board of Directors and seventy-five percent (75%) of the members of the Association, or by not less than eighty percent (80%) of the votes of the entire membership of the Association. Members not present at the meeting considering the amendment may express their approval, in writing, given before such meetings.

11.2 In alternative to the procedure set forth above, an amendment may be made by an agreement signed and acknowledged by all of the record Owners of Units in the condominium in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the public records of Indian River County, Florida.

11.3 A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with the same formality as that of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the public records of Indian River County, Florida.

11.4 No amendment shall change the configuration or size of any condominium Unit in any material fashion, materially alter or modify the appurtenances to such Unit, or change the proportion or percentage by which the Owner of the parcel shares the common expenses and owns the common surplus unless, in addition to the requirements of Section 11.1 above, the record Owner thereof and all record Owners of liens thereon shall join in the execution of the amendment.

11.5 Notwithstanding anything contained herein to the contrary, the designation of the agent for the service of process named in this Declaration may be changed from time to time by an instrument executed by the Association with the formalities required for the execution of a deed and recorded in the public records of Indian River County and filed with the Florida Department of State, Division of Corporations.

11.6 Anything herein to the contrary notwithstanding, the Association expressly reserves the right to amend this Declaration in order to correct any legal descriptions contained herein which may be incorrect by reason of a scrivener's or surveyor's error. Such error may be, among other things, the failure to designate an appropriate undivided share of the common expenses, or that all of the common expenses or interest in the common surplus or all of the common elements of the condominium have not been distributed in this Declaration such that the sum total of the share of common elements which have been distributed or the sum total of shares in the common expenses or ownership of common surplus fail to equal 100%, or if more than 100% of the common elements or common expenses or ownership of the common surplus shall have been distributed. The Association may amend this Declaration as aforesaid by filing an amended legal description (or descriptions) as an amendment to this Declaration among the public records of Indian River County, Florida, which amendment (or amendments) shall expressly describe the legal description which is

being corrected (by reference to the exhibit containing said legal description or otherwise) in addition to the corrected legal description. Such amendment (or amendments) need be approved only by the Board of Directors or a majority of the Unit Owners and need not be approved by lienors, or mortgagees of Units of the condominium, except for the written consent of the affected mortgagee. As part of any such amendment, there shall be attached thereto an affidavit of the individual or individuals responsible for the original incorrect legal description whether he be the scrivener or the surveyor, which affidavit shall set forth that: (1) said individual made an error in the legal description, (2) the error is corrected by the description contained in the amendment, and (3) it was the intent at the time of the incorrect original legal description to make the description such as is contained in the new amendment.

12. Termination of Condominium

12.1 All of the Unit Owners may remove the condominium property from the provisions of the Condominium Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the condominium parcels consent thereto, or agree, in either case by instruments duly recorded, that their liens be transferred to the individual share of the Unit Owner in the property as hereinafter provided.

12.2 Upon removal of the condominium property from the provisions of the Condominium Act, the condominium property shall be deemed to be owned in common by the Unit Owners. The undivided share in the property owned in common by each Unit Owner shall be the undivided share previously owned by such Owner in the common elements.

12.3 After termination of a condominium in any manner, the liens upon condominium parcels shall be upon the respective undivided shares of the Owners as tenants in common.

12.4 The termination of the condominium shall not bar the creation of another condominium affecting the same property.

13. Equitable Relief

In the event of substantial damage to or destruction of all or a substantial part of the condominium property, and in the event the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any Unit Owner or mortgagee shall have the right to petition a court of equity having jurisdiction in and for Indian River County, Florida, for equitable relief, which may, but need not necessarily include a termination of the condominium and a partition.

14. Enforcement of Maintenance

In the event the Owner of a Unit fails to maintain same as required herein, or otherwise violates the provisions hereof, the Association or any other Unit Owner shall have the right to proceed in a court to seek compliance with the applicable provisions.

15. Limited Common Elements

15.1 Certain common elements have been designated as limited common elements, reserved for the use of a particular Unit, to the exclusion of all other Units. The limited common elements and the Units to which their use has been designated are as described in this Declaration and as further identified on the Survey and Site Plans (Exhibit "2" to the Declaration). Each Unit Owner shall maintain and repair all limited common elements which such Owner is exclusively entitled to use. The following common elements are hereby designated as limited common elements, and shall be appurtenant to the particular Unit:

- (1) **Balconies and Railings.** Each balcony and railing other than the balcony slab shall be a limited common element of the Unit so served.
- (2) **Windows, Screens, Screen Frames, Shutters, and Doors.** The windows, screens, screen frames, shutters, entry and sliding glass doors, including glass, hardware and frames/casings are limited common elements of the Unit served thereby.
- (3) **Heating and Air Conditioning Units.** The air conditioning/heating Unit, including the handling equipment and all appurtenances and lines wherever situated shall be limited common element of the Unit served thereby.
- (4) **Garages.** In Building(s) (as identified on Exhibit "2" and provided such Building is built), each penthouse Unit (as identified on Exhibit "2") shall be assigned a three car garage space by the Developer as a limited common element of the Unit to which same is assigned. Each other Unit in said Building shall be assigned a two car garage by the Developer, as a limited common element of each Unit. The Developer shall be entitled to charge consideration for the assignment, which consideration shall belong solely to the Developer. The garages are numbered on Exhibit "2" to this Declaration. Such assignment shall be accomplished by the Developer's execution of a Garage Assignment form at each closing of a Unit. This form to be used is attached to and, made part of this Declaration as Exhibit "9." Each garage may be re-assigned to another Unit if consented in writing by the Owners affected and approved by the Association.
- (5) **Others.** Any part of the common elements connected to or exclusively serving a single Unit shall be deemed a limited common element appurtenant to that Unit, whether specifically described above or not.

16. Insurance and Condemnation

The insurance, other than title insurance, which shall be carried upon the condominium property and the property of the Unit Owners shall be governed by the following provisions:

16.1 **Liability Insurance:** The Board of Directors of the Association shall obtain public liability and property damage insurance covering all of the common elements of the condominium and insuring the Association and the common Owners, as its and their interest appear, in such amount as

the Board of Directors of the Association may determine from time to time, provided that the minimum amount of coverage shall be \$100,000/300,000/10,000. Said insurance shall include, but not be limited to, water damage, legal liability, hired automobile, non-owned automobile, and off premises employee coverage. All liability insurance shall contain cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner. Premiums for the payment of such insurance shall be paid by the Association and charged as a common expense.

16.2 Casualty Insurance:

- (1) Purchase of Insurance: The Association shall obtain fire, flood, windstorm and extended coverage insurance and vandalism and malicious mischief insurance, insure all of the insurable improvements within the condominium, including personal property owned by the Association, in and for the interest of the Association and all Unit Owners and their mortgagees, as the interests may appear, in a company acceptable to the Board of Directors of the Association, in an amount equal to the maximum insurable replacement value, as determined annually by the Board of Directors of the Association. The premiums for such coverage and other expenses in connection with said insurance shall be paid by the Association and be charged as a common expense. The company or companies, with which the Association shall place its insurance coverage, as herein provided, must be good and responsible companies, authorized to do business in the State of Florida. The institutional mortgagee having the highest dollar of indebtedness on the Units in the condominium property, may have the right to approve the policies, the company or companies who are the insurers under the insurance placed by the Association, and the amount thereof (all rights granted to mortgagee in this paragraph shall be referred to as Mortgagee's Insurance Rights).
- (2) At such time as the aforesaid institutional first mortgagee is not the holder of a mortgage on a Unit, then these rights of approval and designation shall pass to the institutional first mortgagee originally having the next highest dollar indebtedness on Units in the condominium property, and in the absence of the action of said mortgagee, the Association shall have said right without qualification.

16.3 Loss Payable Provision: All policies purchased by the Association shall be for the benefit of the Association, all Unit Owners, and their respective mortgagees, as their interests may appear. Such policies shall be deposited with the Association. Said policies shall provide that all insurance proceeds payable on account of loss or damage shall be payable to the Association. The Association shall be liable for the payment of premiums and for the renewal of the policies, the sufficiency of policies, the failure to collect any insurance proceeds, and the form or content of the policies. The duty of the Association shall be to receive such proceeds as are paid and hold the same for the purposes herein stated, and for the benefit of itself, the Unit Owners, and their respective mortgagees (hereinafter sometimes collectively referred to as "beneficial Owners"), in the following shares as such shares are set forth upon the records of the Association.

- (1) Common Elements: Proceeds on account of damage to common elements - an undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his Unit.
- (2) Condominium Units: Proceeds on account of condominium Units shall be in the following undivided shares:
 - (a) Partial Destruction - when Units are to be repaired and restored for the Owners of the damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner.
 - (b) Total destruction of condominium improvements, or where "very substantial" damage occurs and the condominium improvements are not to be restored, as hereinafter provided in this Article 16, for the Owners of all condominium Units, each Owner's share being proportion to his share in the common elements appurtenant to his condominium Unit.
- (3) Mortgagees: In the event an institutional mortgage encumbers a Unit, the share of the Unit Owners shall be held in trust for the mortgagee and the Unit Owner, as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired.

16.4 Distribution of Proceeds: Proceeds of insurance policies and condemnation awards received by the Association shall be distributed to or for the benefit of the beneficial Owners and expended or disbursed in the following manner:

- (1) Reconstruction or Repair: If the damage, for which the proceeds were paid, is to be repaired and restored, the proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners (or retained, pursuant to paragraph 16.8 below). All remittances to Unit Owners and their mortgagees shall be payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit. Said remittance shall be made solely to an institutional first mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment of reduction of its mortgage debt.
- (2) Failure to Reconstruct or Repair: If it is determined, in the manner herein provided, that the damage for which the proceeds are paid shall not be repaired and restored, the proceeds shall be disbursed to the beneficial Owners; remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by the same. Said remittance shall be made solely to an institutional first mortgagee when requested by such institutional first mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment of its mortgage debt. In the event of loss or damage to personal property belong to the Association, and should the Board of

Directors of the Association determine not to replace such personal property as may be lost or damaged, the proceeds shall be disbursed to the beneficial Owners as surplus in the manner provided in the entirety of paragraph 16, or retained pursuant to paragraph 15, or retained pursuant to paragraph 16.7 herein.

- (3) **Certificates:** In making distribution to Unit Owners and their mortgagees, the Association may rely upon a certificate of ownership as to the names of the Unit Owner and their respective shares of the distribution, approved in writing by an attorney authorized to practice law in the State of Florida or a title insurance company or abstract company authorized to do business in the State of Florida.

16.5 Loss Less than "Very Substantial": Where a loss or damage occurs to more than one Unit, to the common elements, or to any Unit or Units and the common elements, but said loss is less than "very substantial" (as hereinafter defined), it shall be an obligation of the Association and the Unit Owners to repair or restore the damage caused by said loss. Where such loss or damage is less than "very substantial":

- (1) *The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.*
- (2) If the damage or loss is limited to the common elements, with no, or inconsequential damage or loss to any individual Unit and if such damage or loss to the common elements is less than \$50,000.00, the insurance proceeds shall be payable to the Association, and the Association shall promptly contract for the repair and restoration of the damage.
- (3) Subject to the provisions of subparagraph (6) of paragraph 16.5 herein, if the damage or loss involves any individual Unit as well as the common elements, or if the damage is limited to the common elements alone, but is in excess of \$50,000.00 the insurance proceeds shall be disbursed by the Association for the repair and restoration of the property, provided however, that upon the request of the original institutional first mortgagee, the written approval for such disbursement shall also be required of the institutional first mortgagee owning and holding the first mortgage encumbering a condominium Unit. At such time as the original institutional first mortgagee having the greatest number of first mortgages on the condominium property is not the holder of a mortgage on a Unit, then this right of approval and designation shall pass to the institutional first mortgagee having the highest dollar indebtedness on Units in the aforesaid, it shall be said mortgagee's duty to give written notice thereof to the Association. The Association may rely upon the above-referenced certificate and the aforesaid institutional first mortgagee, if said institutional first mortgagee's written approval is required, as to the payee and the amount to be paid from said proceeds. All payees shall deliver bills and waivers of mechanic's liens to the Association, and the Association may require that the aforesaid institutional first mortgagee execute an affidavit evidencing the same. In addition to the foregoing, the institutional first mortgagee whose approval may be required, as aforesaid, shall have the right to require the Association to obtain a completion, performance, and payment bond in an

amount and with a bonding company authorized to do business in the State of Florida which is acceptable to said mortgagee.

- (4) Subject to the foregoing, the Board of Directors shall have the right and obligation to negotiate and contract for the repair and restoration of the premises.
- (5) If the net proceeds of the insurance are insufficient to pay for the estimated cost of restoration and repair (or for the actual costs thereof, if the work has actually been done), the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Unit Owners in proportion to the Unit Owner's share in the common elements, for that portion of the deficiency as is attributable to the costs of restoration of the common elements. The funds of the special assessments shall be delivered to the Association and added to the proceeds available for the repair and restoration of the property.
- (6) In the event the insurance proceeds are sufficient to pay for the cost of restoration and repair, or in the event the insurance proceeds are insufficient but additional funds are raised by special assessment within ninety (90) days after the casualty, so that sufficient funds are on hand to fully pay for such restoration and repair, then no mortgagee shall have the rights to require the application of insurance proceeds as to the payment of its loan; provided, however, this provision may be waived by the Board of Directors in favor of any institutional first mortgagee upon request therefor at any time.

16.6 "Very Substantial Damage": As used in this Declaration, or any other context dealing with this condominium, the term "very substantial" damage shall mean loss or damage whereby seventy-five percent (75%) or more of the total Unit space in any building comprising the condominium property is rendered untenable, or loss or damage whereby seventy-five percent (75%) or more of the total amount of insurance coverage of any of said buildings becomes payable. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration thereof. Should such "very substantial" damage occur, then:

- (1) If such very substantial damage has occurred to the building, and in the absence of any determination to abandon the condominium as herein provided, then all of the insurance proceeds payable on account of such very substantial damage to said building shall be held by the Association solely for the benefit of Unit Owner (and their mortgagees) of said building. Notwithstanding that the ownership of common elements in said building sustaining very substantial damages is partially vested in Unit Owners of other buildings, in the absence of a determination to abandon the condominium, Unit Owners of the building not sustaining such substantial damage shall not be entitled to participate or share in any portion of such insurance proceeds, anything in this declaration to the contrary notwithstanding.
- (2) Thereupon, a membership meeting shall be called by the Board of Directors of the Association, to be held not later than sixty (60) days after the casualty, to determine the wishes of the membership with reference to the abandonment of the condominium

subject to the following:

- (a) If the net insurance proceeds available for restoration and repair, together with funds to be advanced by Unit Owners to replace insurance proceeds paid over to the institutional first mortgagees, are sufficient to cover the cost thereof so that no special assessment is required, then the condominium property shall be restored and repaired unless three-fourths (3/4) of the total votes of the members of the condominium shall vote to abandon the condominium, in which case the condominium property shall be removed from the provisions of the law, in accordance with the Condominium Act.
 - (b) If the net insurance proceeds available for restoration and repair are not sufficient to cover the cost thereof so that a special assessment will be required, as set forth above, then a vote will be taken of the membership of this condominium to determine whether said special assessment should be made, or whether the condominium should be abandoned. Said assessment shall be made and the condominium property restored and repaired, unless two-thirds (2/3) of the total votes of the members of this condominium shall vote to abandon. Otherwise, the Association shall immediately levy such special assessment.
 - (c) Unless it is determined to abandon the condominium, the Association shall proceed to negotiate and contract for such repairs and restoration, subject to the provisions set forth above. The special assessment funds shall be delivered to the Association and added by said Association to the proceeds available for the repair and restoration of the property. The proceeds shall be disbursed by the Association for the repair and restoration of the property, as herein above provided.
- (3) In the event any dispute shall arise as to whether or not "very substantial" damage has occurred, it is agreed that such a finding made by the Board of Directors of the Association shall be binding upon all Unit Owners (but not upon institutional first mortgagees).

16.7 Surplus: It shall be presumed that the first monies disbursed in payment of costs of repair and restoration shall be from the insurance proceeds; and if there is a balance in the funds held by the Association after the payment of all costs of the repair and restoration, such balance may be retained as a reserve, or wholly or partly distributed, at the discretion of the Board of Directors, unless the institutional mortgagee holding and owning the first recorded mortgage encumbering a condominium Unit requires distribution. In the event of distribution, then the Association shall distribute any such balance to the beneficial Owner of the fund in the manner elsewhere stated.

16.8 Certificate: The Association may rely upon a certificate of a majority of the Board of Directors of the Association certifying as to whether or not the damaged property is to be repaired and restored.

16.9 Plans and Specifications: Any repair and restoration must be substantially accordance with the plans and specifications for the original building, or as the building was last constructed, or according to the plans approved by the Board of Directors of the Association, which approval shall not be unreasonably withheld. If any material or substantial change is contemplated, the approval of all institutional first mortgagees shall also be required.

16.10 Association's Power to Compromise Claim: The Association is hereby irrevocably appointed agent for each Unit Owner, for the purpose of compromising and settling claims arising under insurance policies purchased by the Association, and to execute and deliver releases therefore, upon the payment of claims.

16.11 The Association shall purchase a Worker's Compensation policy to meet the requirements of law.

16.12 The Association shall purchase such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable, and to meet the requirements of law.

16.13 Each individual Unit Owner shall be responsible for purchasing, at his own expense, liability insurance to cover accidents occurring within his own Unit, and for purchasing insurance upon his own personal property, and living expense insurance.

16.14 Anything in this Article 16 to the contrary notwithstanding, a mortgagee shall always be entitled to receive, in reduction of its mortgage debt, that portion of insurance proceeds apportioned to its mortgaged Unit in the same share as the share in the common elements appurtenant to such Unit, in the event: (a) its mortgage is not in good standing and is in default; or either (b) the insurance proceeds are not sufficient to complete restoration, reconstruction or repair and the Association has not made additional funds available for such purpose; or, (c) it is determined to restore, repair, or reconstruct the improvements in a manner or condition substantially different from that existing prior to the casualty and such mortgagee has not consented in writing to such change or alteration.

16.15 Condemnation Awards. Whenever all or any part of the Condominium Property shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings as provided by law. The award made for such taking shall be payable to the Association. The award shall be disbursed by the Association as provided in Section 16.4 above or as otherwise provided by law.

17. Leasing of Units.

An Owner may lease only his entire Unit, and then only in accordance with the Declaration, after receiving the approval of the Association as provided for in this Article 17. Reference to "leasing" in this Article 17 shall also include rental. Prior approval is also required in connection with any lease renewal and in connection with any change in occupancy under, during or along with a lease. A lease or rental shall exist if any form of consideration (whether for services, employment or otherwise) is paid or exchanged. Any lease, lease renewal or change in occupancy under, during or along with a lease is referred to in this Article 17 as a Transfer."

17.1 Procedures

- A. Notice by the Owner. An Owner shall give to the Board of Directors or its designee written notice of an intended Transfer at least fifteen(15) days prior to the proposed Transfer and occupancy thereunder, together with the name and address of the proposed lessee(s), an executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require the personal appearance of any lessee(s), and his/her spouse and any other intended occupants, as a condition of approval.
- B. Approval. After the required notice and all information, transfer fee, and appearances requested have been provided, the Board shall approve or disapprove the proposed Transfer within fifteen (15) days. If the Board neither approves nor disapproves within this time period, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a letter of approval to the Owner.
- C. Disapproval. A proposed Transfer shall be disapproved only if a majority of the whole Board so votes, and in such case the Transfer shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, any one or more of the following:
 - 1. The Owner is delinquent in the payment of assessments at the time the application is considered, and the Owner does not bring the delinquency current (with any interest, late fees, costs and attorneys' and paralegal fees also due and owing) within a time frame required by the Board of Directors;
 - 2. The Owner has a history of leasing his/her Unit to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his Unit;
 - 3. The real estate company or agent handling the leasing transaction on behalf of the Owner has a history of screening lessee applicants inadequately or recommending undesirable lessees;
 - 4. The application on its face appears to indicate that the person seeking approval and/or intended occupants intend(s) to conduct himself/themselves in a manner inconsistent with and/or are unable to comply with the Condominium Documents and/or Rules and Regulations of the Association;
 - 5. The prospective lessee or other intended occupants have been convicted of a felony involving violence to persons or property;

H. Certain Exceptions. Article 17.1 shall not apply to a transfer to or purchase by an Institutional Mortgagee that acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such Article 17.1 apply to a transfer, sale or lease by an Institutional Mortgagee that so acquires its title. Nor shall such Article require the approval of a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

1. Proviso. This Article 17.1 shall not be construed to exempt the foregoing from compliance or permit the foregoing to be in noncompliance with the Condominium Act and all other provisions of the Condominium Documents and Rules and Regulations of the Association; nor shall the grantee (other than another Institutional Mortgagee) of the foregoing be exempt from the requirements of this Article 17.1.

17.2 Contents in Lease Agreement. Every lease as of the Effective Date of this Declaration, must be written, and if it does not contain, shall automatically be deemed to contain, the following:

- A. The lessee and all occupants shall abide by all provisions of the Condominium Documents and reasonable Rules and Regulations, as amended from time to time, the failure of which shall constitute a material default and breach of the lease.
- B. The parties recognize that the Association, as agent for the landlord/Owner, has the power to evict the tenants and occupants under Chapter 83, Florida Statutes, for violations of the Condominium Documents and reasonable Rules and Regulations, as amended from time to time.

17.3 Minimum and Maximum Terms; Frequency of Leasing. The minimum term for any lease shall be two (2) consecutive months. Units may be leased only two times in any calendar year; the first day of the lease term shall determine the date on which the lease is made.

17.4 Subleasing; Renting Rooms. Subleasing of a Unit shall be absolutely prohibited. Furthermore, no rooms shall be rented in any Unit. The intention is that only entire Units may be rented, and Units may not be sublet.

18. Ownership and Transfer of Ownership of Units.

In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of the ownership of a Unit shall be subject to the following provisions so long as the Condominium exists, which provisions

each Owner of a Unit agrees to observe.

18.1 Forms of Ownership.

- A. General. There is no limitation as to the ownership of Units in this Condominium.
- B. Life Estate. A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Article 18.2 below. In that event, the life tenant shall be the only Association member from such Unit, and the occupancy of the Unit shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and Charges against the Unit. Any consent or approval required of Association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners.

18.2 Transfer of Ownership of Units.

- A. Transfers Subject to this Article 18.2
 - 1. Sale or Gift. No Owner may dispose of a Unit or any interest in the Unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
 - 2. Devise or Inheritance. If any Owner acquires his title by devise or inheritance his/her right to occupancy or use the Unit shall not be subject to the approval of the Board of Directors.
 - 3. Other Transfers. If any person acquires title in any manner not considered in the foregoing sections (1) or (2), his right to occupy or use the Unit shall be subject to the approval of the Board of Directors (that person having no right to occupy or use the Unit before being approved by the Board of Directors) under the procedures outlined in Article 18.2.B below.

The foregoing is sometimes referred to in this Article 18 as a "Transfer".

B. Procedures.

- 1. Notice to Association.
 - (a) Sale or Gift. An Owner intending to make a sale or gift of his Unit or any interest in the Unit shall give to the Board of

Directors or its designee written notice of such intention at least thirty (30) days prior to the intended closing date, together with the name and address of the proposed purchaser or donee, an executed copy of the sales contract, if any, and such other information as the Board may reasonably require. The Board may require the personal appearance of any purchaser (s) or donee(s) and his/her spouse and other intended occupants, as a condition of approval.

- (b) Devise, Inheritance or Other Transfers. The transferee(s) must notify the Board of Directors of his/her ownership and submit a certified copy of the instrument evidencing his/her ownership and such other information as the Board may reasonably require.
 - (c) Demand. With the notice required in Subsection (1)(a) above, the Owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser upon the same price and terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Unit determined as provided below. This obligation of the Association exists only if the written demand is made by the Owner or transferee along with and at the same time as the provision of the Subsection (1)(a) notice.
 - (d) Failure to Give Notice. If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a Unit, or making a gift of the Unit, such failure shall create a rebuttable presumption that the seller and the purchaser, or Owner making the gift, intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.
2. Approval. Within thirty (30) days of receipt of the required notice, transfer fee, personal appearances and information requested, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in an Association Certificate in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within this thirty (30) day time limit, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue an Association Certificate to the transferee.

3. Disapproval.

(a) With Good Cause. Approval of the association shall be withheld if a majority of the whole Board so votes. Only the following may be deemed to constitute good cause for disapproval:

- (i) The person seeking approval or intended occupants have been convicted of a felony involving violence to persons or property;
- (ii) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (iii) The application for approval on its face indicates that the persons seeking approval or intended occupants intend(s) to conduct himself/themselves in a manner inconsistent with and/or unable to comply with the Condominium Documents and/or the Rules and Regulations of the Association;
- (iv) The person seeking approval or intended occupants have a history of disruptive behavior or disregard for the rights or property of others;
- (v) The person seeking approval or intended occupants have evidenced an attitude of disregard for covenants or restrictions applicable to the Condominium and/or Rules and Regulations of the Association, by his conduct in the Condominium as a tenant, Owner or occupant of a Unit, or such attitude at the personal appearance before the Board or its designee; or
- (vi) The person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner, or proved false information during the application process.

(b) Without Good Cause. If the Board disapproves without good cause, and if the Owner or transferee has made the demand set forth in Article 18.2.B(1)(c) above, then within sixty (60) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the Owner or transferee (hereafter "the seller") the name of an approved purchaser who will purchase the Unit upon

substantially the same price and terms as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two MAI appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing; real property taxes and Condominium assessments and Charges shall be prorated for the year of closing and the parties shall bear their own attorneys' fees, if any. The closing shall take place no longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure to close by the seller shall constitute a breach of contract and shall entitle the purchaser to specific performance or damages.

- (c) Automatic Approval. If the Board fails to deliver the name of the approved purchaser within sixty (60) days as required above, or if the approved purchaser defaults in his/her purchase, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand an Association Certificate shall be issued.

18.3 General Provisions

- A. Unapproved Transfers. Any Transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall be void unless subsequently approved in writing by the Board of Directors. The Association shall have the right to remove any occupant(s) and personal belongings by injunctive relief or by other means provided in this Declaration should this Article 18 be violated.
- B. Application Form. The Association is vested with the authority to prescribe an application form such as may require specific personal, social, financial, and other data relating to the intended purchasers or new Owners, and occupants, as may reasonably be required by the Association in order to enable the Association to reasonably investigate the intended purchasers, new Owners and occupants within the time limits extended to the Association for that purpose as set forth in this Article 18. The application shall be complete and

submitted to the Association along with and as an integral part of the notice of intended Transfer.

- C. Transfer Fee. The Board of Directors is empowered to charge a fee in connection with and as a condition for the approvals set forth in this Article 18. The current amount is \$100.00 per applicant, with husband and wife and dependent children to be considered as one applicant. Such amount shall increase to the maximum amount permitted by the Condominium Act as amended from time to time.
- D. Certain Exceptions. Article 18.2 shall not apply to a transfer to or purchase by an Institutional Mortgagee that acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such Article 18.2 apply to a transfer, sale or lease by an Institutional Mortgagee that so acquires its title. Nor shall such Article require the approval of a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.
 - 1. Proviso This Article 18.3.D shall not be construed to exempt the foregoing from compliance or permit the foregoing to be in noncompliance with the Condominium Act and all other provisions of the Condominium Documents and Rules and Regulations of the Association; nor shall the grantee (other than another Institutional Mortgagee) of the foregoing be exempt from the requirements of Article 18.2 above.

19. Limitation of Liability

19.1 The Liability of the Owner of a Unit for common expenses shall be limited to the amounts for which he is assessed from time to time in accordance with this Declaration.

19.2 The personal liability of a Unit Owner for damages caused by the Association, in relation to the use of the common elements, shall be limited to the extent of the pro rata share of the liability in the same percentage as the interest in the common elements and then in no case shall the liability exceed the value of the Unit.

20. Liens

20.1 With the exception of liens which may result from the initial construction of this condominium, no liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (distinguished from individual Units) except with the unanimous consent of the Unit Owners.

20.2 Unless a Unit Owner has expressly requested or consented to work being performed or material being furnished to his Unit, such labor or materials may not be the same for the filing of a lien against same pursuant to the Mechanics' Lien Law. No labor performed or materials furnished to the common elements shall be the same for a lien thereon, but if duly authorized by the Association, such labor or material shall be deemed to be performed or furnished with the express consent of each Unit Owner and shall be the basis for the furnishing of a lien against all condominium parcels in the proportions for which the Owners thereof are liable for common expenses.

20.3 In the event a lien against two or more condominium parcels becomes effective, each Owner thereof may relieve his condominium parcel of the lien by paying the proportionate amount attributable to his condominium parcel. Upon such payment, it shall be the duty of the lienor to release the lien of record for such condominium parcel.

20.4 Service or delivery notices, papers or copies thereof permitted or required under the Mechanics' Lien Law for or incident to the perfection or reinforcement of liens arising from labor or materials furnished, duly authorized by the Association, may be effected by service on or delivery to the Association. Suits to foreclose or otherwise enforce liens arising from labor or materials furnished to the common elements may be brought against the Association and the Owners of Units shall not be deemed necessary parties to such suits.

21. The Association - By-Laws

21.1 The operation of the condominium property shall be governed by the By-Laws of the Association, a copy of which attached hereof and made a part hereof as Exhibit "5". The By-Laws may be modified or amended as provided in Article VI of said By-Laws. No amendment to said By-Laws shall be adopted which would affect or impair the validity or priority of any mortgage covering any condom parcel defects or omissions in the By-Laws shall not affect the validity of the condominium or the title to condominium Units.

22. Membership In Association

22.1 The Association was created to perform the acts and duties of the management of the Units and common elements defined and described in this Declaration, and to levy and enforce collection of assessments necessary to perform said acts and duties.

22.2 All Owners shall automatically be members of this Association, and said membership shall terminate when they no longer own said Units. The voting rights of members shall be as set forth in the Articles and By-Laws. (Exhibits "4" and "5" hereto).

23. The Association, Its Powers and Responsibilities

23.1 The operation of the condominium shall be vested in the Association.

23.2 The officers and directors of the Association shall have a fiduciary relationship to the Unit Owners.

23.3 No Unit Owner, except as an officer of the Association, shall have any authority to act for the Association.

23.4 The powers and duties of the Association shall include those set forth in the By-Laws referred to above, but in addition thereto, the Association shall have all of the powers and duties set forth the Condominium Act, as well as all powers, duties granted to or imposed upon it by this Declaration, including but not limited to:

- (1) The irrevocable right to have access to each Unit from time to time during reasonable hours maybe necessary for the maintenance, repair or replacement of any common elements or therein for making emergency repairs therein necessary to prevent damage to the common elements or to any other Unit or Units. Each Owner shall deposit a key to his Unit with the Association. Should the Owner change any lock or install or add a new one, the Owner shall deposit the new additional key(s) with the Association. The Association's use of the key to gain access to a Unit shall be limited to the need to perform maintenance, repairs, replacement, alterations and protection of the Condominium and Association Property. Should the Owner fail to provide a key, and should the Association be required to gain access to the Unit, the Owner shall be liable for any damage caused by the Association to the Unit and common elements resulting from the Association's forced entry into the Unit for the purposes stated in this section.
- (2) The power to make and collect assessments and lease, maintain, repair and replace the common elements and to levy and collect reasonable fines for failure to obey the provisions of the condominium document.
- (3) The duty to maintain official business and account records in Indian River County, Florida which shall be open to inspection and copying at a reasonable charge by Unit Owners or their authorized representatives at a reasonable time and written summaries which shall be supplied at least annually to Unit Owners or their authorized representatives. Such records shall include, but are not limited to a record of all receipts and expenditures and an account for each Unit which shall designate the name and address of the Unit Owner, the amount of each assessment, the dates and amounts which the assessments came due, the amounts paid upon the account, and the balance due, and such other records as may be required by the Florida Condominium Act.
- (4) The power to pay any and all taxes which might be assessed against the Association.
- (5) The power to contract for the management and maintenance of the condominium property and to authorize the Management Agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, and maintenance, repair and replacement of the common elements with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the condominium documents, the Condominium Act and Chapters 607 and 617, Florida Statutes,

including but not limited to the making of assessments, promulgation of rules and execution of contracts on behalf of the Association. Each Unit Owner, his heirs, successors and assigns, shall be bound by and such management agreement or amendments or revisions thereof to the same extent and effect as if he had executed such management agreement for the purposes herein expressed, including but not limited to adopting, ratifying, confirming and consenting to the execution of the same by the Association, covenanting and promising to perform each and every one of the covenants, promises and undertakings to be performed by Unit Owners as required under said management agreement, acknowledging that all of the terms and conditions thereof, including the managers' fee, are reasonable, and agreeing that the persons acting as directors and officers of the Association entering into such an agreement have not breached any of their duties or obligations to the Association. The management agreement, as well as each and every provision thereof, and the acts of the Board of Directors and officers of the Association entering into such agreement are hereby ratified, confirmed, approved and adopted.

- (6) The power to adopt reasonable rules and regulations for the maintenance and conservation of the condominium property, and for the health, comfort, safety and welfare of the condominium Unit Owners, all of whom shall be subject to such rules and regulations.
- (7) The power to own, convey and encumber real and personal property.
- (8) The power to execute contracts, deeds, mortgages, leases and other instruments.
- (9) The power to purchase Units in the condominium and to acquire and hold, lease, mortgage and convey the same.

23.5 When the Board of Directors of the Association is not controlled by the Developer, the Association shall have the authority and power to maintain a class action and to settle a cause of action on behalf of the Unit Owners with reference to matters of common interest. including but not limited to, the common elements, the roof and structural components of a building or the improvement and mechanical, electrical and plumbing elements serving an improvement or building, as distinguished from mechanical elements serving only a Unit. In any case in which the Association has the authority and the power to maintain a class action, the Association may be joined in an action as representatives of the same class with reference to litigations and disputes involving the matters for which the Association could bring a class action.

23.6 In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association shall give notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability and they shall have the right to intervene and defend.

23.7 Service of process upon the Association may be had by serving any officer of the association or by serving the agent designated for the service of process. Service of process upon the Association shall not constitute service of process upon any Unit Owner.

23.8 Nothing herein shall limit any statutory or common law right of any individual Unit Owner or class of Unit Owners to bring any action which may otherwise be available in any court.

23.9 A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

23.10 Failure to permit inspection of the Association's official records by Unit Owners or their authorized representative shall entitle any person prevailing in an action for enforcement to recover reasonable attorney's fees from the person or persons in control of the books and records who, directly or indirectly, knowingly denied access to records for inspection.

24. Maintenance; Limitation Upon Improvement

24.1 The maintenance of the common elements shall be the responsibility of the Association.

24.2 There shall be no material alterations or substantial additions to the common elements, except as provided herein.

24.3 No Unit Owner shall make any alterations in the portions of the improvements of the condominium which are to be maintained by the Association, or to remove any portion thereof, or make any addition thereto, or do any work which would jeopardize the safety or soundness of the building containing his Unit, or impair any easement.

25. Common Expenses and Common Surplus

25.1 Common expenses shall include the costs of carrying out the powers and duties of the Association, and any other expenses designated as common expenses by this Declaration and the By-Laws, including, but not limited to, the following:

- (1) The costs of operation, maintenance, repair and replacement of the common elements.
- (2) Costs of fire and other casualty and liability insurance as set forth in the Declaration.
- (3) Costs of management of the condominium and administrative costs of the Association including professional fees and expenses.
- (4) Costs of water, electricity and other utilities which are not metered to the individual Units.
- (5) The costs of capital additions or improvements (i.e., adding to or increasing the original specification), or purchases by the Association of additional lands or facilities, purchased as part of the common elements for the benefit of all the members upon a vote of seventy-five percent (75%) of the voting interests.
- (6) The cost of any taxes assessed or levied against the Association.

- (7) The cost of rent and fees under any lease of cable television equipment and any contract for the management of same.

25.2 Funds for the payment of common expenses shall be assessed against Unit Owners in the percentages of sharing common elements as provided on Exhibit "3" hereto.

25.3 The common surplus shall be owned by Unit Owners in the same percentages as their share of the common elements.

26. Assessments, Liabilities, Lien & Priority, Interest & Collections

26.1 The Association, through its Board of Directors, subject to the provisions of the By-Laws applicable thereto, shall have the power to fix and determine from time to time the sums necessary to provide for the common expenses of the condominium property, including the expense allocable to service being rendered by a management company with which the Association may contract. The assessments shall include hazard and liability insurance premiums. A Unit Owner, regardless of how title is acquired, including without limitation a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the Owner of a Unit. Except as provided for in paragraph 26.6, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of transfer of title without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. The Association may, at its option, require the monthly assessments to be collected on an advanced quarterly basis.

26.2 The initial estimated assessment chargeable to a Unit Owner for common expenses shall be the amounts set forth in Exhibit "6" attached hereto.

26.3 The liability for assessments may not be avoided by waiver of, the use or enjoyment of any common elements, services or recreation facilities, or by abandonment of the Unit for which the assessment was made.

26.4 The Association shall have a lien on each condominium parcel for any unpaid assessments as provided for under paragraph 26.2 and this Article 26, of such condominium parcel until paid. Such lien shall also secure the cost of recording the claim of lien and all court costs, including but not limited to filing and service of process fees, and reasonable attorneys' fees incurred by the Association incident to the collection of such assessment or enforcement of such lien, including same if an appeal is taken.

- (1) Such liens shall be effective from and after the time of recording in the public records of Indian River County, Florida, a claim of lien stating the description of the condominium parcel, the name of the record Owner, the name and address of the Association, the amount due and the date when due, and the lien shall continue in effect until the earlier of payment of all sums secured by the lien, or one year after the claim of lien has been recorded, unless, within that time, an action to enforce the lien is commenced in a court of competent jurisdiction. The one year period shall automatically be extended for any length of time during which the Association is

prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Unit Owner or any other person claiming an interest in the Unit. Such claim of lien shall be signed and verified by an officer or agent of the Association and shall then be entitled to be recorded. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of the lien. All such liens shall be subordinate to the lien or a mortgage or other lien recorded prior to the time of recording of the claim of lien. The claim of lien shall secure 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 attorney's fees incurred by the Association incident to the collection process.

- (2) The Board of Directors may take such action as it deems necessary to collect assessments by personal action or by enforcement and foreclosing said lien, and may settle and compromise the same if in the best interest of the Association. Suits to recover money judgment for unpaid assessments may be maintained without waiving the lien securing the same. Said lien shall be effective as and in the manner provided by the Condominium Act and shall have the priorities established thereby.
- (3) All liens for assessments, and any action to enforce such liens, shall be in accordance with the provisions of Chapter 718, Florida Statutes and all other laws governing same.

26.5 Liens for assessments may be foreclosed by suit brought in the name of the Association in the manner of a foreclosure of mortgage on real property, as more fully set forth in the Condominium Act. The Association may bid at any sale and apply a cash credit against its bid all sums due the Association covered by the lien being enforced, and to acquire and hold, lease, mortgage and convey the same.

26.6 A Unit Owner, regardless of how his title has been acquired, including a purchaser at a judicial sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he is the Unit Owner. The grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. A first mortgagee who acquires title to the Unit by foreclosure or by deed in lieu of foreclosure liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed. However, the mortgagee's liability is limited to a period not exceeding six (6) months, but in no event does the first mortgagee's liability exceed one (1%) percent of the original mortgage debt. The first mortgagee's liability for such expenses or assessments does not commence until thirty (30) days after the date the first mortgagee received the last payment of principal or interest. In no event shall the mortgagee be liable for more than 6 months of the unit's unpaid common expenses or assessments accrued before the acquisition of the title to the Unit by the mortgagee or one (1%) percent of the original mortgage debt, whichever amount is less.

26.7 Any person who acquires an interest in a Unit, including without limitation persons acquiring title by operation of law including purchasers at judicial sales, shall be required to pay all unpaid assessments due and owing by the former Owner which have not been paid.

26.8 The Association shall, within ten (10) days after the request of a Unit Owner or Unit mortgagee, provide a certificate stating all assessments and other monies owed to the Association by the Unit Owner with respect to the condominium parcel have been paid, or the current status if said amounts have not been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby.

26.9 Nothing herein shall abridge or limit the rights or responsibilities of mortgagees of a condominium Unit.

26.10 Except as set forth in paragraph 26.6, no Unit Owner may be excused from the payment of his proportionate share of the common expense of a condominium unless all Unit Owners are likewise proportionately excused from such payment, except in the following case:

- (1) The Developer hereby elects, in accordance with Chapter 718.116, Florida Statutes to be excused from the payment of his share of the common expenses with respect to the Units from the date of recording the condominium documents until the date of turn-over of Association control by the Developer, or until August 31, 2006 with the option to extend this date as allowed by Florida Statute, whichever occurs first, and guarantees that during said period of time, the assessment for common expenses of the condominium Units located in Buildings 3, 4, 5, 6, and 7 imposed upon the Unit Owners other than the Developer shall not increase over the dollar amount of Five Hundred and Forty (\$540.00) Dollars (including reserves and the cost of belonging to The River Preserve Community Association, Inc.) monthly for quarterly assessments stated in the initial Estimated Annual Operating Budget (Exhibit "6"). This amount may be increased during the guarantee period by an amount not to exceed (10%) ten percent. The Developer shall pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other Unit Owners.

27. Charges

27.1 Each Unit and Owner shall be liable for charges levied by the association against the Unit and Owner. Charges shall be deemed to include but not be limited to: maintenance or other services furnished by the Association for the benefit of an Owner; damages; and any other sums other than assessments which are referred to as charges in the Condominium Documents. At no time shall a charge be deemed an assessment under the Condominium Act or under the Condominium Documents.

27.2 The Owner of each Unit, regardless of how title was acquired, is liable for all charges coming due while he is the Owner. Multiple Owners are jointly and severally liable.

27.3 Any charges paid on or before fifteen (15) days after the date due as specified in the notice of charge from the Association shall not bear interest, but all charges not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. In addition, any charges or installments not paid on or before fifteen (15) days after the date due shall result in the imposition of a late fee of the higher of \$50.00 or five (5%) percent of the late payment. All payments on account shall be applied in the sole discretion of the Board of Directors, irrespective of any restrictive endorsement, designation or instruction placed on or accompanying any payment. The Association also has the right to refuse to accept a partial or insufficient payment. No payment by check is deemed paid until the check has cleared. However, interest and late fees shall be calculated as accrued from the date of the Association's actual receipt of payment.

27.4 The Association may bring an action to recover a money judgment for the unpaid charges and shall be entitled to recover interest, late fees, and all costs of collection, including Court costs and paralegal and attorney's fees.

28. Working Capital Contributions

28.1 Working capital contributions shall be required from each purchaser. Such contributions may be used to reimburse the Developer for start-up expenses, or otherwise as the Board of Directors shall determine from time to time.

29. Annual Assessment

29.1 The Board of Directors of the Association shall approve annual budgets in accordance with the provisions of the By-Laws of the Association, which budget shall project anticipated income and estimated expenses in sufficient detail to show separate estimates for taxes, if any, and insurance for the common elements plus operating and maintenance expenses, and reserves as required by the Condominium Act.

29.2 The percentage of the annual assessment chargeable for each fiscal year against each Unit is set forth in Exhibit "3", however, said assessment shall be allocated to the Unit Owner on a yearly basis, but be payable in advance, in equal quarterly installments on the 1st day of each quarter. In addition, the Association has the power to levy special assessments against each Unit in their respective percentages if a deficit should develop in the Association's treasury for the payment of common expenses.

30. Obligations of Members

In addition to the other obligations and duties heretofore set forth in this Declaration, every Unit Owner shall:

30.1 Promptly pay the assessments levied by the Association.

30.2 Maintain in a clean and sanitary manner, and repair, the Unit, all interior surfaces within or surrounding the Unit and all limited common elements which the Owner is exclusively entitled to use, (such as the surfaces of the walls, ceilings, floors), and maintain and repair the fixtures

therein and pay for any utilities which are separately metered to the Unit.

30.3 Not use or permit the use of the Unit for any purpose other than as a residence.

30.4 Not permit anything to be done or kept in the Unit which should increase the insurance rates on the Unit or the common elements, or which will obstruct or interfere with the rights of other members or annoy them with unreasonable noises or other; nor shall a member commit or permit any nuisance or immoral or illegal act in the Unit or within the common elements.

30.5 Conform to and abide by the By-Laws and uniform rules and regulations in regard to the use of the Unit and common elements which may be adopted in writing from time to time by the Board of Directors and members of the Association, and to see that all persons using the Owner's property by, through or under the Owner do likewise.

30.6 Make no alteration, decoration, repair, replacement or change of the common elements or to any outside or exterior portion of the building without the prior written consent of the Association.

30.7 Allow the Board of Directors or the agents of the Association to enter any Unit for the purpose of maintenance, repair, or replacement of the common elements, or when necessary to prevent damage to the common elements or another Unit or Units.

30.8 Show no sign, no for sale sign, advertisement, or notice of any type on the common elements or the Unit, and erect no exterior antennas and aerals except as provided in uniform regulation promulgated by the Association. This provision shall not apply to the Developer, who may display sales signage, as long as Developer owns one or more Units whether such Unit is being developed or being completed.

30.09 Make no repairs to any plumbing or electrical wiring within a Unit except by plumbers or electricians authorized to do such work by proper governmental authorities. Plumbing and electrical repairs within a Unit shall be paid for and be the financial obligation of the Owner of the Unit. The Association shall pay for and be responsible for plumbing repairs and electrical wiring within the common elements.

30.10 Return the "condominium parcel" for the purpose of ad valorem taxes to the respective taxing authorities having jurisdiction over them for separate assessment against his condominium parcel. For the purposes of ad valorem taxation, the interest of the Owner of a "condominium parcel" in his condominium Unit and in the "common elements" shall be considered as a Unit. The value of said Unit shall be equal to the percentage of the value of the entire condominium, including land and improvements, as has been assigned to said Unit in Exhibit "3" of this Declaration. The total of all of said percentages equals 100% of the value of all of the land and improvements thereon.

30.11 Use the garage specifically assigned to the Unit.

30.12 Not place screens, жалousies or other enclosures on any parts of the building, except with the prior written consent of the Association or the Developer.

30.13 Not divide or subdivide a Unit for purpose of sale or lease.

30.14 Not hang any laundry, garments or other unsightly objects which are visible outside the Unit.

30.15 Not allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles provided therefore, so that each Unit, the common elements, and limited common elements shall at all times remain in a clean and sanitary condition.

30.16 Not make any use of a Unit that violates any laws.

30.17 Nothing shall be placed in designated storage areas which would create a fire hazard.

30.18 Bicycles must be placed or stored in the designated areas, if any.

30.19 Plants, pots, receptacles and other movable objects must not be kept, place or maintained on ledges of windows or balconies. Unit Owners shall remove all loose objects or moveable objects from the balconies during hurricane season. Unit Owners shall not allow anything to be thrown or to fall from balconies.

30.20 Seasonal lighting is permitted only during the period beginning with the last Thursday of November and through the period ending on the 6th day of January. Banners or signs are not allowed to be displayed from a balcony or window.

31. Architectural Standards

31.1 The following constitute architectural standards for the Condominium applicable to the Owners and residents relating to the only alterations and improvements permitted by Owners and residents, and only with prior Board approval, which the Board of Directors is empowered to supplement from time to time without having to amend this Declaration. If an alteration or improvement is not listed, same is not permitted.

- (1) No balcony enclosure(s) of any kind are permitted except screening as same may be approved by the Board of Directors or the Developer. The balconies shall contain only furnishings typically contained in such areas, neatly arranged for use and not of an unsightly or disorderly nature. No gas or propane barbecues shall be used, placed or stored on the balconies. Notwithstanding the foregoing, electric grills or electric barbecues or similar cooking devices are permitted. No surf boards, beach going apparatus, fishing gear or recreational equipment shall be stored or placed on the balconies.
- (2) No carpet shall be placed on any balcony as a floor covering. Tile may be installed on balconies only with the prior written approval of the Board of Directors or the Developer.
- (3) The only type of shutter allowed is a hurricane shutter which shall be limited to sliding

side stack type, which must be installed flush to and on the outside of the sliding glass doors and windows, and which must be white in color.

- (4) Reflective material or window tinting is/are permitted on the windows so long as the color of the material or tinting blends harmoniously with the exterior color(s) of the Unit. At no time shall aluminum foil be permitted on the inside or outside of the windows. The backing of window treatment on the interior of the window shall be of such color that it blends harmoniously with the exterior color(s) of the Unit. Screens over windows are permitted, only if the styles match those existing on the date of recording of this Declaration. Jalousie windows are prohibited.
- (5) Screen doors shall be permitted but only on the exterior of the sliding glass doors which are part of the balcony.
- (6) No solar panels or devices, roof ventilators, turbines, antenna or satellite dishes shall be permitted, excepting therefrom any satellite dish with a diameter of 18 inches or less which is located within the boundary of the Unit or a limited common element appurtenant to the Unit. The satellite dish must be mounted on a wood frame or concrete block and not be affixed to a wall or railing and must be placed lower than the top of the balcony railing. No other device which to be installed requires cutting into the roof shall be allowed.
- (7) Antennae and Satellite Dishes. The only antennae and satellite dishes permitted shall be those that are protected by federal law. In no event shall any restrictions imposed in this Article 31 impair a viewer's ability to receive an acceptable signal or impose any unreasonable delay or expense, as recognized by the administrative rules adopted from time to time by the Federal Communications Commission ("FCC") and any applicable cases or administrative rulings as exist from time to time. Until federal law or the applicable FCC cases and rulings change, which changes are automatically incorporated into this Declaration without the need to amend in the future, a satellite dish or antenna installation must be situated entirely within the boundaries of the Unit. Notwithstanding any provision contained in this Declaration to the contrary, the approval of the Board of Directors of the Association will not be required for installations referred to under this Article 31. No other satellite dishes or antennae are permitted

32. Alterations and Improvements by the Association

32.1 The Association shall have the right to make or cause to be made alterations or improvements to the Common Elements and Association Property which are approved by the Board of Directors and which do not prejudice the right of any Owner or any Institutional Mortgagee. However, if the cost of same shall exceed 10% of the annual budget, cumulatively in a budget year, then the alteration or improvement may not be made unless ratified (whether before or after-the-fact) by a majority of the voting interests of those members present in person and by proxy at a member's meeting; the exceeding of said 10% figure shall be considered to be a material or substantial alteration or improvement.

33. Use Restrictions

33.1 The use of the properties shall be in accordance with the following provisions as long as the Condominium exists:

- (1) Each Unit shall be occupied by Owners and tenants and their family members, guests, and invitees, as a residence and for no other purpose.
- (2) No Unit may be subdivided into more than one Unit. Only entire Units may be sold, leased or otherwise transferred.

33.2 There is no minimum age for permanent occupancy of a Unit.

33.3 Pets and animals shall be permitted, only as provided for as follows:

- (1) Pets and animals shall be restricted to cats or dogs not exceeding two in total, none to exceed thirty (30) pounds when measured at maturity, except that pitbulls, rottweilers, mastiffs, and chows are prohibited; two domestic birds in cage(s) and fish in tanks. The cage(s) and tanks must be located in the Unit and not in any common or limited common area. No visitor or guest shall be permitted to bring and no Owner or resident shall allow a visitor or guest to bring any pet or animal into the Condominium, except a handicap guide dog accompanying a handicapped visitor or guest. No pet or animal shall be bred or kept for commercial purposes. No other pets shall be permitted.
- (2) All dogs and cats must be inoculated against rabies by a duly qualified and licensed veterinarian and shall also be inoculated in like manner in such cases of emergency whenever ordered by the Board of Health of the State of Florida.
- (3) When outside of the building, all dogs and cats must be accompanied by an attendant who shall have such dog or cat firmly held by collar and leash, which leash shall not exceed eight (8) feet in length. No cats or dogs shall be permitted to run at large outside of the building.
- (4) The Owner or custodian of each animal and pet and/or the individual walking same, shall be required to promptly clean up after the pet or animal.
- (5) The Owner or custodian of the animal or pet shall remove his or her animal or pet from the Condominium when such animal or pet emits excessive noise such that same may be heard outside of the Unit.
- (6) The pet or animal Owner and the Owner of the Unit involved shall be strictly liable for damages caused to the Properties by the pet or animal.
- (7) Any pet or animal Owner's right to have a pet or animal reside in the Unit shall have such right revoked if the pet or animal shall create a nuisance or shall become a

nuisance as may be determined by the Board of Directors of the Association.

33.4 The following restrictions apply irrespective of whether the Properties in question lie within areas owned by or dedicated to a governmental entity:

(1) Prohibited Vehicles or Items. THIS SECTION CONTAINS PROHIBITED VEHICLES OR ITEMS ("PROHIBITED VEHICLES"), WHICH ARE PROHIBITED AND SHALL NOT BE ENTITLED TO PARK ANYWHERE ON THE PROPERTIES EXCEPT WITHIN THE GARAGE OR WITHING THE ASSIGNED COVERED PARKING SPACE. HOWEVER, IF A VEHICLE OR ITEM IS LISTED IN SECTION (2) RIGHT BELOW, THEN IT IS ALLOWED NO MATTER WHAT IS STATED IN THIS SECTION.

- (a) Motorcycles, dirt bikes or other two-wheeled motorized vehicles;
- (b) Mopeds and other self-powered bicycles;
- (c) C-J type Jeeps or other similarly vehicles, unless permitted by sections (2) (e) or (2) (e) below;
- (d) Trucks, including pick-up trucks or any vehicle with a passenger cab and cargo bed, whether covered or uncovered, whether with a bed top or without, unless permitted by sections (2)(e) or (2) (h) below;
- (c) Agriculture vehicles;
- (d) Dune buggies, swamp buggies and all terrain and off-road vehicles;
- (e) Any trailer or other device transportable by vehicular towing;
- (f) Semis', tractors or tractor trailers;
- (g) Buses;
- (h) Travel trailers;
- (i) Boats and boat trailers with or without boats;
- (j) Commercial vehicles as defined below;
- (k) Vehicles which are not fully mechanically operable, which are unregistrable or which are not currently licensed for use;
- (l) Vehicles which are an eyesore;
- (m) Motorcycle delivery wagons;

- (n) Campers;
 - (o) Recreational vehicles;
 - (p) Mobile homes or mobile houses;
 - (q) Truck mounted campers attached or detached from the truck chassis;
 - (r) Motor homes or motor houses;
 - (s) Motor vehicles not having any bodies whatsoever, or incomplete bodies;
 - (t) Passenger automobiles that have been converted to a different type of motor vehicle by replacing the original body, or by modifying the exterior and/or interior of the vehicle.
 - (t) Passenger automobiles that are noisy, unsightly or junkers; and
 - (u) Vans, unless permitted by paragraph 33.4 (2) (e) below.
 - (v) Any vehicle which has the capacity and is designed to seat more than six persons whether with optional equipment or not is prohibited unless the vehicle is a traditional station wagon, unless permitted by sections (2) (e) or (2) (h) below.
- (2) Exceptions to (1) above. The following vehicles shall not be subject to the parking restrictions contained in section (1) above, and shall be entitled to park within designated areas of parking in the Condominium, subject to restrictions and provisions contained in sections (3) through (6) below.
- (a) Moving Vans shall be permitted to park, but not on the grass for the purpose of loading and unloading and at no time shall same park as such during the hours of 8:00 p.m to 8:00 a.m.
 - (b) Vehicles, regardless of classification necessary for the maintenance care or protection of the Properties, during regular business hours, and only for the time period during which the maintenance, care or protection is being provided.
 - (c) Service and delivery vehicles, regardless of classification, during regular business hours and only for that period of time to render the service or delivery in question.
 - (d) Vehicles for handicapped persons, "handicapped" being defined by any fair housing law.

- (e) Certain vans which are permitted. Subject to that provided above, a two-axle van as defined below which is not a commercial vehicle as defined below; which contains windows on the rear of the vehicle, on both sides of the vehicle adjacent to the first row of seating, and also at least one set of windows on each side of the vehicle beyond the windows adjacent to the first row of seating; and which does not exceed the manufacturer's standard height, width and length for the vehicle.
- (f) Vehicles with respect to the Developer provided the vehicle is engaged in any activity relating to the construction, maintenance, or marketing of Units.
- (g) Police and fire safety vehicles.
- (h) A pick-up truck with the following restrictions in addition to any other ones contained in this Declaration: The bed length cannot exceed eight (8) feet; the gross weight load carrying capacity shall not exceed ½ ton; and the size of the width, length and height cannot exceed manufacturer's standard specifications.

(3) Classifications and Definitions.

- (a) The most current edition of the N.A.D.A. Official Used Car Guide ("Guide") shall determine the classification of whether a vehicle is in fact a truck or van, or whether it is a passenger automobile. If the Guide does not contain reference to a particular vehicle, then the manufacturer's classification shall control. If publication of the Guide shall be discontinued, an equivalent publication shall be selected by the Board of Directors to be used to determine vehicle classifications hereunder. Except as otherwise provided as to certain vans under paragraph 33.4 (2) (e) above, a State registration or title classification shall have no bearing on determination of the classifications under this paragraph 33.4.
- (b) A "commercial vehicle" shall mean any motor vehicle which has an outward appearance of being used in connection with business, such as: the vehicle displays work equipment to view and/or is commercially lettered or contains a commercial or business logo. Actual use of the vehicle shall not be considered; only its outward appearance shall be.
- (c) A "truck" shall mean any motor vehicle which is classified as a truck in accordance with paragraph 33.4 (3) (a).
- (d) A "van" shall mean any motor vehicle which is classified as a truck in accordance with paragraph 33.4 (3) (a) above which is recognized by the manufacturer to be a type of a van, and which has two (2) axles. Notwithstanding the foregoing to the contrary, a pick-up truck shall not be considered to be a van by the addition of a camper top or similar covering.

(4) The following restrictions also apply:

- (a) No repair (including changing of oil) of a vehicle shall be made within the Condominium except for minor repairs necessary to permit removal of a vehicle, unless they are made in the Garage assigned to the Unit. Washing or waxing of a vehicle is permitted in the designated space, if any, identified as the washing station.
- (b) No motor vehicle which is of the type of vehicle which does not have the capability of being registered shall be driven or operated on any of the Properties at any time for any reason.
- (c) No vehicle may be parked with an expired license plate or registration.
- (d) No motor vehicle, including moving vans, shall be parked at any time on the grass or swales within the Condominium (except for the landscaping equipment at the direction of the Board of Directors).
- (e) Except where safety dictates otherwise, horns shall not be used or blown while a vehicle is parked, standing in or driving through parking areas and/or streets. Racing engines, loud and smoking exhausts shall be prohibited. No vehicle shall be parked with motor running.
- (f) No vehicle may be parked such that it blocks any sidewalk, except where otherwise necessary by moving vans and only for loading and unloading.
- (g) No Owner or lessee, or their family members, guests and invitees shall park in a parking space assigned to another Unit without the express written consent of that Unit Owner.
- (h) There will be times where vehicles must be removed from the parking areas to accommodate maintenance, repairs or replacement of the parking areas in the Condominium. Upon reasonable notice from the Association that the foregoing will occur, each Owner, resident, guest and invitee shall remove their vehicle for the time period requested, or be deemed in violation of paragraph 33.4.

(5) Remedy of Towing. If upon the Association's provision of that notice required by Section 715.07, Florida Statutes, and any applicable County Ordinances, as amended from time to time, an offending vehicle Owner does not remove a prohibited or improperly parked vehicle from the Condominium, the Association shall have the option and right to have the vehicle towed away at the vehicle Owner's expense. By this provision, each Owner and vehicle Owner provides the Association with the necessary consent to effect the tow.

- (6) **Alternative and Concurrent Remedies.** Whether or not the Association exercises its right to have the vehicle towed, the Association shall nonetheless have the right to seek compliance with this paragraph 33.4 by injunctive and other relief through the Courts; and/or any other remedy conferred upon the Association by law or the Condominium Documents. The Association's right to tow shall in no way be a condition precedent to any other remedies available to the Association incident to the enforcement of this paragraph 33.4.

33.5 No Owner shall use any of the Properties, or permit same to be used, in any manner which is unreasonably disturbing, detrimental or a nuisance to the occupant(s) of other Unit(s), or which would not be consistent with the maintenance of the highest standards for a first class residential development, nor permit the Properties to be used in a disorderly or unlawful way, nor which will produce an insurance risk for the Association or other Owners or occupants. The use of each Unit shall be consistent with existing ordinances and laws and the Condominium Documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

33.6 No business of any kind whatsoever shall be erected, maintained, operated, carried on, permitted or conducted on the Properties. Also prohibited are garage sales, yard sales and the like. Notwithstanding, the foregoing to the contrary:

- (1) Any business which qualifies as a home occupation under the applicable zoning code shall be permitted.
- (2) The practice of leasing Units shall not be considered as a business activity under this paragraph 33.6.
- (3) The business of operating the Association shall not be considered as business activity under paragraph 33.6.

33.7 No Unit shall be used or maintained as a dumping ground for rubbish, trash or other waste. Trash and garbage shall be placed in dumpsters provided. For sanitary reasons, all trash and garbage except newspapers, tree limbs and other such bulky items, shall be placed in plastic bags and tied securely before being placed in the dumpsters. All trash, garbage and other waste shall be stored and/or maintained so as to not be visible. The foregoing is subject of any regulations and policies of the collection authorities.

33.8 No business solicitation whatsoever is permitted in the Condominium, whether or not such solicitation is for the benefit of a non-profit organization, whether in person or by hand delivery of letters, without the permission of the Association. This shall not preclude an Owner from inviting a person or firm to enter the Condominium for the purpose of contracting business with the Owner.

34. Transfer of Association Control

34.1 When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in a condominium that will be operated ultimately by an Association, the Unit Owners other than the Developer shall be entitled to elect no less than one-third (1/3) of the members of the Board

of Administration of the Association. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Administration of an Association:

- (1) Three years (3) after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;
- (2) Three months (3) after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;
- (3) When all the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business;
- (4) When some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or
- (5) Seven (7) years after recordation of the Declaration of Condominium or the case of an association which may ultimately operate more than one condominium, seven (7) years after recordation of the Declaration for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to Chapter 718.403, Florida Statutes, seven (7) years after recordation of the Declaration creating the initial phase, whichever occurs first. The Developer entitled to elect at least one (1) member of the Board of Administration or an Association as long as the Developer holds for sale in the ordinary course of business at least five percent (5%), in a condominium with fewer than five hundred (500) Units, and two percent (2%), condominiums with more than five hundred (500) Units, of the Units in a condominium operated by the Association. Following the time the Developer relinquishes control of the Association, the Developer may exercise the right to vote any developer-owned Units in the same manner as any other Unit Owner except for purposes of reacquiring control of the Association or electing the majority members of the Board of Administration.

34.2 Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of the Association, the Association shall call, and give not less than sixty (60) days notice of a meeting of the Unit Owners for this purpose. Such meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

34.3 If the Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

- (1) Assessment of the Developer as a Unit Owner for capital improvements.
- (2) Any action by the Association that would be detrimental to the sale of Units by the Developer; however, an increase in assessments for common expenses without discrimination against the Developer shall not be deemed to be detrimental to the sale

of Units.

34.4 At the time that the Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association, and the Unit Owners shall accept control. Simultaneously, the Developer shall deliver to the Association, at the Developer's expense, all property of the Unit Owners and the Association held or controlled by the Developer, including, but not limited to the following items, if applicable, as to each condominium operated by the Association:

- (1) The original or a photocopy of the recorded Declaration of Condominium and all amendments thereto. If photocopy is provided, it shall be certified by affidavit of the Developer or an officer or agent of the Developer as to be a complete copy of the actual recorded Declaration.
- (2) A certified copy of the Articles of Incorporation of the Association or, if the Association was created prior to the effective date of this act and is not incorporated, copies of the documents creating the Association.
- (3) A copy of the By-Laws.
- (4) The minute books, including all minutes, and other books and records of the Association, if any.
- (5) Any house rules and regulations which have been promulgated.
- (6) Resignations of officers and members of the board of administration who are required to resign because the Developer required to relinquish control of the Association.
- (7) The financial records, including financial statements of the Association, and source documents from the incorporation of the Association through the date of turnover. The records shall be audited for the period from the incorporation of the Association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent Certified Public Accountant. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy, pursuant to Chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for Association purposes and the billings, cash receipts, and related records to determine that the Developer was charged and paid the proper amounts of assessments.
- (8) Association funds or control thereof.
- (9) All tangible personal property that is property of the Association, which is represented by the Developer to be part of the common elements or which is ostensibly part of the

common elements, and an inventory of that property.

- (10) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and the construction and installation of all mechanical components serving the improvement and the site with a certificate or affidavit from the Developer or his agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his knowledge and belief, the actual plans and specifications utilized in the construction and improvements of the condominium property and for the construction and installation of the mechanical components servicing the improvements. If the condominium property has been declared a condominium more than three (3) years after the completion of construction or remodeling of the improvements, the requirements of this paragraph do not apply.
- (11) A list of the names and addresses of which the Developer had knowledge at any time in the development of the condominium, of all the contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping of the condominium or Association property.
- (12) Insurance policies.
- (13) Copies of any certificates of occupancy which may have been issued for the condominium property.
- (14) Any other permits applicable to the condominium property which have been issued by governmental bodies and are within one (1) year prior to the date the Unit Owners other than the Developer take control of the property.
- (15) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.
- (16) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the developer's records.
- (17) Leases of the common elements and other leases to which the Association is a party.
- (18) Employment contracts or service contracts in which the Association is one of the contracting parties or service contracts in which the Association or the Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.
- (19) All other contracts to which the association is a party.

35. Manager

The Association may have a Management Agent whose duties and remuneration shall be

prescribed by the Board of Directors of the Association. The Management Agent's remuneration shall be paid by the Association and assessed to the Unit Owners as a monthly management charge.

36. Community Association.

36.1 Community Association. Each Owner by virtue of acquisition of fee simple title to a condominium Unit shall become a member of The River Preserve Community Association, Inc., a not for profit Florida Corporation (the "Community Association"). The Community Association, pursuant to and in accordance with the Declaration of Restrictions and Protective Covenants for the Community Association, is obligated to maintain and repair the Community Association Property including the Recreational Properties (as defined in the Declaration of Restrictions and Protective Covenants for the Community Association) and to provide certain community services as more particularly described in the Declaration of Restrictions and Protective Covenants for the Community Association. Each Owner is obligated to pay a pro-rata portion of any annual assessments or charges assessed by the Community Association for the maintenance and repair of the Community Association Property and Recreational Properties and to provide for certain community services, which if unpaid, may result in the imposition of a lien and foreclosure. Each Unit shall have one (1) vote in the Community Association.

37. Developer's Units and Privileges: Developer Designees.

The following provisions shall apply in addition to any and all provisions contained elsewhere in this Declaration with respect to the Developer's Units and privileges. The provisions of this Article 37 shall take precedence over any other provisions to the contrary in the Condominium Documents.

37.1 Changes in General Plan of Development. Subject to the limitations of Florida Statute 718.110(4) and Florida Statute 718.110(8): Until the sale of all Units in the Condominium, the Developer reserves the right, without joinder of any person or entity, to make such alterations or improvements to the Condominium as may be required by any lender, governmental authority, or as may be, in its judgment, necessary or desirable; provided that any changes when made will provide facilities as good as or better than those shown on the development plans filed with the appropriate governmental authority. The foregoing is subject to the rights of any Owner or any other person under the Condominium Act.

37.2 Sales/Lease Activities. No Owner, person or the Association, or their use of the Units, shall interfere with the Developer's completion and sale or leasing of the Units, whether in this Condominium, a dwelling Unit or house which is part of the Community Association, or otherwise. The Developer, until all of the Units in the Condominium have been sold and closed, shall be irrevocably empowered to sell Units to any person or entity approved by the developer without any interference or objection from the Association, and without limitation. The Developer is obligated to seek lease approval as provided for in Section 17 of the Declaration. Furthermore, the Developer reserves the right to retain title to any Units and lease all or portions of same, without any intention of selling them. The Developer shall have the right to transact upon the Properties any business necessary to consummate the sale/lease of Units, including, but not limited to, the right to construct, install, maintain and use temporary construction, office, storage and sales facilities, place signs, banner and flags on the Properties for sales offices or for construction and sales purposes; use the

common elements and Association and Community Association property for sales offices or for sales and promotional purposes; and conduct sales activities relating to property owned by the Developer or any of its affiliates which is situated outside of the Condominium. Any sales office, signs, fixtures, furnishings or other tangible personal property belonging to the Developer shall not be considered as part of the Properties nor owned by the Association and shall remain the property of the Developer. The Developer shall further be exempt from the vehicle and parking restrictions herein only to the extent that the vehicles in question are engaged in any activity relating to the construction, maintenance and marketing of Units for sale or for lease.

37.3 **Specific Exemptions Under the Declaration.** In addition to any other exemptions provided in favor of the Developer in this Declaration, the Developer and his designees shall be exempt from all use restrictions contained in this Declaration, including but not limited to those provided in Section 33 above.

38. Miscellaneous

38.1 If any provisions of this Declaration, or of the By-Laws attached hereto, or of the Condominium Act, or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration, the By-Laws attached or the Condominium Act, and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

38.2 Whenever notices are required to be sent hereunder the same shall be sent to the Unit Owners by regular mail, at their place or residence in the condominium building, unless the Unit Owners have, by written notice duly receipted for, specified a different address. Notices to the Association shall be delivered by registered mail to the resident agent. All notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written notice.

38.3 Each Unit Owner and the Association shall be governed by and shall comply with the Condominium Act and this Declaration and By-Laws as they may exist from time to time to do so shall entitle the Association or any other Unit Owner to recover sums due for damages or injunctive relief or both. Such actions may be maintained by or against a Unit Owner or the Association or in a proper case by or against one or more Unit Owners and the prevailing party shall be entitled to recover reasonable attorneys' fees. Such relief shall not be exclusive of other remedies provided by law.

38.4 Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the plural shall include the singular and the singular shall include the plural. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the operation of the condominium in accordance with the laws made and provided for the same. As used herein, the term "member" means and refers to any person, natural or corporate, who is a Unit Owner.

38.5 No Unit shall be occupied by more persons than would be allowed by applicable health regulations.

38.6 This Declaration and all Exhibits thereto shall be binding upon and inure to the benefit of each Unit Owner, their heirs, personal representatives, successors, assigns and grantees and any and all persons claiming by, through or under any Unit Owners.

IN WITNESS WHEREOF, VERO ISLAND PROPERTIES INC., as Developer has caused the execution of this Declaration of Condominium of THE RIVER PRESERVE RIVERFRONT, A CONDOMINIUM, on this 29th day of July, 2004.

WITNESSES:

VERO ISLAND PROPERTIES INC., a
Florida Corporation

Sign: _____

Print Name: Roger Smigel

BY: _____

Mitchell B. Malvan, President.
9891 U.S. Highway #1
Sebastian, Florida 32958

Sign: _____

Print Name: Leslie Lang

STATE OF FLORIDA)

COUNTY OF INDIAN RIVER)

I HEREBY CERTIFY that on this 29th day of July, 2004, before me personally appeared Mitchell B. Malvan, President of Vero Island Properties, Inc., who is personally known to me or who has produced _____ as identification and who did not take an oath and who executed the aforesaid as their free acts and deeds as such duly authorized officers; and that the official seal of the Corporation is duly affixed and the instrument is the act and deed of the Corporation.

WITNESS my signature and official seal at _____ in the County of Indian River,
State of Florida, the day and year last aforesaid.



Notary: _____

Sign: _____

Print Name: _____