

OFF. REC. 1262 PG 1681

Prepared by:

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VILLAGE BROOKE CONDOMINIUM III  
DECLARATION OF CONDOMINIUM OWNERSHIP

WHEREAS, VILLAGE BROOKE ASSOCIATES, a Florida Partnership, having its offices at 3247 Boneva Road, Sarasota, Florida (herein called "Developer") owns a fee simple certain real Property described in Exhibit "C," attached hereto and incorporated herein by reference, and is in the process of developing said Property into a phased condominium known generally as Village Brooke.

WHEREAS, the Developer submitted Phase I of Village Brooke to condominium ownership on the 27th day of May, 1975, by recording Village Brooke Condominium I Declaration of Condominium ownership in Official Records Book 1080, Page 40-82 of the Public Records of Sarasota County, Florida;

WHEREAS, the Developer submitted Phase II of Village Brooke to Condominium ownership on the 30th day of March, 1978, by recording Village Brooke Condominium II Declaration of Condominium ownership in Official Records Book 1227, Page 2055 through 2130 of the Public Records of Sarasota County, Florida;

WHEREAS, the Developer owns a fee simple certain real Property located within the boundaries of Exhibit "C" described as Phase III in Exhibit "A" attached hereto and incorporated herein by reference, and desires to submit the Phase III Property to the condominium form of ownership;

WHEREAS, this is the third and last Phase of the Condominium generally known as Village Brooke. All references to subsequent phases in this Declaration of Condominium should be disregarded. There will be no additional development after the completion of Phase III.

NOW, THEREFORE, in order to create a Condominium consisting of the Phase III property and the improvements constructed and to be constructed thereon, to be known as "Village Brooke Condominium III," the Developer hereby submits the Phase III property and all of its interests therein to the Florida Condominium Act (Chapter 718 Florida Statutes, as amended or may hereafter be amended), and in furtherance thereof makes the following declarations...

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conditions, and hereby declares and agrees that the Phase III property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to this Declaration (which Declaration is intended to create covenants running with the land and shall be binding upon and be for the benefit of the owners and lessees of all or any part of the Condominium Property and their respective successors, heirs, executors, administrators and assigns).

SECTION 1. CONDOMINIUM PROPERTY

1.01 The phase III Property, and all improvements constructed and to be constructed thereon and all easements and rights appurtenant thereto intended for and granted for use in connection with the Phase III Property, is hereby submitted to condominium ownership.

SECTION 2. NAME OF CONDOMINIUM

2.01 The Condominium shall be known as "VILLAGE BROOKE CONDOMINIUM III," or by such other name as may from time to time be selected by the Association.

SECTION 3. DEFINITIONS

3.01 Assessment: A share of the funds required for the payment of Common Expenses which from time to time is levied against unit owners by the Association.

3.02 Association: Village Brooke Condominium Association, Inc., a Florida corporation not for profit, said Association being the legal entity responsible for the operation of Village Brooke Condominium I and subsequent condominiums established within the boundaries of the property described in Exhibit "C."

3.03 Bylaws: The rules governing the conduct of the affairs of the Association specified above, as they exist from time to time.

3.04 Common Elements: The common elements and limited common elements as defined in Section 7 hereof.

3.05 Common Expenses: The expenses incurred in the maintenance, administration, improvement and repair of the Common Elements as set forth in Section 12.01.

3.06 Common Surplus: The excess of all receipts of the Association over its expenses, as set forth in Section 12.02.

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3.07 Condominium: That system of ownership of Condominium Property under which individual units of improvements are subject to ownership by one or more owners, with each unit, as a part thereof, having an undivided share in the Common Elements appurtenant thereto.

3.08 Condominium Act: The Condominium Act of the State of Florida (F.S. 718, et seq.) as the same may be amended from time to time.

3.09 Condominium Documents: The Declaration, Bylaws, Articles of Incorporation of the Association, Maintenance Agreement, and all Exhibits annexed thereto, as the same may be amended from time to time.

3.10 Condominium Parcel, or Parcel: A Condominium Unit, together with the undivided share in the Common Elements which is appurtenant to the unit.

3.11 Condominium Property: All of the Condominium Parcels.

3.12 Condominium Unit, or Condominium Residential Unit: A unit as defined in the Condominium Act referring herein to each of the separate and identified units delineated in the site plans and floor plans attached to the Declaration as Composite Exhibit "B" and designated as Condominium Units.

3.13 Declaration, or Declaration of Condominium, or Declaration of Condominium Ownership: The instrument which submits the property to Condominium Ownership as it may be from time to time amended.

3.14 Developer: Village Brooke Associates, a Florida Partnership, and its successors and assigns.

3.15 Institutional Mortgagee: A bank, savings and loan association, insurance company, or union pension fund authorized to do business in the United States of America, an agency of the United States Government, a real estate investment trust, mortgage company, title insurance company, or other lender generally recognized in the community as an institutional type lender.

3.16 Maintenance Agreement: The agreement attached to this Declaration as Exhibit "G," which provides for the management of the Condominium Property, and any similar type agreements made after the expiration of term of the initial agreement.

3.17 Member, or Association Member: The Owner of a Condominium Unit.

3.18 Occupant: The person or persons, other than the unit owner, in possession of a unit.

3.19 Phase III: The real property described in Exhibit "A" and the improvements constructed or to be constructed thereon.

3.20 Phases: Phase I, II, and III property and improvements constructed or to be constructed thereon make up all of the real property described in Exhibit "C."

3.21 Unit: A Condominium Residential Unit.

3.22 Unit Owner: The owner of a Condominium Parcel.

3.23 Voting Member: The person or persons entitled to vote pursuant to Article IV of the Articles of Incorporation of the Association. When Unit Owners have the right to vote, that Unit Owner designated by the Owner or Owners of a majority interest in a single Condominium Unit to cast the vote appurtenant to such Unit, or, in the case of a Condominium Unit being owned by a legal entity other than a natural person, the person designated by such legal entity. A voting member must be designated by a statement filed with the Secretary of the Association, in writing, signed under oath, by the Owners of a majority interest in the Condominium unit as the person entitled to cast the vote for all such owners. The designation may be revoked and a substitute Voting Member designated at any time at least five (5) days prior to a meeting. If such statement is not filed with the Secretary at least five (5) days prior to any meeting, no vote shall be cast at such meeting by or for said Unit Owner(s).

3.24 Unless the context otherwise requires, all other terms used in this Declaration shall have the meaning attributed to said term by Section 718.103 of the Condominium Act.

#### SECTION 4. GENERAL DEVELOPMENT AND IDENTIFICATION

4.01 Phase III: This Declaration submits the Property described as Phase III to Condominium ownership. The Condominium Property is described in Exhibit "A" and Composite Exhibit "B" attached hereto and made a part hereof. Each Condominium Unit is described in Exhibit "B" in such manner that there can be determined therefrom the identification, location, dimensions, and size of each Unit as well as the Common Elements appurtenant thereto. Each Condominium Unit is identified by a number as shown in the floor plans in Composite Exhibit "B" so that no Unit bears the same designation as any other Unit.

4.02 Additional Development: It is the present intention of the Developer to develop within the property area described in Exhibit "C" a multi-family apartment project made up of either condominium units, rental units or both, which in the aggregate will include not more than 321 units. It is contemplated that the project will be developed in phases with the subsequent condominium phases being named "Village Brooke Condominium"

followed by successive Roman numerals. The additional phases of Village Brooke Condominium will be developed in a manner consistent with applicable zoning regulations of the County of Sarasota. The Developer reserves the right to convert any rental apartments developed on the property described in Exhibit "C" to a condominium phase of Village Brooke Condominium and to control the design, size, number and location of subsequent units. Condominium Garage Units may also be included in subsequent Phases. Except for Phases I, II, and III and the facilities referred to in Section 4.03 (but subject to the reservations set forth therein), the Developer does not warrant or guarantee that any property will be developed since the further development of said property depends on future economic conditions, social and cultural patterns and the like.

4.03 Common Facilities: The recreation facilities to be made available by the Developer consist of a clubhouse, two swimming pools, a shuffleboard court, three gazebos, and two tennis courts. The Developer reserves the right at any time to make the recreational facilities noted above available to all residents on the property described in Exhibit "C", including residents of rental apartments, provided that the expenses applicable to the above listed facilities shall be pro-rated between Condominium Unit Owners and Occupied Rental Apartments.

SECTION 5. CHANGES IN PLANS AND SPECIFICATIONS AND AMENDMENTS OF DECLARATION

5.01 Reservation of Rights: Notwithstanding anything else in these Condominium Documents to the contrary, the Developer reserves the following rights:

A. To change the interior design and arrangement of all Units, including Phase III units, owned by the Developer, and to alter the boundaries between Units owned by the Developer; provided, however, that the change in size or number of Units shall not alter the percentage of ownership in the Common Elements of units not so changed.

B. To relocate, prior to the initial recordation of this Declaration, the Units designated in Composite Exhibit "B" in the furtherance of construction and aesthetic consideration so long as the general orientation of the Units is not altered.

C. To include additional Units and property as part of Phase III prior to the initial recordation of this Declaration and to adjust the percentage ownership in the Common Element appurtenant to each Unit on a pro-rata square footage per Unit basis.

D. To submit subsequent Phases to Condominium ownership.

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E. To determine the design, size, number and location of Units in subsequent Phases, if any, prior to recordation of Documents submitting such Units to the Condominium form of ownership.

F. It is recognized that, at the date hereof, construction of all of the improvements and Units contemplated by the exhibits attached hereto may not be completed. Developer expressly reserves every right necessary or desirable, relative to the Common Elements, its sales office and models, the Condominium Property and the Exhibit "C" property, for the purpose of constructing and completing said improvements and Units as well as improvements and Units for subsequent Phases and rental apartments and for the further purpose of effecting the sale or lease of all Units in Phase 1, subsequent Phases, or the rental apartments. Pending completion of the Units, no portion of the Common Expenses shall be allocated to unfinished Units. Subject to the provisions of Section 6.01, Common Expenses shall be allocated to Units as of the date of the issuance of the certificate of occupancy for the building in which the Unit is located.

5.02 Amendment by Developer: Without the consent of the Association, any Unit Owner, or Lienor or mortgagee of any Condominium Parcel (except institutional mortgagees of record), whether or not elsewhere required for an amendment of this Declaration, the Developer may at any time prior to the initial recordation of this Declaration and until January 1, 1980, amend this Declaration to carry out the development plan of Section 4 hereof and to implement the reservation of rights set forth in Section 5.01 hereof. Said amendments need be signed only by the Developer and such other architect, engineer, or surveyor as may be required, and shall contain the particulars required by the Condominium Act. No amendment of this Declaration after the initial recording hereof shall be effective until recorded in the Official Records of Sarasota County, Florida. In the event that the Developer changes or amends this Declaration in a manner other than as provided for herein in accordance with the request of a title insurance company, an institutional lender, or for any other reason, and said change or amendment would materially affect the rights of buyers or the value of the Unit to be purchased by the buyer, said buyer shall be entitled to rescind the contract for sale of such Unit at any time prior to closing and to receive a refund of all deposit monies paid. The contract of sale shall thereupon be terminated and the Developer relieved of all further liability under the contract. Changes or amendments pursuant to this Declaration or which do not materially affect the rights of the buyer or the value of the Unit to be purchased shall not entitle the buyer to rescission.

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5.03 Amendment of Declaration by Owners: This Declaration may be amended at any regular or special meeting of the Association called or convened in accordance with the Bylaws, by the affirmative vote of two-thirds (2/3) of the Voting Members of the Association. Each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the Public Records of Sarasota County, Florida. Unless otherwise provided herein, no such amendment shall change the proportionate share of the Common Expenses or Common Surplus, nor the voting rights appurtenant to any Unit unless the record owner(s) thereof, and all record owners of mortgages or other liens which have been voluntarily placed on a Unit, shall consent in writing to the execution of the amendment. No amendment shall be effective which shall impair or prejudice the rights or priorities of any mortgages, or change the provisions of this Declaration with respect to Institutional Mortgages without the written approval of all Institutional Mortgages of record. The rights of the Developer shall not be subject to change without the approval of Developer.

#### SECTION 6. PARCELS OWNED BY DEVELOPER

6.01 For so long as the Developer holds Units for sale in the ordinary course of business, the Developer may not be assessed as a Unit Owner for capital improvements and the Association may take no action that would be detrimental to the sales of Units without the prior written approval of the Developer. Notwithstanding any provisions of the Condominium Documents to the contrary, the Developer is irrevocably empowered to sell, lease or rent unit located on Exhibit "C" property to any person or persons without restriction, by time or otherwise, and to have the right to transact on the Condominium Proper any business necessary to consummate such power, including, but not limited to, the right to maintain models, have signs, employees in the office, use the Common Elements and to show Units and recreation facilities to prospective purchasers and Lessees. The signs and other items used in connection with the sale or leasing of Condominium Parcels shall not be considered a part of the Common Elements and shall remain the property of Developer. The Developer shall be excused from the payment of its share of common expenses applicable to Units owned by the Developer for so long as the Developer or the Management Company shall guarantee the provision of services for a stated sum of money. Except as provided elsewhere herein, the Developer shall be subject to the same restrictions and entitled to enjoy the same privileges as any other Unit Owner with respect to each Parcel owned by Developer.

6.02 Developer hereby establishes for its own benefit, and for the benefit of its successors and assigns, the following:

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A. An easement in common with others for ingress and egress, by vehicle or on foot, in, to, upon, over and under the passageways located on the Condominium Property.

B. A non-exclusive easement for the benefit of the Developer, its successors and assigns, and the Unit Owners in Phase I and subsequent Phases, over the entry drive on Beneva Road and other roadways in Phase I for ingress and egress from and to Phase I, contiguous property and Beneva Road.

C. The right to locate utilities including sewer, gas, electricity, telephone and television cable under, upon, over, in and through the Condominium Property.

D. In the event that subsequent Phases are submitted to condominium ownership, the Unit Owners of each phase shall have a perpetual non-exclusive easement for ingress, egress, utilities and drainage over, under, through and about the common elements of each phase (including the clubhouses and recreation facilities) and such easement shall survive until the termination of all Village Brooke Condominium phases.

E. The right to create easements in and through the Condominium Property and to designate the beneficiaries thereof, including itself and tenants of rental apartments, without approval of the Association or any Unit Owners. Developer shall have this right so long as it owns any portion of the property described in Exhibit "C" or until January 1, 1980, whichever is the longer. Easements granted by the Developer may be perpetual or for a term of years. The easements granted by Developer shall not structurally weaken the building improvements nor unreasonably interfere with the enjoyment of the Condominium Property by the Unit Owners.

#### SECTION 7. COMMON ELEMENTS

7.01 Common Elements: The Common Elements shall include and mean the following items:

A. The real Property described in Exhibit "A," attached hereto and made a part hereof, and all improvements thereon, except for Units as shown on the Condominium Plat; and

B. all structural beams, posts and members within a Unit; and

C. easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to Units and the Common Elements; and

D. an easement of support in every portion of a Unit which contributes to the support of a building; and



E. the property and installations for the furnishing of utilities or other services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation; and

F. roofs, yards, streets, parking areas, recreational areas and gardens, except as otherwise provided; and

G. all electrical apparatus and wiring, TV cables, plumbing pipes and apparatus, telephone lines, communication system, and all other ducts, conduits, cables, wire or pipe, within the Common Elements and up to the unfinished surface of the unit wall; and

H. all other elements of the Condominium Property designed for common use or necessary to its existence, upkeep and safety.

7.02 Right To Limit Use Of Common Elements: The Association may reserve for the exclusive use of a certain number of Condominium Units areas such as parking spaces, special corridors, stairways, sanitary services common to the Condominium Units of a particular building, and the like. All areas which are reserved for exclusive use shall be Common Elements and shall be treated as such for all purposes except exclusivity of use.

#### SECTION 8. OWNERSHIP OF COMMON ELEMENTS

8.01 Each of the Unit Owners shall own an undivided interest in the Common Elements; and the undivided interest, stated as percentages or fractions of such ownership in said Common Elements shall be determined in accordance with Exhibit "D," which is annexed to this Declaration and made a part hereof.

8.02 In the event subsequent Phases are submitted to Condominium Ownership, the Common Elements appurtenant to said Phases shall not be merged with the Common Elements appurtenant to either Phase I or Phase II.

8.03 Any attempts to separate the title to a Condominium Unit from the Common Elements appurtenant to such Unit shall be null and void.

#### SECTION 9. UNIT BOUNDARIES

9.01 Upper And Lower Boundary: The upper boundary and lower boundary of each Phase III Unit shall be the following, extended to the perimeter boundaries:

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A. Upper Boundary: Up to and including the horizontal plane of the back-surface of the drywall which serves as the Unit's ceiling.

B. Lower Boundary: Down to and including the horizontal plane of the back-surface of the structural slab which serves as such Unit's floor if such Unit is on the ground floor. Down to and including the horizontal plane of the back-surface of the concrete topping which serves as such Unit's floor if such Unit is on the second level.

9.02 Perimeter Boundary. The Perimeter Boundary of each Phase III Unit shall be up to and including the vertical plane of the back-surface of the drywall serving as a perimeter wall which plane shall be extended to each level's Upper and Lower Boundary. Where a balcony is attached to the Unit being bounded, the Owner of such Unit shall own the interior decorative surface of the floor and side of such balcony. Where there is a patio extending from the Unit being bounded, the Owner of such Unit shall own the upper surface of said patio. The Units shall also include all perimeter windows, screens, and doors.

9.03 Encroachments. If any portion of a Unit or Common Elements encroaches upon another, a valid easement for the encroachment and maintenance of such encroachment shall and does exist for so long as the encroaching improvement stands. In the event a Condominium building or buildings are partially or totally destroyed, and then rebuilt, the Unit Owners agree that minor encroachments on parts of the Common Elements or Limited Common Elements or Units, as aforescribed, due to construction, shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

## SECTION 10. THE OPERATING ENTITY

10.01 The Association shall be responsible for the operation of VILLAGE BROOKE CONDOMINIUM I and all subsequent Phases. The Owners of Units in Phase I as well as Owners of Units in subsequent Phases shall be members of the Association with equal voice and vote for each member. The Association shall have all the powers and duties set forth in the Condominium Act, as well as all the powers and duties granted to or imposed upon it by this Declaration, the Bylaws of the Association (which are annexed hereto as Exhibit "E") and its Articles of Incorporation (which are annexed hereto as Exhibit "F") as they may be amended from time to time. No modification of or amendment to the Bylaws or the Articles of Incorporation of said Association, shall be valid unless set forth in or annexed to a duly recorded amendment of this Declaration. The Bylaws and the Articles of Incorporation may be amended in the manner provided for therein, but no amendment thereto shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Parcel(s), or which

would change the provisions thereof with respect to institutional mortgages, without written approval of all Institutional Mortgages of record. No such amendment shall change the rights and privileges of the Developer without the Developer's written approval. Until such time as the Unit Owners become entitled to elect a majority of the Members of the Board of Directors of the Association pursuant to Article IV of the Articles of Incorporation of the Association, the Board of Directors shall be the only Voting Members and as such shall be the only Members of the Association who are entitled to have any voice in the management of the affairs of the Association, and no other Member shall have any vote or voice with respect to any matter whatsoever.

10.02 Every Unit Owner, whether he has acquired his ownership by purchase, gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the Condominium Documents.

#### SECTION 11. ASSESSMENTS

11.01 The Association has the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the Common Expenses and such other sums as are specifically provided for in the Condominium Documents. The Association shall have the power to fix and determine from time to time Assessments as provided for in the Condominium Documents and to delegate such power to the Developer or a management company. The procedures for the determination of Assessments shall be as set forth in the Condominium Documents.

11.02 The Association has entered into a contract with a management company pursuant to which said company has agreed to provide certain services at a designated price per Unit, which price may vary according to the size of the Unit. The Association shall have the power to assess Unit Owners at the rate and in the manner specified therein. Other Common Expenses which are not included in the Maintenance Agreement, or which are to be provided at cost pursuant to the Maintenance Agreement, or which are incurred after termination of the Maintenance Agreement, shall be assessed against each Unit Owner and Condominium Parcel as provided for in the Condominium Documents. The Association also has the power to make Assessments to cover other obligations of the Unit Owners under the Condominium Documents, including but not limited to assessments for late charges, lease payments, interest, attorney's fees, damage to Units caused by Unit Owners, repairs undertaken for Unit Owners, commissions, services not covered by the Maintenance Agreement and the like.

11.03 The Association shall have a lien on each Condominium Parcel for unpaid Assessments and late charges, together with interest thereon, and shall also have a lien on all tangible personal property located within said Unit, except that such lien

shall be subordinate to prior bona fide recorded liens of record. Reasonable attorneys' fees incurred by the Association incident to the collection of such Assessments or the enforcement of such lien together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, shall be payable by the Unit Owner and secured by such lien. The Association may take such action as it deems necessary to collect Assessments either by personal action against the record owner of the Condominium Parcel against which such Assessment has been made, or by enforcing and foreclosing said lien, or by exercising both of such remedies. In addition, with respect to any Assessments which are made on an annual basis, but payable in installments, the Association may declare due and payable the entire remaining annual Assessment upon failure of the Unit Owner to make the installment payment when due. The Association may settle and compromise any Assessment if it is deemed to be in its best interest to do so. The lien of any Assessment shall be effective as and in the manner provided for by the Condominium Act and shall have the priorities established by said Act. The Association shall be entitled to bid at any sale held in connection with the foreclosure of an Assessment lien, and may apply as a cash credit against its bid all sums secured by the lien enforced.

11.04 If the holder of an Institutional First Mortgage, or a purchaser of a Condominium Parcel at foreclosure sale, obtains title to a Condominium Parcel as a result of foreclosure of the Institutional First Mortgage, or if the holder of an Institutional First Mortgage accepts a deed to said Condominium Parcel in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for any Assessments levied prior to its acquisition of title and such unpaid Assessment shall be deemed to be a Common Expense and shall be collectible from all of the Unit Owners, including such acquirer, its successors and assigns.

11.05 Except as provided in Section 6.01 and 11.04 above, no person who acquires an interest in a Unit, including persons acquiring title by operation of law and purchasers at judicial sales, shall be entitled to occupy the Unit or use the Common Elements until all unpaid Assessments due and owing by the former Unit Owner(s) have been paid. The Association shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessments to the Developer, management company, Unit Owner(s), or any third party.

## SECTION 12. COMMON EXPENSES AND COMMON SURPLUS

12.01 Common Expenses. Except as modified by the Maintenance Agreement, the Common Expenses of the Condominium shall be shared by the Unit Owners in the same proportion as their percentage of ownership interest in the Common Elements. In the

event that Subsequent Phases are developed, the Common Expenses shall be allocated between phases in the manner set forth in Exhibit "D". It is understood that Common Expenses shall include all taxes, assessments, insurance, and all other expenditures for which the Association shall be responsible, including those in connection with Common Elements and expenditures contracted for in any Maintenance Agreement or Lease Agreement. Water and sewer service which is not metered to individual Units shall be Common Expenses.

12.02 Common Surplus. Any Common Surplus shall be owned by each of the Unit Owners in the same proportion as their percentage of obligation for Common Expenses. The Common Surplus is the excess of all receipts of the Association including, but not limited to, Assessments, rents, profits and revenue on account of the Common Elements of this Condominium, over the Common Expenses.

### SECTION 13. MAINTENANCE AND ALTERATIONS

13.01 The Association may enter into a contract with any firm, person or corporation, or may join with other Condominium Associations and entities, in contracting for the maintenance and repair of the Condominium Property or Properties and other type properties, and may contract for or may join with other Condominium Associations in contracting for the management of the Condominium Property or Properties and other type properties, and may delegate to the contractor or manager all of the powers and duties of the Association, except such as are specifically required by this Declaration or by the Bylaws to have the approval of the membership of the Association.

13.02 Each Unit Owner agrees as follows:

A. To maintain and bear the cost of maintaining his Unit and the entire interior thereof in good and tenable condition, and to maintain, repair, replace and bear the cost of maintaining, repairing and replacing the fixtures and equipment located therein or which serve only his Unit including, but not limited to, the following when applicable: air conditioning and heating units, any and all appurtenances thereto wherever situated including, but not limited to, any exterior parts thereof; refrigerator, stove, fans, dishwasher, and all other appliances; drains, plumbing fixtures, meters and connections, sinks, plumbing within the Unit; electric panels, wiring, outlets, and electric fixtures within the Unit; interior doors, windows, screening and glass; all exterior doors, except the painting of the exterior faces of exterior doors which shall be a responsibility of the Association.

B. With respect to second floor Units, to include

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the yarn weight initially provided by Developer in the areas originally carpeted by Developer.

C. To pay for all of his utilities, including electricity, water, gas, sewage and telephone used within his Unit and all taxes levied against his Parcel unless such utilities costs are part of the expenses which the Association shall pay for out of assessments.

D. Not to make, or cause to be made, any repairs to any plumbing or electrical wiring unit within a Unit except by licenses plumbers or electricians authorized to do work by the Association or its delegate. Plumbing and electrical repairs within a Unit shall be paid for by the Owner(s) of the Unit.

E. Not to make, or cause to be made, any addition or alteration to his Unit or Common Elements specifically including, but not limited to, screening or enclosing private balconies and patios or affixing outside shutters to windows, removing any additions, improvements, or fixtures from the building, or doing any act that would impair the structural soundness of the building without the prior written consent of the Association. Structural alterations within a Unit may be made with the written consent of the Association and any Institutional First Mortgagee holding a mortgage on said Unit.

F. To make no alterations, 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. If consent is granted, the Unit Owner shall use only a contractor or subcontractor approved by the Association, who shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association. The Unit Owner shall be liable for all damages to another Unit and to the Common Elements caused by any contractor employed by such Unit Owner or by the subcontractor or employees of such contractor, whether said damages are caused by negligence, accident or otherwise.

G. To allow the Association, its delegates, agents, or employees at all reasonable times to enter into any Unit for the purpose of maintaining, inspecting, repairing, or replacing the improvements within the Unit(s) or the Common Elements; to determine in case of emergency, circumstances threatening Units or the Common Elements and to correct the same; or, to determine compliance with the provisions of the Condominium Documents.

H. To promptly report to the Association any defects or needed repairs for which the Association is responsible.

13.03 In the event the Unit Owner fails to maintain the Unit as required herein, or otherwise violates or threatens to

violate the provisions hereof, the Association shall have the right to proceed in a Court of equity for an injunction to seek compliance with the provisions hereof. In lieu thereof, or in addition thereto, the Association shall have the right to levy an Assessment against the Unit Owner, and the Unit, for such necessary sums to remove any unauthorized addition or alteration, and to restore the property to good condition and repair.

13.04 The Association shall determine the exterior color scheme and appearance of the buildings, and no Owner shall paint any exterior surface or add or replace anything thereon or affixed thereto, without prior written consent of the Association. Each Unit Owner also agrees to maintain the portions of his Unit that are visible outside in conformity with the color scheme and appearance of the buildings as determined by the Association.

13.05 The Association shall be responsible for the maintenance, repair and replacement of the Common Elements, provided that if any repairs or replacements are made necessary because of abuse or negligent use thereof by a Unit Owner the cost of such repair or replacement may be assessed against such Unit Owner. Any assessment made pursuant to this Section or pursuant to Section 13.03 shall be enforceable in the same manner as provided for the enforcement of Assessments in Section 11 thereof.

#### SECTION 14. INSURANCE PROVISIONS

14.01 Liability Insurance. The Association shall maintain comprehensive public liability and property damage insurance covering all of the Common Elements and insuring the Association, the Unit Owners (and, as long as the Maintenance Agreement is in effect, the Developer and Management Company), as named insureds in such amounts as the Association determines necessary, provided that the minimum amount of coverage shall be \$500,000 for bodily injury or death of any one person, \$1,000,000 for bodily injury to or death of any number of persons arising out of any one occurrence, and \$100,000 for any instance of property damage. Premiums for such insurance shall be paid for by the Association.

#### 14.02 Property Insurance.

A. Purchase of Insurance. The Association shall obtain and maintain fire, windstorm and extended coverage insurance (including vandalism and malicious mischief insurance) covering all the insurable Condominium Property, including personal property owned by the Association, as their interests may appear, with a company selected by the Association having a policyholder's rating of not less than A in the most recent edition of Best's Insurance Guide, in an amount equal to 80% of the full Replacement Cost of the Condominium Property as determined annually by the Association. The Company or Companies

with whom such insurance coverage is placed, as provided in this Declaration, must be authorized to do business in the State of Florida.

B. Loss Payable Provisions - Insurance Trustee. All policies purchased by the Association Insuring Condominium Property shall be for the benefit of all Unit Owners and their mortgagees, and the Association, as their interests may appear. However, the Association shall be the named insured and it shall not be necessary to name the Unit Owners or any mortgagees, although mortgage endorsements may be issued. The policies shall be held by the Association and shall provide that all insurance proceeds payable on account of loss or damage shall be payable to the Association. The Association shall hold the insurance policies and receive the proceeds paid pursuant to the policies in trust for the purposes stated herein, for the benefit of the Association and the Unit Owners and their respective mortgagees, in the following shares:

(1) Proceeds Paid 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) Proceeds Paid on Account of Damages to Any Units: Proceeds on account of damage to Units shall be held for the Owners of damaged Units in the proportion that the cost of repairing the insured damage suffered by each Unit Owner bears to the total cost of restoring all insured damage to the Units, which cost shall be determined by the Association.

(3) Mortgagees: In the event a mortgagee endorsement has been issued with respect to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner, as their interest 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, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and mortgagee, pursuant to the provisions of this Declaration.

C. Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be first utilized to pay the cost of reconstructing or repairing any damage. Any proceeds remaining after paying such cost shall be distributed to the beneficial owners, provided that, if a mortgagee endorsement has been issued with respect to a Unit, the shares of the Unit Owner will be paid to the Unit Owner and mortgagee jointly.

D. Association as Agent. The Association is hereby irrevocably appointed agent for each Unit Owner and for each



owner of a mortgage or other lien encumbering a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

E. Benefit of Mortgagees. Certain provisions in this Section 14.02 are for the benefit of mortgagees of Condominium Parcels, and may be enforced by such mortgagee.

14.03 Reconstruction or Repair After Casualty

A. Reconstruction or Repair Required. In the event the Common Elements or the Units are damaged by any casualty, whether such damage is insured against or not, the same shall be repaired or reconstructed by the Association or the Unit Owner, as the case may be.

B. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached hereto as exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association, and by not less than 75% of the Unit Owners, including the owners of all damaged Units, which approval shall not be unreasonably withheld.

C. Responsibility. If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for the reconstruction and repair of any damage caused by casualty. In all other instances the responsibility of reconstruction and repair of damage caused by casualty shall be that of the Association.

D. Estimate of Costs. Immediately after a determination to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments. If the proceeds of insurance are not sufficient to pay the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the Unit Owners who own the damaged Units, and against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. The assessment against a Unit Owner for damage of Units shall be in the same proportion as the cost of reconstruction and repair of his Unit bears to the cost of

reconstruction and repair of all damaged Units. Such assessments on account of damage to Common Elements shall be in proportion to the Unit Owner's share in the Common Elements. Any assessment made pursuant to this Section may be enforced in the manner provided in Section 11 hereof.

14.04 Construction Funds. The funds for payment of costs of reconstruction and repair of damage caused by casualty, which shall consist of proceeds of insurance held by the Association and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

A. Association. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the Association, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an Architect licensed to practice in Florida and employed by the Association to supervise the work.

B. Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the Association to the Unit Owner, or if there is a mortgagee endorsement as to such Unit, then to the Unit Owner and the mortgagee jointly, promptly upon completion of all required repairs and reconstruction.

C. Surplus. The first moneys disbursed in payment of costs of reconstruction and repair shall be deemed to be the proceeds of insurance. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated, except, that the part of a distribution to a beneficial owner which is in excess of assessments paid by such owner into the construction fund shall be payable to any mortgagee.

D. Certificate. The Association may require as a condition precedent to any disbursement a certificate of the Architect named by the Association certifying that the work has progressed to the point indicated in the contractor's application for payment, that to the best of the Architect's knowledge, information and belief, the quality of work is in accordance with the contract documents, and that the contractor is entitled to payment.

E. Institutional Mortgagee's Right to Advance Premium. Should the Association fail to pay any insurance premiums when due or should the Association fail to comply with other insurance requirements of the Condominium Documents, any Institutional Mortgagee shall have the right, at its option, after ten (10) days' written

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notice to the Association, to obtain copies of the insurance policies required hereby and to advance such sums as are required to maintain or procure such insurance and, to the extent of the money so advanced, said mortgagee shall be subrogated to the assessment and lien rights of the Association against the Unit Owners.

14.05 Restoration Not Required. In the event more than ninety percent (90%) in value of the Condominium Property (exclusive of land value) is substantially damaged or destroyed by fire or other casualty and the extent of such damage is certified in writing by the Association to each Unit Owner, then two-thirds (2/3) of the Voting Members may signify their desire to terminate the Condominium by filing within ninety (90) days after the casualty in the public records a Notice of Election to Terminate accompanied by the certification of extent of damage by the Association, and the Condominium shall thereupon terminate. Thereafter, the Unit Owners will become tenants in common of the Condominium Property and the insurance proceeds, the share of each Unit Owner being the same as the respective share in the Common Elements appurtenant to his Unit. Any mortgage or other lien which encumbers a Condominium Parcel shall continue as a lien of equal dignity against the undivided interest of the Unit Owner in the Condominium Property and proceeds of insurance. If, after filing the Notice of Election to Terminate as provided for in this paragraph, any Unit Owner requests a partition of the Property, all of the Condominium property shall be sold by the Association and each Unit Owner, or each Unit Owner and his respective mortgagee, will be entitled to recover from the fund composed of insurance proceeds and sale proceeds, as share of such sums that shall be the same as the undivided share of such Unit Owner in the Common Elements. In the event the fund does not contain sufficient sums to fully compensate every Unit Owner; the sum payable to each Unit Owner will be proportionately reduced. In the event the remaining Condominium Property is not sold, each Unit Owner will be compensated for his loss by receiving:

A. the net proceeds of any insurance paid to the Association on account of the casualty to his individual Condominium Parcel, the amount of which payment will be determined by the insurance carrier; and

B. an undivided interest in the land and undestroyed Common Elements. Each Unit Owner's interest shall be the same as his share of the Common Elements. Before distribution to the Unit Owners of insurance or sale proceeds, all liens against a Condominium Parcel will be paid to the extent the proceeds allocated to said Parcel are sufficient to do so.

14.06 Other Insurance. The Association shall maintain such insurance as is required under federal or state law, as well as

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such other insurance (including directors' and officers' liability insurance) as the Association shall determine from time to time to be necessary or desirable. The cost of such insurance shall be a Common Expense.

14.07 Unit Owner's Insurance. Each individual Unit Owner may purchase, at his own expense, liability insurance to cover accidents occurring within his Unit and insurance on his own personal property. No Unit Owner shall purchase any casualty insurance covering his Unit without approval of the Association.

14.08 Waiver of Subrogation. If available without additional cost, and where applicable, the Association and each Unit Owner shall endeavor to obtain policies which provide that the insurer waives the right of subrogation as to any claim against Unit Owners, the Association, their respective servants, agents and guests, and the Management Company.

#### SECTION 15. CONVEYANCE, SALE, RENTAL, LEASE AND TRANSFER

In order to insure a community of congenial residents and thus protect the value of each Condominium Parcel, the sale, leasing, rental and transfer of Condominium Parcels by any Owner other than Developer shall be subject to the following provisions:

15.01 Right of First Refusal. In the event the Owner of any Condominium Parcel wishes to sell the same (and as a condition precedent to each and every such sale) and shall have received a bona fide offer to purchase same, such Owner (Seller) shall notify the Association in writing that the Condominium Parcel is for sale and shall supply the Association with an executed copy of such offer and the terms thereof, including the name of the prospective purchaser and such other information as the Association, in the reasonable exercise of its discretion, may request. The Association shall have the option for twenty (20) days following receipt of such offer to purchase the Parcel on the terms and conditions set forth in the offer, which option shall be exercised if at all by notice in writing given to the Seller within said 20-day period. The Association shall have the right to assign the option herein granted to any Unit Owner or to any purchaser approved by the Association. If the Association or its assignee does not exercise the option herein granted, the Seller shall have the right for a period of sixty (60) days after the receipt by the Association of the original offer within which to complete the transaction described in the offer to the purchaser named therein. If for any reason such transaction is not concluded and notice of such fact given to the Association within said 60-day period, the offer shall be deemed to have been abandoned and the provisions of this Section shall be reimposed on the Parcel in question.

For the purpose of this Section, the term "bona fide offer" shall mean an offer made by a prospective purchaser, in good faith, to purchase the Condominium Parcel.

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15.02 Application. The right of first refusal provided for in Section 15.01 shall not apply to transfers made by the Developer, or any partner, affiliate or subsidiary of the Developer, or to transfers made solely for the purpose of securing an obligation, transfers involving a foreclosure sale or other judicial sale or any transfer to a mortgagee in lieu of foreclosure, any transfer by a mortgagee following foreclosure or any proceeding or arrangement in lieu thereof, the transfer of one joint tenant's interest to another, by operation of law or otherwise, or transfers by will or intestate distribution, or to transfer by gift to direct descendants or ascendants of the transferor.

15.03 Certificate of Termination. The Association shall upon request at any time furnish to any Member, or other party legitimately interested in the same; a certificate in writing executed by an officer of the Association in recordable form stating that the requirements of Section 15.01 have been complied with, or duly waived by the Association, and that the rights of the Association thereunder have terminated. Such certificate shall be conclusive evidence of compliance with the requirements of Section 15.01, for all persons who rely thereon in good faith.

15.04 Rental or Lease. No Condominium Parcel shall be leased or rented more than four times in any one calendar year, nor shall any Condominium Parcel be leased or rented for a period of time less than thirty days. The terms, conditions, lessee and proposed occupant shall be subject to the approval of the Association. The Association shall have the right to require that a substantially uniform form of lease be used. In the event the Association approves a rental or lease, such approval of a lease or rental shall not release the Member from any obligation under this Declaration.

15.05 Voidability. Any purported sale or lease of a Unit where the Unit Owner or lessor has failed to comply with the provisions of this Section, shall be voidable at the election of the Association; provided, however, that such voidability shall exist for a period no longer than ninety (90) days from the consummation of such transaction, such consummation to be evidenced by occupancy of the Unit or by furnishing the Association with a true copy of the recorded deed of conveyance thereto; and, provided, further, that the Association commence an action within such ninety (90) day period to have the same declared void.

15.06 Exception. Any Institutional First Mortgagee making a mortgage loan for the purpose of financing the purchase of a Unit shall not be required to inquire whether or not its mortgagor's grantor complied with the provisions of this Section, and any failure of such mortgagor's grantor to so comply will not operate to affect the validity or priority of such mortgage.

SECTION 16. OBLIGATIONS OF UNIT OWNERS

16.01 In addition to the other obligations and duties heretofore set out in this Declaration, no Unit Owner shall:

A. Use or permit the use of his Unit for any purpose other than as a single family residence or fail to maintain his Unit in a clean and sanitary manner;

B. Permit or suffer anything to be done or kept in his Unit which will increase the insurance rates on his Unit or the Common Elements, or which will obstruct or interfere with the rights of other Members, or commit, permit or suffer any nuisance or illegal act in his Unit or on the Common Elements;

C. Fail to conform to and abide by the Bylaws and nondiscriminatory rules and regulations in regard to the use of the Condominium Property which may be adopted in writing from time to time by the Association, and to see that all persons using Unit Owner's property by, through, or under him do likewise;

D. Park vehicles other than passenger automobiles or passenger station wagons, or recreation vehicles of lesser size, in a parking space. No signs or markings of a commercial nature shall appear on such vehicles unless approved by the Association.

E. Allow or permit to be displayed laundry or clothing on the porch or balcony of his Unit or anywhere within said Unit in such manner as to be visible from the outside of said Unit;

F. Be permitted to make any adjustments whatsoever to any of the equipment located on the Common Elements without first obtaining the permission of the Association;

G. Attempt to exempt himself from liability for his contribution toward the Common Expenses by waiver of the use and enjoyment of any of the Common Elements, or by the abandonment of his Condominium Unit.

SECTION 17. MAINTENANCE AGREEMENT

17.01 The Association, by and through its original Board of Directors and Officers, has entered into a maintenance agreement with the Developer or its designee which agreement is attached hereto as Exhibit "G". Amendment or revision of such agreement shall not require the procedures for an amendment or change to the Declaration or to the Bylaws and may be accomplished by agreement in writing between the Association with the approval of its Board of Directors and the management company or Developer

executed with the formality required of a deed and duly filed among the Public Records of Sarasota County, Florida.

17.02 Each Unit Owner, his heirs, successors and assigns, shall be bound by said agreement to the same extent and effect as if he had personally executed said agreement for the purposes herein expressed, including, but not limited to:

A. adopting, ratifying, confirming and consenting to the execution of said agreement by the Association;

B. covenanting and promising to perform pro tanto each and every of the covenants, promises, and undertakings to be performed by Unit Owners in the cases provided therefor in said agreement, including the personal obligation of payment;

C. ratifying, confirming, and approving each and every provision of said agreement and acknowledging that all of the terms and provisions thereof are reasonable;

D. agreeing that the persons acting as Directors and Officers of the Association entering into such agreement have not breached any of their duties or obligations to the Association; and

E. inducing the Developer or its designee to enter into said agreement and to act in reliance (through the expense of funds and otherwise) upon the validity and binding effect of said agreement.

17.03 It is specifically recognized that some or all of the persons comprising the Board of Directors and the Officers of the Association have an ownership interest in the Developer and the Management Company and that such circumstances shall not be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate the agreement in whole or in part. Each and every provision of the agreement and the act of the Board of Directors and Officers of the Association entering into such agreement is hereby ratified, confirmed, approved and adopted.

#### SECTION 18. RESERVE FUND

18.01 The Association may, but shall not be required to, establish and create a reserve account (hereinafter the "Fund"). The purpose of the Fund shall be to accumulate sums in a separate account for working capital of the Association and for the replacement, acquisition, and repair of capital improvements which are, or will be, a part of the Common Elements. The amount of the assessment shall be established by the Association and may