

## **EXHIBIT 1**

### **Declaration of Condominium**

Exhibit A - Plot Plan and Survey  
Exhibit B - Articles of Incorporation  
Exhibit C - By-Laws  
Exhibit D - Allocated Interests and Voting Interests  
Schedule 1- Guaranteed Assessments

This instrument prepared by  
(and after recording, return to):

Martha Anderson Hartley, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
200 South Orange Avenue, Suite 2900  
Orlando, Florida 32801

**AMENDED AND RESTATED**

**DECLARATION OF CONDOMINIUM**

**OF**

**AQUALEA RESIDENCES, A CONDOMINIUM**

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**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
FOR  
AQUALEA RESIDENCES, A CONDOMINIUM**

301 South Gulfview, LLC, a Delaware limited liability company ("Declarant"), hereby declares:

**ARTICLE 1  
INTRODUCTION AND SUBMISSION**

**1.1 The Properties.** The real property, including the land and air rights, defined as the "Properties" in that certain Master Declaration of Covenants, Restrictions and Easements for Aqualea (as now or subsequently amended, modified or supplemented, the "Master Declaration"), recorded in Official Records Book 16930, Pages 567-708, of the Public Records of Pinellas County, Florida ("Public Records") is divided into three (3) parcels, the "Commercial Condominium" (as defined in the Master Declaration), "Resort Condominium" (as defined in the Master Declaration) and this "Residential Condominium" or "Condominium." The Condominium is an air rights condominium and is legally described on the Condominium Plot Plan (hereafter defined) attached to this Declaration as Exhibit "A" (the "Residential Condominium Property." ) The Residential Condominium shall exist and be governed in accordance with this Declaration and the Master Declaration regardless of whether the Resort Condominium or the Commercial Condominium remains under the condominium form of ownership.

**1.2 Submission Statement.** Pursuant to that certain Declaration of Condominium of Aqualea Residences, a Condominium (the "Original Declaration") recorded on May 28, 2010, in Official Records Book 16930, Pages 822-915 of the Public Records, Crystal Beach Capital, LLC, a Florida limited liability company (the "Original Declarant" or "developer") submitted the Residential Condominium Property and all structures and improvements erected or to be erected thereon (the "Condominium Improvements") and all other property, real, personal or mixed, then or hereafter situated on or within the Residential Condominium Property to the condominium form of ownership and use in the manner provided for in the Act, but excluding any structures or improvements or other property now or hereafter situated on the Properties that are part of the Hotel Unit or its Shared Facilities (as those terms are defined in the Master Declaration). No improvements or property, real, personal or mixed, not situated within or upon the Properties, and no portion of the Hotel Unit or its Shared Facilities, shall for any purposes be deemed part of this Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Act or any rules or regulations promulgated pursuant to the Act, unless otherwise expressly provided herein. No portion of the Properties other than that portion described as part of the condominium in the Condominium Plot Plan shall be deemed part of this Condominium. The Original Declarant assigned its rights as Declarant under the Original Declaration to Declarant pursuant to that certain Assignment of Declarant Rights recorded on August 22, 2013, in Official Records Book 18133, Pages 2135-2140 of the Public Records. Pursuant to the authority granted in Section 6.5 of the Original Declaration, and prior to the sale of any Units in the Condominium, the Declarant hereby amends and restates the Original Declaration as set forth herein.

**1.3 Name of Condominium.** The name by which this condominium is to be identified is Aquala Residences, a Condominium (the "Condominium").

**1.4 Plan of Development.** The Condominium consists of eighteen (18) Units and associated Condominium Improvements.

**1.5 Name of Association.** The name of the association responsible for the operation of the Condominium is the Aquala Residences Condominium Association, Inc., a Florida not-for-profit corporation.

## **ARTICLE 2 DEFINITIONS**

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

2.1.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes (2010)) as it may be amended from time to time.

2.1.2 "Allocated Interest(s)" has the meaning ascribed to it in Section 5.1 of this Declaration.

2.1.3 "Articles" or "Articles of Incorporation" means the Amended and Restated Articles of Incorporation of the Association, as amended from time to time. A copy of the Articles of Incorporation is attached to this Declaration as Exhibit "B"; provided, however, notwithstanding such attachment, the Articles of Incorporation may be amended by the amendment procedures set forth in the Articles of Incorporation, not the amendment procedures of this Declaration.

2.1.4 "Assessments" means, collectively, Regular Periodic Assessments, Special Assessments, and Capital Expenditure Assessments.

2.1.5 "Association" means Aquala Residences Condominium Association, Inc., a Florida not-for-profit corporation, and its successor and assigns, the sole entity responsible for the operation of the Common Elements of the Condominium.

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

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

2.1.8 "Building" means the structure or structures in which the Condominium is located, which structure(s) is located within the Properties. The Units and the Common Elements are located within portions of the Building as shown on the Condominium Plot Plan.

2.1.9 "By-Laws" means the Amended and Restated By-Laws of the Association, as adopted and amended from time to time. A copy of the By-Laws is attached to this Declaration as Exhibit "C"; provided, however, notwithstanding such attachment, the By-Laws may be amended by the amendment procedures set forth in the By-Laws, not the amendment procedures set forth in this Declaration.

2.1.10 "Capital Improvement Assessments" shall have the meaning set forth in Section 11.2.2 of this Declaration.

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

2.1.12 "Commercial Condominium" means that certain condominium as set forth in the Declaration of Condominium for AQUALEA COMMERCIAL, a Condominium, recorded in Official Records Book 16930, Pages 916-1004 of the Public Records, as amended from time to time.

2.1.13 "Commercial Unit" means and refers to each unit designated as a "Condominium Unit" in the Commercial Condominium.

2.1.14 "Common Elements" means and includes:

2.1.14.1 The portions of the Condominium Property that are not included within the Units or the Association Property;

2.1.14.2 An easement of support in every portion of the Building that contributes to the support of the Units and Condominium Property, and any other easement granted to the Association or for the benefit of the Unit Owners within the Master Declaration;

2.1.14.3 The Limited Common Elements; and

2.1.14.4 Any other parts of the Condominium Property designated as Common Elements in this Declaration, including exhibits, or otherwise required by law to be a Common Element.

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

2.1.15 "Common Expenses" means all expenses incurred by the Association for the operation, maintenance, repair, replacement, management, protection or insurance of the Common Elements and the Association Property, the costs of carrying out the powers and duties



of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, this Declaration, the Articles or the By-Laws. For all purposes of this Declaration, "Common Expenses" shall include, without limitation: (a) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (b) if applicable, costs relating to insurance for directors and officers; (c) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property and rental or other expenses incurred in connection with any Units leased by the Association; (d) any lease payments required under leases for mechanical equipment, including without limitation, leases for recycling equipment (if any); (e) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure; (f) costs of insurance acquired by the Association under the authority of Section 718.111(11), Florida Statutes, including costs and contingent expenses required to participate in a self-insurance fund; and (g) the expenses incurred for operation, maintenance, repair, replacement, management, protection or insurance of Limited Common Elements, if any (except where the operation, maintenance, repair, replacement, management or insurance obligation, or the cost thereof, is the responsibility of the Owner to which such Limited Common Element is assigned). Common Expenses shall not include any separate obligations of individual Owners with respect to their Units, including, without limitation, real estate taxes or Master Expenses.

2.1.16 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.

2.1.17 "Condominium" shall have the meaning set forth in Section 1.3 of this Declaration.

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

2.1.19 "Condominium Improvements" shall have the meaning set forth in Section 1.2 of this Declaration.

2.1.20 "Condominium Parcel" means a Unit together with its respective Allocated Interest in the Common Elements which is appurtenant to the Unit; and when the context permits, the term includes all other applicable appurtenances to the Unit.

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

2.1.22 "Condominium Property" means the Condominium, the Condominium improvements and other property described in Section 1.2 of this Declaration submitted to the

condominium form of ownership, subject to the limitations of this Declaration and the exclusions from this Declaration. The Condominium Property does not include any portions of the Commercial Condominium and the Resort Condominium. Notwithstanding anything contained in this Declaration to the contrary, the Life Safety Systems, entry doors providing access to the Unit, including doors leading to balconies, exterior of the building, interior structural columns within Units and exterior windows and sliding glass doors of the Unit and all other Shared Facilities are part of the Shared Facilities which are part of the Commercial Condominium and are not part of the Units or the Condominium Property, regardless of location.

2.1.23 "County" means the County of Pinellas, State of Florida.

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

2.1.25 "Declarant" means 301 South Gulfview, LLC, a Delaware limited liability company, its designees, successors and such of its assigns as to which the rights of the Declarant under this Declaration are specifically assigned. The Declarant may assign all or a portion of its rights under this Declaration, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Declarant (unless so designated in writing by the Declarant), but may exercise such rights of the Declarant as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. Notwithstanding any assignment of the Declarant's rights under this Declaration (whether partially or in full), the assignee shall not be deemed to have assumed any of the obligations of the Declarant unless, and only to the extent that, it expressly agrees to do so in writing, in which event the Declarant shall be released of such obligations. The rights of Declarant under this Declaration are independent of the Declarant's rights to control the Board of Directors and, accordingly, shall not be deemed waived, transferred or assigned to the Owners, the Board or the Association upon the transfer of control of the Association.

2.1.26 "Declarant's Mortgagee" means the lender, if any, loaning the greatest amount of indebtedness (based on the initial size of the loan, regardless of what has then been advanced) to Declarant for purposes of financing or refinancing any portion of this Condominium, and shall include its successors and/or assigns.

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

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

2.1.29 "Division" means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation of the State of Florida, or its successor.

2.1.30 "Extraordinary Financial Event" shall have the meaning set forth in Section 11.7 of this Declaration.

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

2.1.32 "Garage Unit" means and refers to each Unit designated as a "Garage Unit" in the Commercial Condominium.

2.1.33 "Guarantee Expiration Date" shall have the meaning set forth in Section 11.7 of this Declaration.

2.1.34 "Hotel" has the meaning ascribed to such term in the Master Declaration.

2.1.35 "Hotel Unit" means and refers to each Unit designated as a "Hotel Unit" in the Commercial Condominium.

2.1.36 "Insurance Trustee" means the Hotel Unit Owner or its designee. If the Hotel Unit Owner declines to serve as Insurance Trustee and elects not to appoint an alternate Insurance Trustee, then the Association will perform directly all obligations imposed upon the Insurance Trustee by this Declaration. This definition shall not be amended without the prior written consent of the Hotel Unit Owner.

2.1.37 "Insured Property" has the meaning ascribed to such term in Section 12.2.1 of this Declaration.

2.1.38 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association the Federal Home Loan Mortgage Corporation or any other lender generally recognized as an institutional lender, holding a first mortgage on a Unit or Units. A majority of Institutional First Mortgagees shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the Voting Interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.

2.1.39 "Life Safety Systems" means any and all emergency lighting, audio and visual signals, safety systems, sprinklers and smoke detection systems, which are now or subsequently installed in the Building, whether or not within the Units or the Condominium Property.



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

2.1.41 "Master Declarant" shall have the meaning ascribed to such term in the Master Declaration.

2.1.42 "Master Declaration" shall have the meaning set forth in Section 1.1 of this Declaration. This Declaration shall be junior and subordinate to the Master Declaration; provided, however, this reference shall not be deemed or construed as reimposing the Master Declaration of record.

2.1.43 "Master Expenses" shall mean and refer to the payments to Hotel Unit Owner which are required to be made by Owners pursuant to the terms of the Master Declaration, including Assessments (as defined in the Master Declaration) and Special Assessments (as defined in the Master Declaration) for Shared Facilities Expenses allocated to the Unit(s) and payable to the Hotel Unit Owner by the Owners. The Master Expenses are not Common Expenses.

2.1.44 "Material Amendment" shall have the meaning set forth in Section 6.2 of this Declaration.

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

2.1.46 "Owner" means a record owner of legal title to a Condominium Parcel.

2.1.47 "Primary Institutional First Mortgagee" means the Declarant's Mortgagee for as long as it holds a mortgage on any Unit in the Condominium, and thereafter shall mean the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.

2.1.48 "Properties" has the meaning ascribed to such term in the Master Declaration.

2.1.49 "Regular Periodic Assessment" means a share of the funds required for the payment of Common Expenses that from time to time is assessed by the Association against an

Owner; however, the Regular Periodic Assessments may be adjusted from time to time by the amendment procedures for Regular Periodic Assessments set forth in this Declaration.

2.1.50 "Resort Condominium" means that certain condominium as set forth in the Declaration of Condominium for AQUALEA RESORT, a Condominium, recorded in Official Records Book 16930, Pages 709-821 of the Public Records, as amended from time to time.

2.1.51 "Resort Unit" means and refers to each unit designated as a condominium "Unit" in the Resort Condominium.

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

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

2.1.54 "Shared Facilities Expenses" has the meaning ascribed to such term in the Master Declaration. Shared Facilities Expenses are not Common Expenses.

2.1.55 "Special Assessments" shall have the meaning set forth in Section 11.2.1 of this Declaration.

2.1.56 "Standards" shall have the meaning set forth in Section 7.5 of the Declaration.

2.1.57 "Unit" means a part of the Condominium Property which is subject to exclusive ownership, and shown as a unit in the Condominium Plot Plan.

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

### ARTICLE 3 DESCRIPTION OF CONDOMINIUM

**3.1 Identification of Units.** Each Unit and its appurtenances constitutes a separate parcel of real property that may be owned in fee simple. Each Unit may be conveyed, transferred, and encumbered like any other parcel of real property, independently of all other parts of the Condominium Property, subject to the provisions of this Declaration, the Master Declaration, and applicable law. Each Unit is identified by a separate numerical and/or alpha-numerical designation, which is set forth on the Condominium Plot Plan. Each Unit shall have, as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration, including, without limitation, the right to transfer such right to other Units or Owners; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at

any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided, however, that an easement in airspace which is vacated shall be terminated automatically; and (d) other appurtenances as may be provided by this Declaration. Each Unit Owner shall be a member of the Association and entitled to vote as more particularly set forth in Section 5.2 below and in the Articles and By-Laws.

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

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

**3.2.1.1 Upper Boundaries.** The horizontal plane of the unfinished lower surface of the ceiling.

**3.2.1.2 Lower Boundaries.** The horizontal plane of the unfinished upper surface of the floor of the Unit.

**3.2.1.3 Interior Divisions.** Except as provided in Sections 3.2.1.1 and 3.2.1.2 above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, in all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Unit.

**3.2.1.4 Drawing.** A drawing depicting the boundaries of the Unit is included within the Condominium Plot Plan.

**3.2.2 Perimeter Boundaries.** The perimeter boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the drywall walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries described in Sections 3.2.1.1 and 3.2.1.2, respectively, above. Interior structural columns shall be part of Shared Facilities and not part of the Condominium.

**3.2.3 Apertures.** Any apertures in any boundary which is a part of the Condominium Property shall be deemed part of the Common Elements. Notwithstanding the boundaries set forth above, all exterior surfaces of the Building, all exterior windows made of glass or other transparent materials, and all doors providing access to the Units, including all doors and sliding glass doors leading to balconies, terraces or other exterior parts of the Building, shall be deemed part of the Hotel Unit and excluded from the boundaries of the Unit and the Condominium.

**3.2.4 Exceptions.** In cases not specifically covered above, and in any case of conflict or ambiguity, the Condominium Plot Plan shall control in determining the boundaries of a Unit. In the event of dispute as to the boundary of Condominium, the decision of the Hotel Unit Owner shall be final.

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

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

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

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



3.3.4 Demolition and Construction: Maintenance. The Declarant (including, without limitation, its designees, agents, contractors, successors and assigns) and the Hotel Unit Owner (including its designees, agents, contractors, successors and assigns) shall have the right, but not the obligation, in its and their sole discretion from time to time, to enter the Condominium Property and take all action necessary or convenient for the purpose of completing the construction of any and all structures and improvements upon any portion of the Properties, or any Condominium Improvements or Units located or to be located on any portion of the Condominium Property, and for repair, replacement and maintenance or warranty purposes as to any portion of the Properties or where the Declarant or the Hotel Unit Owner, in its or their sole discretion, determines that it is required or desires to do so. The Declarant and the Hotel Unit Owner shall have the right to temporarily prohibit access to any portion of the Common Elements or Shared Facilities to any of the Owners, residents, tenants and guests, and to utilize portions of the Common Elements or Shared Facilities in connection with the construction, development, repair and replacements of any and all improvements upon any portions of the Properties. THERE MAY BE CONSTRUCTION-RELATED NOISE, COMMOTION, INTERRUPTIONS AND OTHER UNPLEASANT EFFECTS OF DEMOLITION AND CONSTRUCTION ACTIVITIES FROM TIME TO TIME WITHIN THE PROPERTIES AND OTHER LANDS ADJACENT TO OR NEARBY THE PROPERTIES. FURTHER, OWNERS AND THEIR GUESTS AND INVITEES MAY BE LIMITED IN USING PORTIONS OF THE COMMON ELEMENTS, THE SHARED FACILITIES, AND OTHER COMMON FACILITIES DUE TO SUCH ACTIVITIES. NO OWNER OR SUCH OWNER'S GUESTS OR INVITEES SHALL IN ANY MANNER INTERFERE OR HAMPER THE DECLARANT, THE HOTEL UNIT OWNER OR THEIR RESPECTIVE CONTRACTORS, EMPLOYEES, AGENTS, DESIGNEES, SUCCESSORS OR ASSIGNS, IN CONNECTION WITH SUCH CONSTRUCTION AND DEMOLITION ACTIVITIES.

3.3.5 Sales Activity. For as long as there are any Units owned by the Declarant, its affiliates or any of them or the Declarant or any of its affiliates has any ownership interest in any portion of the Properties, the Declarant and its affiliates shall have the right to use any property owned by the Declarant and parts of the Common Elements, Shared Facilities or Association Property for guest accommodations, model units and sales, leasing and construction offices relating to the Condominium or any other portion of the Properties, to show model Units, the Condominium Property, the Shared Facilities or other parts of the Properties to prospective purchasers and tenants, and to erect on the Condominium Property, the Association Property, the Shared Facilities or any other parts of the Properties, signs and other promotional material to advertise or otherwise market the sale or resale of the Units, and/or any facilities built or to be constructed upon any portion of the Properties for sale, lease or occupancy.

3.3.6 Master Declaration Easements. The Hotel Unit Owner, other Commercial Unit owners, and the "Declarant" of the Master Declaration if different than the Declarant hereunder (the "Master Declarant"), and their respective guests, tenants, invitees, designees, affiliates, agents, employees, contractors, successors and assigns, shall have an easement to enter onto the Condominium Property for the purpose of performing such functions as are permitted or required to be performed by them under the Master Declaration. An easement for such purposes is hereby granted and reserved to the Hotel Unit Owner, other Commercial Unit owners, and Master Declarant, and each Owner, by acceptance of a deed or other instrument conveying a

Unit, shall be deemed to have agreed to the grant and reservation of easements described in this Declaration and the Master Declaration and the rights in this Declaration and the Master Declaration vested in the Hotel Unit Owner, other Commercial Unit owners, and the Master Declarant.

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

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

3.3.9 Additional Easements. For as long as there are any Units owned by the Declarant or its affiliates, or the Declarant or any of its affiliates has any ownership interest in any portion of the Properties, the Declarant or its affiliates, on behalf of itself and all Owners (each of whom hereby appoints the Declarant as its attorney-in-fact for this purpose), and thereafter the Association, through its Board, on the Association's behalf and on behalf of all Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify, relocate, abandon or terminate any such existing easements or drainage facilities, in any portion of the Condominium Property and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property and/or Association Property, as the Declarant or the Board, as the case may be, shall deem necessary or desirable for the proper operation, development, construction, sales and maintenance of the Condominium Improvements, or any portion thereof, or any improvement located within the Properties, or for the general health or welfare of the Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration or the

Master Declaration; provided, however, that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

**3.4 Limited Common Elements.** Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, one or more of the following as Limited Common Elements appurtenant thereto:

**3.4.1 Parking Spaces.** Each parking space shown on Condominium Plot Plan shall be a Limited Common Element only upon it being assigned to a particular Unit in the manner described herein. Declarant hereby reserves the right to assign, with or without consideration, the exclusive right to use any parking space located within the Common Elements of the Condominium to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. Such assignment shall not be recorded in the Public Records but, rather, shall be made by way of instrument placed in the official records of the Association (as same are defined in the By-Laws). A Unit Owner may assign the Limited Common Element parking space appurtenant to his or her Unit to another Unit by written instrument delivered to (and to be held by) the Association. Further, a Limited Common Element parking space may be relocated at any time, and from time to time, by the Board to comply with applicable Federal, State and local laws and regulations regarding or affecting handicap accessibility. The maintenance of any parking space so assigned shall be the responsibility of the Association.

**3.4.2 Storage Spaces.** Declarant hereby reserves the right to assign, with or without consideration, the exclusive right to use any storage space located within the Common Elements of the Condominium to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. Such assignment shall not be recorded in the Public Records, but, rather, shall be made by way of instrument placed in the official records of the Association (as same are defined in the By-Laws). After assignment to a Unit by the Declarant, a Unit Owner may reassign the Limited Common Element storage space appurtenant to his or her Unit to another Unit by written instrument delivered to (and to be held by) the Association. The maintenance of any space so assigned, the screening of such space, as well as the insurance of its contents, shall be the sole responsibility of the Owner of the Unit(s) to which it is assigned. The maintenance, repair and required replacement of any storage space not so assigned shall be the responsibility of the Association, except if caused by the Unit Owner, its guests, tenants and licensees, in which event it shall be repaired or replaced by the Association at the Unit Owner's expense.

**3.4.3 Balconies.** Each balcony or similar area attached to a Unit shall be a Limited Common Element of the Unit to which it is attached. Except as otherwise provided in the Master Declaration, the maintenance, repair and required replacement shall be the responsibility of the Association, except if caused by the Unit Owner, its guests, tenants and licensees, in which event it shall be repaired by the Association at the Unit Owner's expense. No modification of or improvement to any balcony shall be made without the prior consent of the Declarant prior to the date on which control of the Association is turned over to the Unit Owners

other than the Declarant as required by the Act ("Turnover"), and, thereafter, by the Hotel Unit Owner.

3.4.4 General. Except as otherwise provided in the Master Declaration, the Association shall be responsible for the maintenance of any Limited Common Elements and such maintenance costs shall be part of the Common Expenses attributable to the applicable Owner or Owners. Notwithstanding the foregoing, the designation of an area as a Limited Common Element shall not entitle the Owner(s) of the Unit(s) to which they are appurtenant to preclude passage over such areas as may be required by applicable law (and an easement for such passage is hereby reserved).

#### ARTICLE 4

##### RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

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

#### ARTICLE 5

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

**5.1 Percentage Ownership and Shares.** The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses and of Master Expenses is as set forth on Exhibit "D" attached to and made a part of this Declaration (the "Allocated Interest(s)"). The Allocated Interests in the Common Elements, Common Surplus, and Common Expenses of the Condominium has been determined by dividing the approximate square footage of each Unit, as measured within the unfinished interior surfaces of the walls bounding the Unit, by the total square footage of all Units in the Condominium, measured in the same fashion.

**5.2 Voting.** Each Unit Owner shall be entitled to a vote in Association matters equal to its Allocated Interest in the Common Elements of this Association (a "Voting Interest"), such Voting Interest to be cast in accordance with the provisions of the Articles and By-Laws. Each Owner shall be a member of the Association.



## ARTICLE 6 AMENDMENTS

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

**6.1 By the Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the Voting Interests of the Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing a majority or more of the Voting Interests of all Owners. No amendment shall adversely impact the operation of the Hotel without the consent of the Hotel Unit Owner.

**6.2 Material Amendments.** Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, permit timeshare estates, or change the Allocated Interests or Voting Interests allocable to any Unit (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment, and the amendment is otherwise approved by a majority of the Voting Interests of all Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and, accordingly, shall not constitute a Material Amendment.

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

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

**6.5 By the Declarant.** Notwithstanding anything contained in this Declaration to the contrary, prior to Turnover, the Declaration and its exhibits, including and not limited to the Articles, By-Laws and the Rules and Regulations of the Association may be amended by the Declarant alone (joined in by the Declarant's Mortgagee, if any, and required by the terms of said mortgage instruments), without requiring the consent of any other party, to effect any change whatsoever, except for an amendment to permit timeshare estates or to effect any other Material Amendment (which must be approved, if at all, in the manner provided in Section 6.2 of this

Declaration). The unilateral amendment right set forth in this section of the Declaration shall include, without limitation, the right to correct scrivener's errors. Until such time as Declarant no longer holds Units for sale or lease in the ordinary course of business, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any business operations, rights, easements, benefits, privileges or priorities granted or reserved to the Declarant, without the consent of the Declarant in each instance. This provision may not be amended.

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

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

## ARTICLE 7 MAINTENANCE AND REPAIRS

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

**7.1.1 General Maintenance.** Except as otherwise provided in this Declaration or the Master Declaration, each Owner shall perform, at the Owner's sole cost and expense, all day-to-day cleaning, care, operation, maintenance, repairs and replacements of and to each Unit that he or she owns, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, the day-to-day cleaning, care, operation, maintenance, repair and replacement of all interior surfaces including all interior walls (provided, however, that Hotel Unit Owner's consent shall be required prior to making any repairs, alterations or replacements to any interior structural wall or to any interior non-structural wall that contains pipes, conduits or other components that serve more than one Unit), and all window coverings within the Unit. In addition, each Owner shall be

responsible for the day-to-day cleaning and care of the following items which exclusively serve his/her Unit: the interior surfaces and, if readily accessible from the Unit, exterior surfaces of all windows and sliding glass doors, and all other doors leading to and from the Unit. If applicable, each Owner shall be responsible for the day-to-day cleaning, care and maintenance of all balconies and terraces adjoining the Unit.

**7.1.2 Decorations.** Subject to compliance with the obligations set forth in Section 7.1 and the provisions of the Master Declaration, each Owner shall be responsible for, at the Owner's sole cost and expense, all of the decorating within such Owner's Unit (initially and thereafter from time to time), including painting, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Owner shall be entitled to the exclusive use of the interior surfaces of the common walls and the interior surfaces of the vertical perimeter walls, floors and ceiling of such Owner's Unit, and such Owner shall maintain such portions in good condition at such Owner's sole expense as may be required from time to time. The interior surfaces of all windows and sliding glass doors forming part of a perimeter wall of a Unit (and the exterior surfaces to the extent readily reachable) shall be cleaned or washed by and at the expense of each respective Owner. The use of and the covering of interior surfaces of such windows, whether by tinting, draperies, shades or other items visible from the exterior of the Building, and the use and furnishing of any balcony or terrace, shall be subject to the rules and regulations of the Hotel Unit Owner pursuant to the Master Declaration. In order to promote a consistent exterior appearance, curtains or drapes (or linings thereof) which face the exterior windows or glass doors of any Unit shall be white in color, unless otherwise approved by the Hotel Unit Owner, and if such curtains or drapes are not white and are not approved by the Hotel Unit Owner, they shall be removed and replaced with acceptable items.

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

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

**7.4 Notice Obligation of Association.** If the Association believes that Declarant has failed in any respect to meet Declarant's obligations under this Declaration or has failed to comply with any of Declarant's obligations under law, or believes the Common Elements or Shared Facilities are defective in any respect, the Association shall give written notice to Declarant detailing the alleged failure or defect. The Association agrees that once the

Association has given written notice to Declarant pursuant to this Section, the Association shall be obligated to permit Declarant and its agents to perform inspections of the Common Elements and Shared Facilities and to perform all tests and make all repairs/replacements deemed necessary by Declarant to respond to such notice at all reasonable times. The rights reserved in this Section include the right of Declarant to repair or address, at Declarant's sole option and expense, any aspect of the Common Elements and Shared Facilities during its inspections. The Association's failure to give the notice or otherwise comply with the provisions of this Section will damage Declarant. At this time, it is impossible to determine the actual damages Declarant might suffer. Accordingly, if the Association fails to comply with its obligations under this Section in any respect, the Association shall pay to Declarant the sum of Five Hundred Thousand Dollars (\$500,000) as agreed upon liquidated damages.

Notwithstanding anything to the contrary, DECLARANT IS NOT THE ORIGINAL DEVELOPER OF THE CONDOMINIUM AND IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618, FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF DECLARANT.

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

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

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

8.1.1 No Owner (other than the Declarant or the Association) shall make any addition, alteration or improvement in or to the Common Elements, the Association Property or such Owner's Unit (to the extent either (i) visible from any Unit, (ii) affecting the structural integrity of the Building, or (iii) affecting any electrical, mechanical, HVAC, plumbing, Life Safety System, monitoring, information or other systems of the Building) without the prior written approval of Hotel Unit Owner. The Hotel Unit Owner shall have the right to establish restrictions on any and all persons performing work within the Condominium Property, including, without limitation, by (a) restricting the hours during which work may be performed and restricting access of contractors to certain areas, (b) requiring that all persons performing any work have all necessary licenses and permits to perform the work, (c) requiring that all persons performing any work have adequate insurance coverage and that the Association and Hotel Unit Owner be a named additional insured on such policy(ies), and (d) requiring a security deposit or other collateral to protect against damage that may be caused during such work. Any approved additions, alterations and improvements by the Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and with any conditions imposed by the Hotel Unit Owner with respect to design, structural integrity,



aesthetic appeal, construction details, lien protection or otherwise, including, but not limited to, the Standards. Once approved by the Hotel Unit Owner, such approval may not be revoked unless the Owner submitted materially false information in securing such approval or the Owner fails to comply with the terms of the approval and/or this Declaration in connection with such approval.

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

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

8.1.4 An Owner making or causing to be made any additions, alterations or improvements set forth above in Sections 8.1.1 and 8.1.2 of this Declaration agrees, and shall be deemed to have agreed, for such Owner, and his or her heirs, personal representatives, successors

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

8.1.5 The foregoing provisions of Section 8.1 shall not be applicable to the Hotel Unit or to any Unit or portion of the Properties owned by the Declarant or the Hotel Unit Owner.

**8.2 Improvements, Additions or Alterations by Declarant.** Anything to the contrary notwithstanding, the foregoing restrictions of this Section 8 shall not apply to Units owned by the Declarant. The Declarant shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation the removal of walls, floors, ceilings and other structural portions of the Condominium Improvements); and (b) expand, alter or add to all or any part of the

recreational facilities. Any amendment to this Declaration required by a change made by the Declarant pursuant to this Section 8.2 shall be adopted in accordance with Section 6.5 of this Declaration by the Declarant alone without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in this Section 8.2.

**8.3 Changes in Declarant-Owned Units.** Without limiting the generality of the provisions of Section 8.2 above, and anything to the contrary notwithstanding, the Declarant shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Declarant, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Declarant-owned units; (iii) change the size of Declarant-owned Units by combining separate Declarant-owned Units into a single apartment (although being kept as two separate legal Units), or otherwise; and (iv) reapportion among the Declarant-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expense; provided, however, that the Allocated Interests in the Common Elements, , Common Surplus and Common Expenses of any Units (other than the affected Declarant-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Declarant shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Declarant may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units, and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Declarant. Any amendments to this Declaration required by changes of the Declarant made pursuant to this Section 8 shall be effected by the Declarant alone pursuant to Section 6.5, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 8.2 above. Without limiting the generality of Section 6.5 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Declarant.

**8.4 Amendment.** Except those provisions which may not be amended, the provisions of this ARTICLE 8 shall not be amended without the affirmative vote of at least eighty percent (80%) of the total Voting Interests of Owners.

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

**9.1 Powers and Duties.** The Association shall be the entity responsible for the operation of the Common Elements and the Association Property. The powers and duties of the Association shall include those set forth in the Articles and By-Laws, as amended from time to time. The affairs of the Association shall be governed by a Board of not less than three (3) nor

more than seven (7) directors, as provided in the By-Laws. Directors must be natural persons who are 18 years of age or older and members of the association except as to Directors appointed by the Declarant. Any person who has been convicted of any felony in the State of Florida or in a United States District or Territorial Court, has been convicted of any offense in another jurisdiction which would be considered a felony if committed in Florida, unless such person's civil rights have been restored for at least five (5) years as of the date the person seeks election to the Board, is not eligible for Board membership (provided, however, that the validity of any Board action is not affected if it is later determined that a member of the Board is ineligible for Board membership due to having been convicted of a felony). In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

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

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

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

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

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

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



9.1.7 The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Declarant, or may be the Hotel Unit Owner or the operator of the Hotel with the consent of the Hotel Unit Owner) to assist the Association in carrying out its powers and duties by performing functions, including, without limitation, the submission of proposals, collection of Assessments, preparation of records, enforcement of Rules and Regulations and maintenance, repair, cleaning and replacement of Common Elements, with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Declaration, the By-Laws, the Articles and the Act, including, but not limited to, the making of Assessments, promulgation of Rules and Regulations subject to the provisions of Section 9.1.9 below, and execution of contracts on behalf of the Association.

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

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

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

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

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

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

**9.2 Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Owners, lessees or to any other person or entity for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations, improvements or other activities done by or on behalf of any Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 8.1 of this Declaration. The Association also shall not be liable to any Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required by this Declaration; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms. Nothing in this Declaration shall be deemed to relieve the Association of its duty to exercise ordinary care in the carrying out of its responsibilities or to deprive the Owners of their right to sue the Association if the Association negligently or willfully causes damage to the Owners' property during the performance of its duties.

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

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

**9.5 Acts of the Association.** Unless the approval or action of Owners, or a specific percentage of the Board of Directors, is specifically required in this Declaration, the Articles of Incorporation, the By-Laws, the applicable Rules and Regulations, or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by a majority vote of the Board of Directors, without the consent of Owners, and the Board may so approve and act through the proper officers of the Association without a specific

resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

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

9.6.1 Assessment of the Declarant as an Owner for capital improvements, including, without limitation, Capital Improvement Assets; or

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

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

The Board of Directors shall from time to time, and at least annually, prepare, or cause to be prepared, a budget for the Condominium and the Association and determine, or cause to be determined, the amount of Regular Periodic Assessments payable by the Owners to meet the Common Expenses and allocate and assess such Common Expenses among the Owners in accordance with the provisions of this Declaration and the By-Laws. Each Owner shall be liable for his or her share of all Common Expenses which shall be in the same percentage as his or her Allocated Interest in the Common Elements. The Board of Directors shall advise all Owners promptly in writing of the amount of the Regular Periodic Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the Association budget, on which such Regular Periodic Assessments are based, to all Owners and if requested in writing, to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles of Incorporation, the By-Laws, applicable Rules and Regulations, or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any operating budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.

## ARTICLE 11 COLLECTION OF ASSESSMENTS

**11.1 Liability for Assessments.** The Association has been granted the right to make, levy and collect Assessments against the Owners to provide the funds necessary for proper operation and management of the Condominium. The Association shall also collect assessments as set forth in the Master Declaration. An Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while he or she is the Owner, and shall be jointly and severally liable with the previous Owner(s) for all unpaid Assessments that came due up to the time of the transfer of title. This liability is without prejudice to any right the current Owner may have to recover from the previous Units Owner(s) the amounts paid by the current Owner to cover such prior unpaid Assessments. An Owner's liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments and impositions are made or otherwise.

If a Unit is occupied by a lessee, licensee or occupant (each, an "Occupant"), and the Unit Owner is delinquent in paying any monetary obligation due to the Association, the Association may demand in writing that the Occupant pay to the Association the subsequent rental or other payments and continue to make such payments until all monetary obligations of the Unit Owner related to the Unit have been paid in full to the Association. Such notice to the Occupant must comply with the requirements of the Act. The Association shall mail written notice to the Unit Owner of the Association's demand that the Occupant pay monetary obligations to the Association. Upon written demand by the Association, the Occupant must continue to pay the monetary obligations to the Association until the Association releases the Occupant or the Occupant discontinues occupancy in the Unit. The liability of the Occupant may not exceed the amount due from the Occupant to the Unit Owner, and the Unit Owner shall provide the Occupant with a credit against rent or other occupancy fees due to the Unit Owner in an amount equal to the moneys paid to the Association. Upon request, the Association shall provide the Occupant with written receipts for payments made. An Occupant does not, by virtue of payment of monetary obligations to the Association, have any rights of a Unit Owner to vote in any election or to examine the books and records of the Association.

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

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

11.2.2 "Capital Improvement Assessments" shall mean and refer to an assessment levied against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be



located within the Common Elements or Association Property, which are not in the annually adopted budget for the Association.

Special Assessments and Capital Improvement Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board of Directors; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed \$125,000.00 or cause the total Assessments levied to exceed 115% of Assessments for the preceding calendar year, the Board must obtain approval of a majority of the Voting Interests held by Unit Owners represented at a meeting at which a quorum is attained.

### **11.3 Effect of Non-Payment of Assessments, Liens; Remedies of Association.**

Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the lesser of eighteen percent (18%) per annum, or the highest interest rate permitted by applicable law, from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment, or any higher amount permitted in the future by applicable law. The Association has a lien on each Condominium Parcel to secure the payment of: (a) Assessments levied against the Unit and Owner(s) thereof, (b) interest, if any, which may become due on delinquent Assessments or charges owing to the Association, and (c) costs and expenses, including actual attorneys' fees and paraprofessional fees and costs (at the trial and appellate levels), which may be incurred by the Association in enforcing its lien upon the Condominium Parcel. The lien of the Association shall also secure all advances for taxes, payments on account of superior mortgages, liens or encumbrances made by the Association to preserve and protect its lien, together with interest at the highest rate permitted by law on all such advances made for such purpose. Such lien shall be evidenced by the recording of a valid claim of lien in the Public Records that states the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due from the Owner and the due dates, and is executed and acknowledged by an authorized officer or agent of the Association (the "Claim of Lien"). Except as set forth below, the Claim of Lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the Claim of Lien is effective from and after the date of the recording of the Claim of Lien in the Public Records. The Claim of Lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by applicable law. No Claim of Lien shall be effective longer than one (1) year after the Claim of Lien has been recorded unless, within that one (1) year period, an action to enforce the Claim of Lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner or any other person claiming an interest in the Unit. The Claim of Lien shall secure (whether or not stated therein) all unpaid Assessments which are due and which may accrue subsequent to the recording of the Claim of Lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the Claim of Lien in recordable form. The Association may bring an action in its name to foreclose a Claim of Lien for unpaid Assessments in the manner a mortgage of real property is foreclosed

and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any Claim of Lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a Claim of Lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Owner and the recording of a Claim of Lien, the Association may declare the Assessment installments for the remainder of the budget year to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the remainder of the budget year, the Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

**11.4 Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Owner in the form required by the Act of its intention to foreclose its lien to collect the unpaid Assessments or charges. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments and charges, including those coming due after the Claim of Lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Owner or by certified or registered mail return receipt requested, addressed to the Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Owner or a mailing address at which the Owner will receive the notice, the court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Owner records a Notice of Contest of Lien as provided in the Act. Upon payment in full of the amount secured by such lien, the Association shall record a release of lien in the form required by the Act.

**11.5 Appointment of Receiver to Collect Rental.** If the Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Owner to pay a reasonable rent for the Unit at a rate equivalent to the comparably sized and similar Unit on the Property or in Clearwater Beach. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.

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

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

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

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

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

**11.7 Declarant's Liability for Assessments.** Notwithstanding anything contained in this Declaration, the Articles, the By-Laws, or the Rules and Regulations to the contrary, during the period from the date of the recording of this Declaration until the earlier of the following dates (the "Guarantee Expiration Date"): (i) the last day of the sixth (6th) calendar month after the recording of this Declaration, or (ii) the date that control of the Association is transferred to the Unit Owners other than Declarant as required under applicable law, Declarant shall not be obligated to pay the Assessments attributable to the Condominium Units owned by the Declarant, provided: (i) that the regular Assessments imposed on each Condominium Unit Owner other than the Declarant prior to the Guarantee Expiration Period shall not increase during such period over the amount set forth on Schedule 1 attached hereto; and (ii) that the Declarant shall be obligated to pay any amount of Common Expenses actually incurred during such period and not recovered by the Assessments at the guaranteed levels receivable from other Condominium Unit Owners in the Condominium. After the Guarantee Expiration Date, Declarant shall have the option of extending the guarantee for consecutive one (1) month periods of time (until such time as Declarant turns over operation and control of the Association to the Condominium Unit Owners other than Declarant), or paying the Assessments attributable to the Condominium Units it then owns. Notwithstanding the foregoing, in the event of an Extraordinary Financial Event (as hereafter defined), the costs necessary to effect restoration shall be assessed against all Condominium Unit Owners owning Units in the Condominium on the date of occurrence of the Extraordinary Financial Event, and their successors and assigns, including Declarant (with respect to the Condominium Units owned by Declarant). As used in this subsection, an "Extraordinary Financial Event" means a casualty loss affecting the Condominium resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from the insurance maintained by the Association or the Hotel Unit Owner.

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

**11.9 Installments.** Regular Periodic Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, Regular Periodic Assessments will be collected monthly.

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

## **ARTICLE 12 INSURANCE**

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

### **12.1 Purchase, Custody and Payment.**

**12.1.1 Purchase.** All insurance policies described in this Declaration covering portions of the Condominium Property and the Association Property shall be purchased by the Association and shall be issued by either an insurance company authorized to do business in the State of Florida or by reputable surplus lines carriers offering policies for properties located in the State of Florida.

**12.1.2 Approval.** Due to the integrated nature of the Hotel Unit and Condominium Property, each insurance policy, including the agency and company issuing the policy, shall be subject to the prior approval of the Hotel Unit Owner.

**12.1.3 Named Insured.** The named insured shall be the Association, individually, and as agent for the Owners covered by the policy, without naming them, and as agent for the holders of any mortgage on a Unit, without naming them. The Owners, the holders of any mortgage on a Unit, the Hotel Unit Owner, and the Association's managing entity (if any) shall be additional insureds.

**12.1.4 Custody of Policies and Payment of Proceeds.** All policies shall provide that payments for losses made by the insurer shall be paid to the Association and that all policies and endorsements shall be deposited with the Association.

**12.1.5 Copies to Mortgagees and Hotel Unit Owner.** One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association to the Hotel Unit Owner and, upon request, to the holder of any mortgage on



a Unit. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

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

**12.2.1 Property Insurance.** The Association shall obtain and maintain insurance coverage for all portions of the Condominium Property located outside the boundaries of the Units and all portions of the Condominium Property located inside the boundaries of the Units required by the Act to be insured under the Association's policies (as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the Unit was initially conveyed) (collectively, the "Insured Property"), in such amounts as are adequate for the replacement thereof. The Insured Property shall not include, and shall specifically exclude, (i) the Shared Facilities and all other portions of the Hotel Unit, (ii) the Units, (iii) all furniture, fixtures, furnishings, floor, wall, and ceiling coverings and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, (iv) other personal property owned, supplied or installed by (or on behalf of) Owners or tenants of Owners, and (v) electrical fixtures, appliances, air conditioner and/or heating equipment, and air conditioning compressors that service only an individual Unit, whether or not located within the Unit's boundaries, water heaters that service only one Unit, water filters, built-in cabinets and countertops, or replacements of the foregoing property in each case located within the boundaries of a Unit and/or serving only one Unit. Such insurance policies may contain reasonable deductible provisions as determined by the Board of Directors and shall afford protection against loss or damage by fire and other hazards covered by a standard "all risks" form. If the Board desires, such policy may also cover other risks that are from time to time customarily covered with respect to buildings and improvements similar to the Insured Property including, but not limited to, vandalism and malicious mischief.

**12.2.2 Liability.** The Association shall obtain and maintain comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters, or things related to the Insured Property, with such coverage amounts as shall be required by the Board of Directors, but with a minimum single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Such policies shall include a minimum of Fifty Thousand Dollars (\$50,000) in property damage coverage. Each such policy shall have a cross-liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa. The Association may obtain directors and officers insurance, if desired or required under the Act, covering all directors, officers and employees of the Association, for claims arising out of their alleged "wrongful acts."

**12.2.3 Workers' Compensation.** The Association shall obtain and maintain workers' compensation insurance, including employers' liability, and other mandatory insurance to the extent applicable to the maintenance, operation, repair or replacement of the Insured Property or Association Property, in amounts at least equal to the minimum statutory amounts or, if applicable, other greater amounts required by the Master Declaration.

**12.2.4 Wind, Storm and Flood Insurance.** The Association may obtain and maintain wind, storm and flood insurance covering the Insured Property and/or Association Property if the Board of Directors determines it to be desirable.

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

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

**12.2.7 Other Insurance.** The Association may obtain and maintain such other insurance as the Board of Directors shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) as to property insurance policies, subrogation against the Association, the Hotel Unit Owner, and against the Owners individually and as a group (and their respective employees, contractors and agents), (ii) pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors or the Hotel Unit Owner (or any of their respective employees, contractors and/or agents), an individual member of the Board of Directors, one or more Owners, or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized and that the insurance provided shall not be prejudiced by any act or omissions of individual Owners that are not under the control of the Association and that the policy shall be primary even if an Owner has other insurance that covers the same loss. To the extent obtainable, all policies of insurance shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to all of the named insureds and additional insureds.

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

**12.4 Insurance Trustee; Share of Proceeds.** All insurance policies obtained by or on behalf of the Association pursuant to this Declaration shall provide that all proceeds covering

property losses shall be paid to the Insurance Trustee or, if the Insurance Trustee declines to serve and elects not to designate an alternate Insurance Trustee, then to the Association, which shall perform directly all obligations imposed upon the Insurance Trustee by this Declaration. The sole duty of the Insurance Trustee shall be to receive such proceeds of property insurance as are paid and to hold the same in trust for the purposes herein stated for the benefit of the Association, Owners and their respective mortgagees, and to disburse the proceeds as herein provided. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. Except as otherwise provided herein, insurance proceeds on account of damage to the Insured Property shall be held in undivided shares for each Owner, such shares being the same as such Unit's Allocated Interest, and disbursed in accordance therewith. Insurance proceeds on account of damage to the Association Property shall be awarded only to the Association.

**12.5 Distribution of Proceeds for the Insured Property.** Proceeds of insurance policies with respect to the Insured Property received by the Insurance Trustee or the Association, as applicable, shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

**12.5.1 Expenses of the Insurance Trustee.** All expenses and fees of the Insurance Trustee (if any) shall be first paid or provision shall be made therefor.

**12.5.2 Reconstruction or Repair.** If the damaged Insured Property for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs of such repairs and reconstruction as elsewhere provided in this Declaration. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners in accordance with their Allocated Interests, remittances to Owners and their mortgagees being payable jointly to them. Regardless of any delay in disbursement, only Owners holding title at the time of any disbursement of insurance proceeds shall have any rights to the same.

**12.5.3 Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided in this Declaration that the damaged Insured Property for which the insurance proceeds are paid will not be repaired or reconstructed, the remaining insurance proceeds shall be allocated among the beneficial owners in the manner set forth in Section 13.1 below, and distributed first to any First Mortgagee in an amount sufficient to pay off its mortgage against the Unit, and the balance, if any, to the Owner of the Unit. This is a covenant for the benefit of First Mortgagees of the Units and may be enforced by them.

**12.5.4 Certificate.** In making distributions to Owners and their mortgagees, the Insurance Trustee (if any) may rely upon a certificate of the Association made by its President or Secretary as to the names of the Owners and their mortgagees and their respective shares of the distribution.

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

**12.7 Owner's Personal Coverage.** Owners shall obtain insurance coverage at their own expense for the property lying within the boundaries of their Unit, including, but not limited to, their personal property, fixtures, appliances, air conditioning and heating equipment, water heaters and built-in cabinets. Owners should also obtain personal liability and living expense insurance. Insurance policies issued to individual Owners shall provide that the coverage afforded by such policies is excess over the amount recoverable under any other policy covering the same property without rights of subrogation against the Association or Hotel Unit Owner. Such policies must include special assessment coverage of no less than \$2,000.00 per occurrence. Unless the Association elects otherwise, the insurance purchased by the Association pursuant to this Declaration shall not cover claims against an Owner due to accidents occurring within his or her Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Owner, if such Owner so desires, to purchase and pay for insurance as to all such other risks not covered by insurance carried by the Association. The Association shall require each Unit Owner to provide evidence of a currently effective policy of hazard and liability insurance upon request, but not more than once per year. Upon the failure of a Unit Owner to provide an acceptable certificate of insurance, the Association may purchase a policy of insurance on behalf of the Unit Owner and the cost of such policy may be collected in the manner set forth in Section 718.116, Florida Statutes.

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

**12.9 Effect on Association.** The Declarant and Association hereby acknowledge that many parts of the Building and related equipment and facilities that are traditionally part of the units or common elements in many condominiums are instead Shared Facilities that are part of the Hotel Unit and will be insured by the Hotel Unit Owner pursuant to the terms of the Master Declaration and the Commercial Condominium. To the extent the Association is required to maintain insurance coverages and policies pursuant to the express requirements of this Declaration or the Act, then as to any claims made under such insurance policies, the distribution and application of proceeds from such claims shall be governed by the terms of this Declaration. To the extent the Hotel Unit Owner maintains insurance coverages and policies pursuant to the Master Declaration with respect to the Hotel Unit (including Shared Facilities), as to any claims made by the Hotel Unit Owner under such insurance policies, the distribution and application of proceeds from such claims shall be governed by the terms of the Master Declaration.

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



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

**13.1 Determination To Reconstruct or Repair.** In the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Insured Property shall be repaired or restored unless a determination has been made in accordance with Section 9.1.1 of the Master Declaration that the Shared Facilities shall not be repaired or restored. If a determination is made in accordance with Section 9.1.1 of the Master Declaration that the Shared Facilities shall be repaired or restored, the Association shall arrange for the prompt repair and restoration of the Insured Property as soon as the Hotel Unit Owner confirms that the repairs to the Hotel Unit and other portions of the Building in which the damaged Insured Property is located have progressed to the point where the Association can commence repairs to the Insured Property. The Association shall repair the Insured Property in accordance with any guidelines established by the Hotel Unit Owner regarding restoration and repairs to the Building. The Insurance Trustee (if any) shall disburse the proceeds of the Association insurance policies to the contractors engaged in the repair and restoration of the Insured Property in appropriate progress payments as set forth in Section 13.4 and the balance, if any, as set forth in Section 13.4. In the event no repairs or restorations to the damaged Insured Property will be made, the Condominium Property shall be subject to an action for partition instituted by the Association, any Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Owners in proportion to their Allocated Interests in the Common Elements with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of a Unit, and shall be divided among affected Owners in proportion to the damage suffered by each such affected Owner (as determined in the sole discretion of the Association) with respect to proceeds held for damage to Insured Property lying within the boundaries of Units; provided, however, that no payment shall be made to an Owner until there has first been paid off out of his or her share of such funds all mortgages and liens on the Owner's Unit in the order of priority of such mortgages and liens.

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

**13.3 Reconstruction Responsibility of Owners.** If damage is to those parts of the Condominium Property for which the responsibility of insurance is that of the respective Owners (i.e., damage to the Units), then the Owner of such damaged property shall be responsible for all necessary reconstruction and repairs, which shall be effected promptly and in accordance with the guidelines established by the Hotel Unit Owner and Board of Directors. An Owner shall be required to reconstruct a damaged Unit (or any other damaged Condominium Property over which it has insurance responsibilities) unless a determination has been made under Section 9.1.1 of the Master Declaration that the Shared Facilities will not be repaired or restored.

**13.4 Disbursement.** Immediately after a determination is made to rebuild or repair damage to Insured Property, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair. The proceeds of insurance collected on account of a casualty to the Insured Property, and the sums collected from Owners on account of such casualty, shall constitute a construction fund which shall be disbursed by the Insurance Trustee (if any) in payment of the costs of reconstruction and repair in the following manner and order.

**13.4.1 Lesser Damage.** If the estimated costs of reconstruction and repair of the Insured Property is less than One Hundred Thousand Dollars (\$100,000), then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee (if any) by the Primary Institutional First Mortgagee, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

**13.4.2 Major Damage.** If the estimated costs of reconstruction and repair of the Insured Property is One Hundred Thousand Dollars (\$100,000) or more, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Section 13.4.1 above, but then only upon the further approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

**13.4.3 Surplus.** It shall be presumed that the first moneys disbursed in payment of the costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of reconstruction and repair for which the construction fund is established, such balance, after reimbursement to the Owners of any Special Assessment(s) paid by the Owners towards such reconstruction or repair costs, shall be distributed to the beneficial owners and their mortgagees in the manner provided in Section 12.5.2.

**13.4.4 Certificate.** Notwithstanding any provisions of this Declaration to the contrary, the Insurance Trustee shall not be required to determine whether or not sums paid by Owners as Assessments, special or otherwise, shall be deposited with the Insurance Trustee, whether disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, whether a particular disbursement is to be made from the construction fund, whether surplus funds to be distributed are less than the Assessments paid by Owners, or the identity of payees or the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of the preceding matters and/or stating that the sums to be paid are due and properly payable and/or setting forth the names of the payees and the amounts to be paid.

**13.5 Special Assessments.** If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair of the Insured Property, or if at any time during reconstruction and repair, or upon completion of such reconstruction and repair, the funds for the payment of the costs of such reconstruction and repair are insufficient, Special Assessments shall be made against the Owners in sufficient amounts to provide funds for the payment of such costs. Such Special Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' Allocated Interests in the Common Elements.

**13.6 Benefit of Mortgagees.** Certain provisions in this ARTICLE 13 are for the benefit of mortgagees of Units and may be enforced by any of them.

## **ARTICLE 14 CONDEMNATION**

**14.1 Deposit of Awards with Insurance Trustee.** The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and, subject to the terms of the Master Declaration, the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty of Insured Property and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Owners, the Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Insurance Trustee, a charge shall be made against a defaulting Owner in the amount of his or her award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

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

**14.3 Disbursement of Funds.** If the Condominium is not to be repaired or reconstructed after condemnation, the proceeds of the awards with respect to the taking of the Condominium Property will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this Declaration with respect to the ownership and distribution of insurance proceeds as to the Insured Property if the Condominium is not to be repaired or reconstructed after a casualty. If the Condominium is to be repaired or reconstructed after condemnation, the size of the condominium will be reduced and the Condominium Property damaged by the taking will be made usable in the manner provided below. The proceeds of awards with respect to the taking of the Condominium Property shall be used for these purposes and shall be disbursed in the manner provided in this Declaration for disbursement of funds by the Insurance Trustee after a casualty of the Insured Property, or as elsewhere provided in this ARTICLE 14.

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

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

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

14.4.3 Adjustment of Allocated Interest. If the floor area of the Unit is reduced by the taking, the Unit's Allocated Interest shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The respective Allocated Interests of all Owners in the Common Elements, Common Expenses, Common Surplus, and the Master Expenses shall then be restated as follows:

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

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

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

**14.5 Unit Made Uninhabitable.** If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable in accordance with the Standards (in the sole opinion of the Hotel Unit Owner), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium and this Declaration:

14.5.1 Payment of Award. The awards shall be paid first to the applicable First Mortgagees in amounts sufficient to pay off their mortgages in connection with each such Unit; second, to the Hotel Unit Owner for any due and unpaid Master Expenses with respect to each such Unit; third, to the Association for any due and unpaid Assessments with respect to each such Unit; fourth, jointly to the affected Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements or Shared Facilities (as applicable and as determined by the Hotel Unit Owner).

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



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

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

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

**14.5.4 Arbitration.** If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and mortgagees of the Unit and the Hotel Unit Owner within sixty (60) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Units Owners, including Owners who will not continue after the taking, in proportion to the applicable Allocated Interest of such Owners as they exist prior to the adjustments to such Allocated Interests effected pursuant hereto by reason of the taking.

**14.6 Taking of Common Elements.** Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association and the Hotel Unit Owner; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Owners in the shares in which they own the Common Elements after adjustments to those shares effected pursuant to this Declaration by reason of the taking. If there is a first mortgage on a Unit, the distribution shall be paid jointly to the Owner and the First Mortgagee of the Unit.

**14.7 Amendment of Declaration.** The changes in Units, in the Common Elements, and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration that is only required to be approved by, and executed upon the direction of, a majority of the members of the Board of Directors and by the Hotel Unit Owner.

## ARTICLE 15 OCCUPANCY AND USE RESTRICTIONS

In addition to the occupancy and use restrictions set forth in the Master Declaration, in order to provide for congenial occupancy of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the Rules and Regulations and the following provisions:

**15.1 Occupancy.** Each Unit shall be used in accordance with all applicable County and State codes, ordinances and regulations, as well as all of the provisions of the Declaration, the Rules and Regulations, the Master Declaration and the rules and regulations from time to time promulgated by the Hotel Unit Owner pursuant to the Master Declaration. The provisions of this Section shall not be applicable to Units used by the Declarant for model apartments, sales offices or management or administrative services and shall not be amended without the affirmative vote of at least eighty percent (80%) of the total Voting Interests of all Owners and the consent of the Hotel Unit Owner.

**15.2 Use of Common Elements and Association Property.** The Common Elements and Association Property shall be used only for furnishing of services and facilities for which they are reasonably suited and originally intended and which are incident to the use and occupancy of the Units. Any proposed change in use of any portion of the Common Elements or Association Property that could have, in Hotel Unit Owner's opinion, a material adverse effect upon the Hotel Unit, Hotel or Hotel Unit Owner, shall require the prior written consent of the Hotel Unit Owner.

**15.3 Alterations.** Without limiting the generality of Section 8.1 hereof, but subject to Section 9 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Shared Facilities, Common Elements, or Association Property, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, satellite dish, television antenna, machinery, or air conditioning units removal or alteration of furnishings, fixtures and equipment, which in any manner change the appearance of any portion of the Building or the exterior of said Unit, without obtaining the prior written consent of the Association (as to the Common Elements only) or the Hotel Unit Owner (as to all other portions of the Building, in the manner specified in Section 8.1 hereof. Additionally, curtains or drapes (or linings thereof) which face the exterior windows or glass doors of Units shall be consistent with the standard adopted from time to time by the Hotel Unit Owner. Hotel Unit Owner shall have the right to enter any Unit upon reasonable notice to terminate activities or remove items that are in violation of this Section 15.3. Notwithstanding the provisions of Section 8.1 above, any Unit Owner may display one portable, removable United States flag in a respectful way, and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard.

The Hotel Unit Owner shall have the right to establish non-discriminatory restrictions on any and all persons performing work within the Condominium Property, including, without limitation, by (a) restricting the hours during which work may be performed and restricting access of contractors to certain areas; (b) requiring that all persons performing any work have all

necessary licenses and permits to perform the work; (c) requiring that all persons performing any work have adequate insurance coverage and that the Association be a named additional insured on such policy(ies); and (d) requiring a security deposit or other collateral to protect against damage that may be caused during such work.

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

**15.5 No Improper Uses.** No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or the Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction, relating to any portion of the Condominium Property or the Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere set forth in this Declaration. Without the prior written approval of the Association and/or the Hotel Unit Owner, as applicable, nothing shall be done or kept in any Unit, in or on the Common Elements, or any portion thereof, or any other portion of the Properties, which would result in the cancellation of the insurance on all or any part of the Condominium Property or the Building or an increase in the rate of the insurance on all or any part of the Condominium Property or the Building over what the Association or the Hotel Unit Owner, but for such activity, would pay. Notwithstanding the foregoing and any provisions of this Declaration, the Articles or the By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 15.5 or the provisions of Section 15.4. No activity specifically permitted by the Master Declaration, including, without limitation, activities or businesses conducted from the Hotel Unit shall be deemed an improper use except to the extent so determined by the Hotel Unit Owner.

#### **15.6 Leasing of Units.**

**15.6.1 Leasing of Units.** No portion of a Unit, other than an entire Unit, may be leased or rented, and all leases of Units must be for a minimum term of thirty (30) days. Each lease shall be in writing and shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration, the Rules and Regulations, the Master Declaration and the rules and regulations of the Hotel Unit Owner promulgated and in effect from time to time, including, without limitation, any and all regulations and procedures adopted by the Hotel Unit Owner regarding mandatory check-in for Owners, tenants and residents, coordination of any charging privileges which the Hotel Unit Owner may elect to afford Owners, their guests, invitees or tenants, and other matters reasonably

necessary to allow Owners and Hotel guests to be well integrated into a unified structure and operation. to ensure that the Units and the Hotel Unit and related systems and facilities and the use and occupancy by Owners and their guests, invitees and tenants and the guests of the Hotel of their respective facilities are integrated to the extent contemplated by this Declaration and the Master Declaration, and to ensure that all operations may be conducted in an efficient manner. The Owner will be jointly and severally liable with the tenant to the Association and/or the Hotel Unit Owner for any unpaid per use charges of tenants and guests and for any amount which is required by the Association and/or the Hotel Unit Owner, as applicable, to repair any damage to the Common Elements or the Shared Facilities (or other parts of the Hotel Unit) resulting from acts or omissions of tenants, as determined in the sole discretion of: (a) the Association, as related to the Common Elements, and (b) the Hotel Unit Owner, as related to the Shared Facilities, and to pay any claim for injury or damage to property caused by the negligence of the tenant, and special charges may be levied against the Unit therefor. All tenancies are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease. There shall be no amendment to this Section 15.6, or to any other provision of this Declaration which shall impair the rights established in this Section 15.6 without the prior approval of at least eighty percent (80%) of the entire Voting Interests of the Owners. If so required by the Association or Hotel Unit Owner, a tenant wishing to lease a Unit shall be required to place in escrow with the Association or Hotel Unit Owner, as applicable, a reasonable sum, not to exceed the equivalent of one month's market rent, which may be used by the Association or Hotel Unit Owner to repair any damage to any portion of the Common Elements, Association Property, Hotel Unit or Shared Facilities resulting from acts or omissions of tenants (as determined in the sole discretion of the Association, as related to damage to the Common Elements and/or Association Property, or the Hotel Unit Owner, as related to damage to the Hotel Unit and/or the Shared Facilities). Nothing herein shall interfere with the access rights of the Owner as a landlord pursuant to Chapter 83, Florida Statutes (2013), as amended. Notwithstanding the foregoing, the above restriction shall not apply to the extent the Unit Owner submits their unit into a rental program, if any, operated by the Hotel Unit Owner or Hotel operator.

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

**15.7 Rules and Regulations.** The Rules and Regulations concerning the use of the Condominium Property may be made and amended from time to time by a majority vote of the Board of Directors. The Association shall furnish copies of the Rules and Regulations and any



amendments to all Owners. Neither the Rules and Regulations, nor amendments to the Rules and Regulations, are required to be recorded in the Public Records.

**15.8 Cumulative with Restrictions of Master Covenants.** The foregoing restrictions shall be in addition to, cumulative with, and not in derogation of those set forth in the Master Declaration.

**15.9 Relief by Association.** The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this ARTICLE 15 for good cause shown to the extent that granting such relief does not in any manner affect the right, privileges or authority of the Hotel Unit Owner or the other requirements set forth in the Master Declaration. To the extent that such relief would affect the Hotel Unit Owner, as aforesaid, the same shall not be valid without the written approval of the Hotel Unit Owner.

**15.10 Effect on Declarant.** Subject to the following exceptions and applicable law, the restrictions and limitations set forth in this ARTICLE 15 shall neither apply to the Declarant nor the Units owned by the Declarant. The Declarant shall not be exempt from restrictions, if any, relating to requirements that Unit leases or lessees be approved by the Association, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to the Declarant's construction, maintenance and marketing activities.

**15.11 Parking.** Unit Owners shall park their automobiles in available parking spaces in the Garage parking area designated for the Residential Units. It is intended, but not guaranteed, that valet parking will be available at the Hotel for fees established by the Hotel Unit Owner.

Certain parking spaces and storage lockers as shown on the Condominium Plot Plan may be assigned for the benefit of the Units, and as otherwise determined by the Declarant. In the event a specific parking space or storage locker is assigned in connection with the sale of a Unit by the Declarant, the right to use said designated parking space or storage locker shall be appurtenant to the Unit owned by the owner to whom such parking space or storage locker is initially assigned. The Association shall not thereafter reassign or change said owner's parking space(s) or storage locker(s) without the Owner's written consent. A conveyance of the Unit shall also transfer, as an appurtenance to said Unit, the designated parking space(s) and storage locker(s), if any, that have not been transferred or assigned by the Unit Owner to another member, without necessity of reference to or description of the parking space(s) or storage locker(s).

Designation of parking spaces or storage lockers, if any, assigned to a Unit Owner shall be made by separate written assignment. It is expressly acknowledged that the Declarant may make an additional charge or increase to the purchase price of a Unit in consideration for designating the right to the use of certain parking spaces and storage lockers.

The Declarant shall control and have the right to make all designations of parking spaces and storage lockers at all times, until the Declarant shall, in whole or in part, voluntarily relinquish the right to designate the parking spaces and storage lockers. After relinquishment of such control by Declarant, the Association shall control the designation of parking spaces and

storage lockers. The Declarant may at any time by an instrument in writing delivered to the Association relinquish in whole or in part any of its rights herein relative to the designation of parking spaces or storage lockers and may assign the rights to the parking spaces or lockers to the Association. This provision regarding parking spaces and storage lockers may not be amended without the written consent of the Declarant during such periods of time as the Declarant shall have any rights hereunder to designate or control the designation of parking spaces.

Guests of Unit Owners shall have the right to park in the Garage Unit only in designated areas, if any, on a space available basis. Such designated areas may have fobs, security pads or other mechanisms as determined by the Garage Unit Owner to limit access. Access to such areas may be granted to other parties in the sole and absolute discretion of the Garage Unit Owner and there may be a cost associated with such use. However, no such designated area is guaranteed, in which case, guests may park in the areas designated for the general public.

**15.12 Exterior Improvements.** Without limiting the generality of Section 8.1 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Hotel Unit Owner.

**15.13 Access to Units; Abandoned Units.** In order to facilitate access to Units by the Association for the purposes enumerated in Section 9.1 hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys (or access card or code, as may be applicable) to their respective Units to the Association and the Hotel Unit Owner to use in the performance of its functions. No Unit Owner shall change the locks to his or her Unit without notifying the Association and providing a new set of keys to the Association.

In addition to access rights granted to the Association elsewhere in this Declaration, the Association, at the sole discretion of the Board, may enter an abandoned Unit to inspect the Unit and adjoining Common Elements; make repairs to the Unit or to the Common Elements serving the Unit, as needed; repair the Unit if mold or deterioration is present; turn on the utilities for the Unit or otherwise maintain, preserve, or protect the Unit and adjoining Common Elements. For purposes of this provision, a Unit is presumed to be abandoned if: (i) the Unit is the subject of a foreclosure action and not tenant appears to have resided in the Unit for at least four (4) continuous weeks without prior written notice to the Association; or (ii) no tenant appears to have resided in the Unit for two (2) consecutive months without prior written notice to the Association, and the Association is unable to contact the Owner or determine the whereabouts of the Owner after reasonable inquiry. Any expense incurred by the Association pursuant to this paragraph is chargeable to the Unit Owner and enforceable as an Assessment, and the Association may use its lien authority to enforce collection of the expense. The Association may petition a court of competent jurisdiction to appoint a receiver to lease out an abandoned Unit for the benefit of the Association to offset against the rental income the Association's costs and expenses of maintaining, preserving, and protecting the Unit and the adjoining Common

Elements, including the costs of the receivership and all unpaid Assessments, interest, administrative late fees, costs and reasonable attorney fees.

**15.14 Mitigation of Dampness and Humidity.** No Unit Owner shall install, within his or her Unit, or upon the Common Elements or Association Property, non-breathable wall coverings or mirrored wall coverings. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at no higher than 78°F, to minimize humidity in the Unit. Leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that neither Declarant, nor the Hotel Unit Owner is responsible, and each hereby disclaims any responsibility for any illness, personal injury, death or allergic reactions which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees or the pets of all of the aforementioned persons, as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well ventilated and free of contamination. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. The Declarant does not make any representations or warranties regarding the existence or development of molds or mycotoxins, and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. In furtherance of the foregoing, if the Association or the Hotel Unit Owner reasonably believes that the provisions of this Section 15.14 are not being complied with, then the Association, the Hotel Unit Owner or the Hotel Unit shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby.

**15.15 Antennas, Satellite Dishes.** To the extent permitted by applicable law, no Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or upon his or her Unit (and/or areas appurtenant thereto), without the prior written consent of the Hotel Unit Owner.

**15.16 Open House.** No person shall be permitted to have an "open house," a "broker's open" or host any other event intended to attract multiple prospects at a single time, in connection with any attempt to sell or lease a Unit. No key box or other similar mechanism shall be utilized at any time. Owners must coordinate the showing of their Unit with the Hotel Unit Owner.

**15.17 Third-Party Service Providers.** The Hotel Unit Owner shall have the right, in its sole and absolute discretion, to establish reasonable regulations from time to time with respect to the provision of hotel services by third-party providers, including, but not limited to, solicitation and provision of housekeeping services, pool services, valet services, engineering

services, personal services (i.e., massage, personal training, dry cleaning, etc.) and food and beverage service, to the Condominium, the Unit Owners and their guests, tenants and invitees. No amendment to this Declaration or rule of the Association shall be adopted to impair or abridge the rights herein granted without an affirmative vote of not less than 80% of the Voting Interests of the Unit Owners.

**15.18 Weight and Sound Restrictions.** No Unit Owner may install floor coverings on any balcony, patio or terrace. Each Owner agrees that sound transmission in a multi-story building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units or mechanical equipment can often be heard in another Unit. The Declarant does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Building. In that regard, each Owner hereby assumes any and all risk associated with the level of sound transmission between Units or emitted from the Common Elements or the Hotel and shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from sound transmission.

**15.19 Relief.** The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 15 for good cause shown.

## ARTICLE 16 COMPLIANCE AND DEFAULT

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

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



*de novo* shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial *de novo* has expired. If a complaint for a trial *de novo* has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

**16.3 Negligence and Compliance.** An Occupant shall be liable for the expense of any maintenance, repair or replacement to the Condominium Property made necessary by his or her negligence or by that of any member of his or her family or his or her guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association. If an Occupant fails to maintain a Unit or fails to cause such Unit to be maintained in accordance with the Standards, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles, the Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity to require performance and compliance with such applicable documents, to impose any applicable fines, to sue at law for damages, and to charge the Owner for the sums necessary to do whatever work is required to put the Owner or Unit in compliance with such applicable documents; provided, however, that nothing contained in this Section 16.3 shall authorize the Association to enter a Unit to enforce compliance or to maintain the Unit. In any proceeding arising because of an alleged failure of an Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed to this Declaration, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). An Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

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

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

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

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

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

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

16.4.6 Application of Fines. All monies received from fines shall be allocated as directed by the Board of Directors.

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

## ARTICLE 17 TERMINATION OF CONDOMINIUM

The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of all Owners and the Primary Institutional First Mortgagee, in accordance with the Act. Notwithstanding the foregoing, the Condominium cannot be terminated without the written consent of the Hotel Unit Owner, which consent may be withheld, conditioned or delayed in the Hotel Unit Owner's sole and absolute discretion. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Owner, mortgagee or lienor as if owned in common in which event the net proceeds of the partition sale shall be divided among all Owners in proportion to their Allocated Interests in the Common Elements; provided, however, that no payment shall be made to an Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to the basis of the Condominium termination, with said certificate to be recorded in the Public Records. This ARTICLE 17 may not be amended without the consent of the Primary First Mortgagee, the Declarant (as long as it owns any Unit), and the Hotel Unit Owner.

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

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

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

18.2.1 any condemnation or casualty loss affecting a material portion of the Condominium or Association Property or the affected mortgaged Unit;

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

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

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

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

## **ARTICLE 19 COVENANT RUNNING WITH THE CONDOMINIUM**

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

the provisions of this Declaration, the, the By-Laws, the Rules and Regulations, and the Master Declaration (and rules and regulations promulgated thereunder), all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained in this Declaration.

#### **ARTICLE 20 MASTER DECLARATION**

The Condominium is subject to the Master Declaration, which is administered by the Hotel Unit Owner. The Master Declaration contains certain covenants, easements, rules, regulations and restrictions relating to the use of the Condominium Property (including Units), the Hotel Unit (including the Shared Facilities) and the Building. Each Owner will be subject to all of the terms and conditions of the Master Declaration, as amended and supplemented from time to time and the rules and regulations promulgated thereunder. Among the powers of the Hotel Unit Owner under the Master Declaration is the power to assess the Owners for the Master Expenses and to impose and foreclose liens upon each Condominium Parcel if such assessments are not paid when due. This Declaration is subject and subordinate to the Master Declaration.

#### **ARTICLE 21 ASSOCIATION SOFTWARE/HARDWARE TECHNOLOGY**

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

#### **ARTICLE 22 DISCLAIMER OF WARRANTIES**

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



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

ADDITIONALLY, EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF A UNIT, UNDERSTANDS AND AGREES THAT THERE ARE VARIOUS METHODS FOR CALCULATING THE SQUARE FOOTAGE OF A UNIT, AND THAT DEPENDING ON THE METHOD OF CALCULATION, THE QUOTED SQUARE FOOTAGE OF THE UNIT MAY VARY BY MORE THAN A NOMINAL AMOUNT. ADDITIONALLY, AS A RESULT OF FIELD CONSTRUCTION, OTHER PERMITTED CHANGES TO THE UNIT, AND SETTLING AND SHIFTING OF IMPROVEMENTS, ACTUAL SQUARE FOOTAGE OF A UNIT MAY ALSO BE AFFECTED. BY ACCEPTING TITLE TO A UNIT, THE APPLICABLE OWNER(S) SHALL BE DEEMED TO HAVE CONCLUSIVELY AGREED TO ACCEPT THE SIZE AND DIMENSIONS OF THE UNIT, REGARDLESS OF ANY VARIANCES IN THE SQUARE FOOTAGE FROM THAT WHICH MAY HAVE BEEN DISCLOSED AT ANY TIME PRIOR TO CLOSING, WHETHER INCLUDED AS PART OF THE DECLARANT'S PROMOTIONAL MATERIALS OR

OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THIS ARTICLE 22, DECLARANT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE ACTUAL SIZE, DIMENSIONS (INCLUDING CEILING HEIGHTS) OR SQUARE FOOTAGE OF ANY UNIT, AND EACH OWNER SHALL BE DEEMED TO HAVE FULLY WAIVED AND RELEASED ANY SUCH WARRANTY AND CLAIMS FOR LOSSES OR DAMAGES RESULTING FROM ANY VARIANCES BETWEEN ANY REPRESENTED OR OTHERWISE DISCLOSED SQUARE FOOTAGE AND THE ACTUAL SQUARE FOOTAGE OF THE UNIT.

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

Notwithstanding anything herein to the contrary, DECLARANT IS NOT THE ORIGINAL DEVELOPER OF THE CONDOMINIUM AND IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618, FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF DECLARANT.

### ARTICLE 23 ADDITIONAL PROVISIONS

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

AFFILIATES, SUCCESSORS AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RESPECTING THE VALIDITY OR ENFORCEABILITY OF THIS DECLARATION, OR THE EXHIBITS HERETO. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

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

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

**23.4 Notices.** All notices to the Association required or desired under this Declaration or under the By-Laws shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may subsequently designate from time to time by notice in writing to all Owners. Except as provided specifically in the Act, all notices to any Owner shall be sent by first class mail to the Condominium address of such Owner, or such other address as may have been designated by him or her from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by certified mail (return receipt requested) to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

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

**23.6 Title Documents.** Each Unit Owner by acceptance of a deed to a Unit acknowledges that such Unit is subject to certain land use and title documents and all amendments thereto, which include among other items, unrecorded land use documents and documents recorded or to be recorded in the Public Records (collectively, the "Title Documents").

Declarant's plan of development for the Condominium may necessitate from time to time the further amendment, modification or termination of the title documents. DECLARANT RESERVES THE UNCONDITIONAL RIGHT TO SEEK AMENDMENTS AND MODIFICATIONS OF THE TITLE DOCUMENTS. It is possible that a governmental subdivision or agency may require the execution of one or more documents in connection with an amendment, modification or termination of the Title Documents. To the extent that such documents require the joinder of Unit Owners other than Declarant, Declarant, by any of its duly authorized officers, may, as the agent or attorney-in-fact for the Unit Owners, execute, acknowledge and deliver any documents required by applicable governmental subdivision or agency, and the Unit Owners, by virtue of their acceptance of deeds to the Units irrevocably nominate, constitute and appoint Declarant, through any one of its duly authorized officers, as their proper and legal attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such document executed pursuant to this Section may recite that it is made pursuant to this Section. Notwithstanding the foregoing, each Unit Owner agrees, but its acceptance of a deed to a Unit: (a) to execute or otherwise join in any documents required in connection with the amendment, modification or termination of the title Documents; and (b) that such Unit Owner has waived its right to object to or comment on the form or substance of any amendment, modification, or termination of the Title Documents.



Without limiting the foregoing, after Turnover, the Association shall assume all of the obligations of Declarant which affect the Condominium under the Title Documents unless otherwise provided in the Master Declaration, this Declaration, or by amendment to this Declaration recorded by Declarant in the Public Records from time to time, and in the sole and absolute discretion of Declarant.

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

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

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

**23.10 Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits annexed to this Declaration, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

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

**23.12 Waiver.** The failure of the Association or any Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed to this Declaration, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

**23.13 Ratification.** Each Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and applicable Rules and Regulations are fair and reasonable in all material respects.

**23.14 Execution of Documents; Attorney-in-Fact.** Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality of this Declaration, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Declarant, all documents or consents which may be required by all governmental agencies to allow the Declarant and its affiliates to complete the plan of development of the Condominium as such plan may be subsequently amended, and each such Owner further appoints hereby and thereby the Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This power of attorney is irrevocable and coupled with an interest. The provisions of this Section 23.13 may not be amended without the consent of the Declarant.

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

**23.16 Captions.** The captions of this Declaration and the exhibits annexed to this Declaration are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

**23.17 Third-Party Beneficiaries.** The provisions of this Declaration, express or implied, exist only for the benefit of those named herein and their respective successors and/or assigns. No other person or entity shall be deemed to be a third-party beneficiary of this Declaration.

**23.18 Relationship with Hotel Operator.** Notwithstanding any contrary provision of this Declaration: (a) no Owner shall have the right, license or ability (or otherwise through the purchase or ownership of a Unit acquire any entitlement) to use any trade name, trademark or service mark associated with the Hotel or Hotel operator; (b) each Owner, by its acceptance of a deed to a Unit, acknowledges that the name by which the Hotel or any other portion of the Building is referred to may be changed from time to time to be compatible with the trademark or service mark associated with the Hotel; (c) no Unit may be identified or affiliated in any way with any hotel "flag" (that is the brand name of any hotel management or franchise company); (d) the Condominium may not be identified or affiliated in any way with any hotel "flag;" (e) upon termination of the Hotel Management Agreement (as defined below), the use of the name of the Hotel operator will terminate; and (f) there exist no joint venture, joint enterprise, partnership, ownership interest between the Declarant and Hotel operator, and Hotel operator has no ownership interest in the Properties or the marketing and sale of Units.

The Hotel is subject to a Hotel Management Agreement (the "Hotel Management Agreement") with Hyatt Corporation ("Hyatt"). In order to continue to retain the rights to the Hyatt brand name and trademarks, the Hotel must be managed, operated and maintained in accordance with the standards established by Hyatt (the "Brand Standards"). The "Brand Standards" refers generally to the first class hotel standards of construction, maintenance, and operation of Hyatt properties which are owned or operated by Hyatt, its successors, assigns, or any of its affiliates or licensees and which are designed as "Hyatt" hotels.

The right and license to use the Hyatt brand name and trademarks is not part of the Association Property, the Common Elements or otherwise included in the Unit being acquired by an Owner. Accordingly, neither the Association nor the Owners have any right, title or interest in and to the name Hyatt or any of the Hyatt trademarks. There exists no joint venture, joint enterprise, partnership, ownership or similar relationship between Declarant and Hyatt. Hyatt has neither an ownership interest in the Hotel nor the Condominium, nor any responsibility for the marketing and sale of Units.

Declarant or Hyatt may at any time terminate the Hotel Management Agreement for various reasons and without the consent of the Association or the Unit Owners. If the Hotel Management Agreement is terminated, the Hotel must cease using the Hyatt brand name and trademarks. An Owner should not acquire a Unit with the expectation that the Hyatt brand name and trademarks will continue to be associated with the Hotel during an Owner's entire period of ownership.

Certain fees, costs and expenses incurred to maintain the right and license to use the Hyatt brand name and trademarks and to maintain the Hotel to the standards required by the Hyatt Management Agreement are part of the Shared Facilities Expenses of the Hotel. The failure of the Hotel Unit Owner, Association or Owners to approve budgets sufficient to cover required maintenance expenses could result in a failure to maintain the Brand Standards and accordingly, a termination of the Hyatt Management Agreement. Hyatt is not responsible for and makes no representation or warranty concerning construction of the Hotel or obtaining required permits, licenses and approvals to develop or operate the Hotel. Hyatt's retention and exercise of rights of approval or inspection with respect to the marketing and operation of the Hotel are for the purpose of protection of Hyatt's interest in the Hyatt brand name and trademarks only. Declarant has the sole right to determine the manner and means by which the Units are sold.

[Signatures on following pages]

IN WITNESS WHEREOF, Declarant caused this Declaration to be duly executed as of the 6<sup>th</sup> day of November, 2014.

Witnesses:

Sign: [Signature]  
Print Name: Ross Hickman

**301 SOUTH GULFVIEW, LLC**, a Delaware limited liability company

By: GlassRatner Management & Realty Advisors LLC, a Georgia limited liability company, its Manager

Sign: [Signature]  
Print Name: Dan J. Berman

By: [Signature]  
Name: RONALD L. GLASS  
Title: OFFICER

STATE OF Georgia  
COUNTY OF Fulton

The foregoing instrument was acknowledged before me this 6 day of November 2014, by Ronald L. Glass, as Officer of Glass Ratner Management & Realty Advisors LLC, a Georgia limited liability company, the Manager of **301 South Gulfview, LLC**, a Delaware limited liability company, on behalf of said entity. He is personally known to me or produced \_\_\_\_\_ as \_\_\_\_\_ identification.

(Notarial Seal)

Alyssa N Lampertz  
Notary Public, Fulton County, GA  
My Commission Expires August 5, 2018

[Signature]  
Name: Alyssa N. Lampertz  
Commission No.: W-00218174  
Notary Public, State of: Georgia  
My Commission Expires: 08/05/2018



JOINDER OF ASSOCIATION

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

IN WITNESS WHEREOF, the Association has caused these presents be signed by its proper officer and its corporate seal to be affixed this 16<sup>th</sup> day of NOVEMBER 2014.

Witnessed by:

**AQUALEA RESIDENCES CONDOMINIUM ASSOCIATION, INC.**, a Florida not-for-profit corporation

Paul Gaur  
Name: Paul Erdman

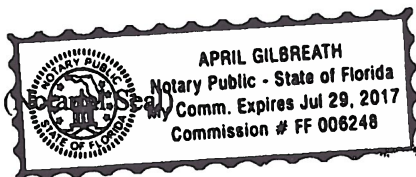
By: [Signature]  
Name: Santosh Govindaraju, President

[Signature]  
Name: April Gilbreath  
STATE OF Florida

SS:

COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November 2014, by Santosh Govindaraju, as President of **Aqualea Residences Condominium Association, Inc.**, a Florida not-for-profit corporation. He is personally known to me or produced \_\_\_\_\_ as identification.



[Signature]  
Name: April Gilbreath  
Commission No.: \_\_\_\_\_  
Notary Public, State of: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

JOINDER OF HOTEL UNIT OWNER

301 South Gulfview, LLC, a Delaware limited liability company (the "Hotel Unit Owner"), hereby joins in, consents to, and approves the provisions of this Declaration and exhibits attached to this Declaration, and agrees to accept all of the benefits and duties, and responsibilities imposed upon it by the provisions of this Declaration and its exhibits.

IN WITNESS WHEREOF, the Hotel Unit Owner has caused these presents be signed by its proper officer and its corporate seal to be affixed this 6<sup>th</sup> day of November, 2014.

Witnesses:

**301 SOUTH GULFVIEW, LLC**, a Delaware limited liability company

Sign: [Signature]

By: GlassRatner Management & Realty Advisors LLC, a Georgia limited liability company, its Manager

Print Name: Ross Hickman

Sign: [Signature]

By: [Signature]  
Name: RONALD L. GLASS  
Title: OFFICER

Print Name: Dan J. Berman

STATE OF Georgia  
COUNTY OF Fulton

The foregoing instrument was acknowledged before me this 6 day of November 2014, by Ronald L. Glass, as Officer of Glass Ratner Management & Realty Advisors LLC, a Georgia limited liability company, the Manager of **301 South Gulfview, LLC**, a Delaware limited liability company, on behalf of said entity. He is personally known to me or produced \_\_\_\_\_ as \_\_\_\_\_ identification.

(Notarial Seal)

[Signature]  
Name: Alyssa N. Lampertz  
Commission No.: W-0021874  
Notary Public, State of: Georgia  
My Commission Expires: 08/05/2018

Alyssa N Lampertz  
Notary Public, Fulton County, GA  
My Commission Expires August 5, 2018

**EXHIBIT "A"**

**CONDOMINIUM PLOT PLAN**

The following Condominium Plot Plan was submitted with the Original Declaration of Aqualea Residences, a Condominium, which was recorded on May 28, 2010, in O.R. Book 16930, Page 822 of the Public Records of Pinellas County, Florida. The Condominium Plot Plan accurately reflects the current state of the Condominium and there have been no material changes.

**AQUALEA RESIDENTIAL, A CONDOMINIUM**  
BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA

### DESCRIPTION

THAT PORTION OF GULF VIEW BOULEVARD AS VACATED IN O.R. 14956, PAGE 2380 AND 3RD STREET AS VACATED IN O.R. 14956, PAGE 2377 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA AND A PORTION OF LOTS 57, 58 AND 59 OF LLOYD-WHITE SUBDIVISION AS RECORDED IN PLAT BOOK 13, PAGE 12 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA AND A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST, PINELLAS COUNTY, FLORIDA BEING LIMITED VERTICALLY BETWEEN ELEVATION 82.75 FEET NORTH AMERICAN VERTICAL DATUM 1988 AND BEING FURTHER DESCRIBED AS FOLLOWS:

[illegible]

**PARCEL B**

THE PORTION OF 360 STREET AS VACATED IN O.R. 14958, PAGE 2177 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA AND A PORTION OF LOTS 57, 58 AND 59 OF LYONS WETLANDS SUBDIVISION AS RECORDED IN PLAT BOOK 13, PAGE 12 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA AND A PORTION OF SECTION 8, TOWNSHIP 30 SOUTH, RANGE 15 EAST, PINELLAS COUNTY, FLORIDA ARE VACATED AND BEING FURTHER DESCRIBED AS FOLLOWS:

[illegible]

## SURVEYOR'S CERTIFICATE

THE UNDERSIGNED SURVEYOR AND MAPPER DULY AUTHORIZED BY THE STATE OF FLORIDA, DO HEREBY CERTIFY, ON THIS 26th DAY OF APRIL, 2009, THAT THE CONSTRUCTION OF THE IMPROVEMENTS ARE SUBSTANTIALLY COMPLETE, SO THAT THE MATERIALS TOGETHER WITH THE PROVISIONS OF THE DECLARATION DESCRIBING THE CONDOMINIUM PROPERTY IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS AND SO THAT THE IDENTIFICATION, LOCATION, AND DIMENSIONS OF THE COMMON ELEMENTS, AND OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS.

DAN H. RIZZUTO  
PROFESSIONAL LAND SURVEYOR  
STATE OF FLORIDA, LS#5227



**POLARIS**  
PROFESSIONAL SURVEYING  
2165 SUNNYDALE BLVD, SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6113



# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA

LEGAL DESCRIPTIONS CONTINUED

CS

THAT PORTION OF GULF VIEW BOULEVARD AS VACATED IN O.R. 14956, PAGE 2380 AND  
RECORDED IN O.R. 14956, PAGE 2377 OF THE PUBLIC RECORDS OF  
PINELLAS COUNTY, FLORIDA, BEING A PORTION OF THE LLOYD-WHITE-SHOMER  
SUBDIVISION AS VACATED IN O.R. 14956, PAGE 2377 OF THE PUBLIC RECORDS OF  
PINELLAS COUNTY, FLORIDA, BEING LIMITED VERTICALLY BETWEEN ELEVATION 3.25 TO  
ELEVATION 14.85 FEET NORTH AMERICAN VERTICAL DATUM OF 1988 AND BEING  
FURTHER DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 58 OF SAID LLOYD-WHITE-  
SHOMER SUBDIVISION; THENCE ALONG THE NORTH LINE OF SAID LOT 58, S.83°54'57"E,  
8.53 FEET; THENCE S.07°29'58"W, 27.50 FEET TO THE POINT OF BEGINNING; THENCE  
S.08°47'43"W, 19.64 FEET; THENCE S.15°23'34"W, 4.47 FEET; THENCE S.08°47'49"W,  
11.67 FEET; THENCE N.83°12'17"W, 6.58 FEET; THENCE N.08°47'43"E, 2.00 FEET;  
THENCE N.83°12'07"W, 10.75 FEET; THENCE N.08°47'43"E, 33.72 FEET; THENCE  
S.83°12'17"E, 18.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH: CS

THAT PORTION OF GULF VIEW BOULEVARD AS VACATED IN O.R. 14956, PAGE 2380 AND  
3RD STREET AS VACATED IN O.R. 14956, PAGE 2377 OF THE PUBLIC RECORDS OF  
PINELLAS COUNTY, FLORIDA, AND A PORTION OF LOTS 57 AND 58, LLOYD-WHITE-  
SHOMER SUBDIVISION AS VACATED IN O.R. 14956, PAGE 2377 OF THE PUBLIC  
RECORDS OF PINELLAS COUNTY, FLORIDA, BEING LIMITED VERTICALLY BETWEEN  
ELEVATION 3.25 TO ELEVATION 14.85 FEET NORTH AMERICAN VERTICAL DATUM OF  
1988 AND BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 58 OF SAID LLOYD-WHITE-  
SHOMER SUBDIVISION; THENCE S.83°54'57"E, 8.53 FEET; THENCE N.07°29'58"E, 2.37  
FEET; THENCE S.83°12'17"E, 18.00 FEET; THENCE N.08°47'43"E, 45.08 FEET; THENCE  
N.83°12'17"W, 18.33 FEET; THENCE N.08°47'43"E, 22.42 FEET; THENCE S.83°12'17"E,  
18.33 FEET; THENCE N.08°47'43"E, 1.50 FEET; THENCE N.83°12'17"W, 18.33 FEET;  
THENCE N.08°47'43"E, 10.67 FEET; THENCE N.83°12'17"W, 0.67 FEET TO THE POINT OF  
BEGINNING; THENCE CONTINUE ALONG SAID LINE, N.83°12'17"W, 7.25 FEET; THENCE  
S.08°47'43"W, 8.58 FEET; THENCE N.83°12'17"W, 9.42 FEET; THENCE N.08°47'43"E,  
33.00 FEET; THENCE S.83°12'17"E, 10.08 FEET; THENCE N.08°47'43"E, 1.33 FEET; THENCE  
S.83°12'17"E, 6.48 FEET; THENCE S.08°36'32"W, 25.75 FEET TO THE POINT OF  
BEGINNING.

LINE TABLE			
LINE	BEARING	DISTANCE	DISTANCE
L1	S83°54'57"E	7.48	7.48
L2	N83°12'17"E	2.34	2.34
L3	S08°47'43"W	6.08	6.08
L4	S08°47'43"W	5.35	5.35
L5	S08°47'43"W	5.35	5.35
L6	S83°12'17"E	3.24	3.24
L7	S08°47'43"W	0.33	0.33
L8	S83°12'17"E	3.51	3.51
L9	N08°47'43"E	0.08	0.08
L10	S83°12'17"E	2.00	2.00
L11	S83°12'17"E	0.08	0.08
L12	S83°12'17"E	0.08	0.08
L13	N08°47'43"E	3.42	3.42
L14	S83°12'17"E	9.92	9.92
L15	S08°47'43"W	3.42	3.42
L16	S83°12'17"E	1.72	1.72
L17	S08°47'43"W	0.18	0.18
L18	S08°47'43"W	6.00	6.00
L19	N83°12'17"E	1.18	1.18
L20	N08°47'43"E	1.18	1.18

## CONDOMINIUM NOTES:

1. SEE DECLARATION OF CONDOMINIUM FOR DEFINITION AND LIMITS OF UNITS, COMMON ELEMENTS,  
ALSO SEE MASTER DECLARATION OF CONDOMINIUM FOR RESTRICTIONS AND EASEMENTS FOR AQUALEA FOR  
ADDITIONAL INFORMATION (THE "MASTER DECLARATION").

2. THE PROJECT INCLUDES THREE CONDOMINIUMS WITHIN THIS SINGLE BUILDING: AQUALEA RESIDENCES,  
A CONDOMINIUM; AQUALEA RESORT, A CONDOMINIUM; AND AQUALEA COMMERCIAL, A CONDOMINIUM.  
SEE THE MASTER DECLARATION FOR MORE INFORMATION.

3. THE BUILDING EXTERIOR, THE ROOF, THE PARKING GARAGE (EXCEPT FOR CERTAIN SPACES  
WITHIN THE AQUALEA RESIDENCES), ALL PORTIONS OF THE PROJECT OUTSIDE OF THE BUILDING,  
BUILDING SYSTEMS SERVING THE ENTIRE BUILDING OR MULTIPLE PARTS THEREOF SUCH AS AIR  
CONDITIONING, UTILITY LINES, ETC., AND CERTAIN OTHER AREAS ARE PART OF AQUALEA COMMERCIAL.

4. ALL DIMENSIONS ARE APPROXIMATE AND ARE IN FEET AND DECIMALS THEREOF. DIMENSIONS SHOWN  
ARE TO THE INTERIOR FACE OF THE UNFINISHED SURFACE (WALLS, CEILINGS AND FLOORS).

5. THE COMMERCIAL CONDOMINIUM CONTAINS ALL OF THE SHARED FACILITIES, SOME, BUT NOT ALL,  
SHARED FACILITIES, ARE AVAILABLE TO UNIT OWNERS. ALL SHARED FACILITIES ARE EITHER GENERAL  
DECLARATION TO DETERMINE WHICH TYPE OF SHARED FACILITIES SHOWN HEREON BELONG IN EACH  
DECLARATION OUTLINES THE RIGHT TO USE, EXTENT, AND CONDITIONS FOR USE  
OF THE SHARED FACILITIES. SHARED FACILITIES MAY CHANGE FROM TIME TO TIME.

6. ALL CITATIONS TO ELEVATIONS, UPPER LIMITS AND LOWER LIMITS AS DEPICTED HEREIN  
ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988.

7. ALL IMPROVEMENTS DEPICTED ON THE PLOT PLAN AND THESE DRAWINGS ARE EXISTING.

8. THE DEFINITIONS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND MASTER  
DECLARATION ARE INCORPORATED HEREIN.

9. DESCRIPTIONS AND EASEMENTS SHOWN HEREON ARE TAKEN FROM A OLD REPUBLIC NATIONAL  
LAND SURVEY OF THE LLOYD-WHITE-SHOMER SUBDIVISION, PLAT BOOK 13, PAGE 12, AS PREPARED  
DATE OCTOBER 7, 2009 @ 9:00 A.M. AND UPDATED THROUGH MARCH 28, 2010 @ 11:00 P.M. AS PREPARED  
BY JERRY E. ARON, P.A. 2505 METROCENTRE BOULEVARD 2501, WEST PALM BEACH, FL 33407.

ITEMS LISTED ON SCHEDULE B-2 ARE AS FOLLOWS:

ITEMS 1 - 8 NOT MATTERS OF SURVEY.

ITEM 7 SUBJECT TO MATTERS AS CONTAINED IN THE PLAT OF LLOYD-WHITE-SHOMER SUBDIVISION  
AS RECORDED IN PLAT BOOK 13, PAGE 12 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA, SHOWN  
DESCRIPTIONS AND EASEMENTS SHOWN HEREON ARE TAKEN FROM A OLD REPUBLIC NATIONAL  
LAND SURVEY OF THE LLOYD-WHITE-SHOMER SUBDIVISION, PLAT BOOK 13, PAGE 12, AS PREPARED  
DATE OCTOBER 7, 2009 @ 9:00 A.M. AND UPDATED THROUGH MARCH 28, 2010 @ 11:00 P.M. AS PREPARED  
BY JERRY E. ARON, P.A. 2505 METROCENTRE BOULEVARD 2501, WEST PALM BEACH, FL 33407.

ITEM 8 - SUBJECT TO A RESOLUTION NO. 08-08 RECORDED IN O.R. BOOK 14894, PAGE 248 OF THE PUBLIC  
RECORDS OF PINELLAS COUNTY, FLORIDA.

ITEM 10 - NOT A MATTER OF SURVEY.

ITEM 11 - SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS AS RECORDED IN O.R. 15252, PAGE 435 OF  
THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

ITEM 12 - NOT A MATTER OF SURVEY.

ITEM 13 - SUBJECT TO GRANT OF EASEMENT AS RECORDED IN 15775, PAGE 484 OF THE PUBLIC RECORDS OF  
PINELLAS COUNTY, FLORIDA, SHOWN

ITEM 14 - DELETED

ITEM 15 - DELETED

ITEM 16 - SUBJECT TO TERMS AND CONDITIONS OF RECIPROCAL AIR RIGHTS EASEMENT AGREEMENT AS  
RECORDED IN O.R. 15823, PAGE 1776 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

ITEM 17 - SUBJECT TO TERMS AND CONDITIONS OF RECIPROCAL EASEMENT AGREEMENT AS RECORDED IN O.R.  
15847, PAGE 1778 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

ITEM 18 - SUBJECT TO DISTRIBUTION EASEMENT FOR FLORIDA POWER CORPORATION AS RECORDED IN O.R.  
16068, PAGE 1476 OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

ITEM 19 - DELETED

ITEMS 20-28 - NOT MATTERS OF SURVEY.

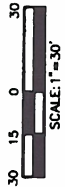


**POLARIS ASSOCIATES INC.**  
PROFESSIONAL SURVEYING  
2165 SUMMITDALE BLVD. SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6113

SHEET 2 OF 19

# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



## NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH RIGHT-OF-WAY LINE OF 2ND STREET SAID LINE BEING S.63°54'57"E.
2. ELEVATIONS SHOWN HEREON ARE BASED ON NOS. 86 AND 87, WHICH ARE BENCHMARKS FOLLOWING THE DATUM OF 3.95, NORTH AMERICAN VERTICAL DATUM 1988.
3. THIS SURVEY IS NOT INTENDED TO SHOW THE LOCATION OR EXISTENCE OF ANY HAZARDOUS OR ENVIRONMENTALLY SENSITIVE AREAS.
4. SURVEY MAP AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A LICENSED PROFESSIONAL ENGINEER. ANY ADDITIONS OR DELETIONS TO THIS SURVEY SHALL BE VOID UNLESS THEY ARE MADE BY THE SAME PERSON AS OTHER THAN THE SIGNING PARTY OR PARTIES IS APPROPRIATED.
5. DESCRIPTIONS AND EASEMENTS SHOWN HEREON HAVE BEEN OBTAINED FROM PUBLIC RECORDS FILED WITH THE PUBLIC RECORDS DIVISION, TITLE INSURANCE COMPANY, 1000 W. 1ST AVENUE, MINNEAPOLIS, MN 55402. THE EFFECTIVE DATE OF THE INSTRUMENT NUMBER 40-000-3060 EFFECTIVE DATE OCTOBER 17, 2009 @ 8:00 A.M. AND UPDATED THROUGH MARCH 29, 2010 AT 11:00 P.M. WAS PREPARED BY JAMES L. KILPATRICK, JR., P.E., METROTECH INC., 13407 UNIVERSITY BLVD., SUITE 200, MINNETONKA, MN 55345. SEE SHEET # FOR ITEMS REFLECTED IN SCHEDULE B-2.

## CERTIFICATION

I HEREBY CERTIFY THAT THE SURVEY REPRESENTED HEREON MEETS THE TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

3RD STREET - 04-06-10 DATE OF SURVEY

DAN H. RIZZUTO,  
PROFESSIONAL LAND SURVEYOR  
NO. 5227  
STATE OF FLORIDA

**QUESTIONS**

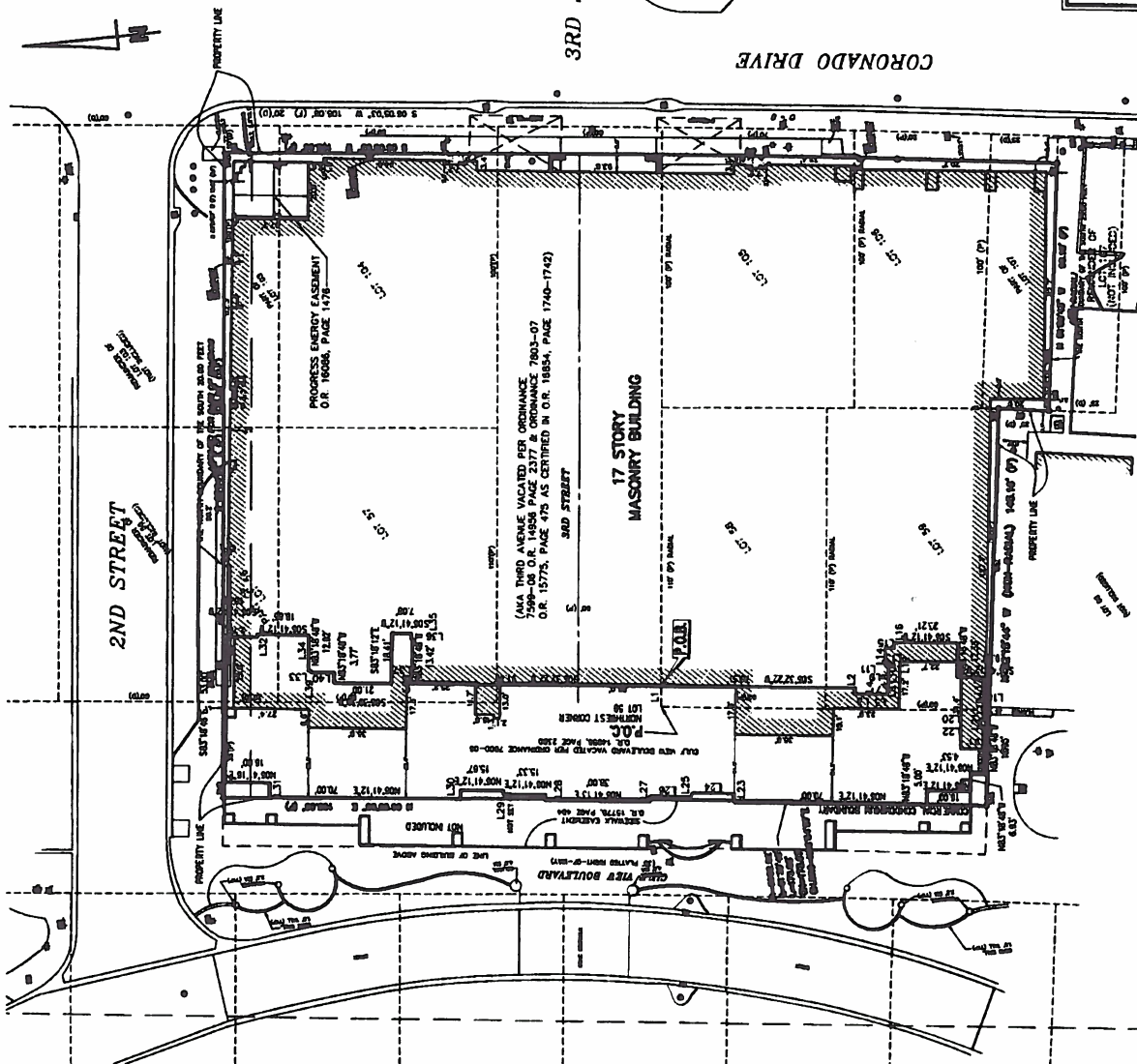
SET IRON ROD LB. #613 ½"  
 F.I.R. = FUND IRON ROD SIZE AND DESIGNATION  
 AS NOTED  
 L.S. = LICENSED BUSINESS  
 F. = FIELD  
 D = DEED  
 P.B. = PLAT BOOK  
 P.C. = PAGE  
 P.O.B. = POINT OF BEGINNING  
 P.O.C. = POINT OF COMMENCEMENT  
 R/W = RIGHT-OF-WAY  
 SEC = SECTION  
 (TYP) = TYPICAL  
 L.C.E. = LIMITED COMMON ELEMENT  
 R.C.E. = RESIDENTIAL LIMITED COMMON ELEMENT  
 S.C.E. = STORAGE COMMON ELEMENT  
 SR = STAIRS  
 T = TRASH CHUTE

## BOUNDARY SURVEY



**POLARIS**  
ASSOCIATES INC.  
LB 6113  
PROFESSIONAL SURVEYING  
2165 SUNNYDALE BLVD. SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6113

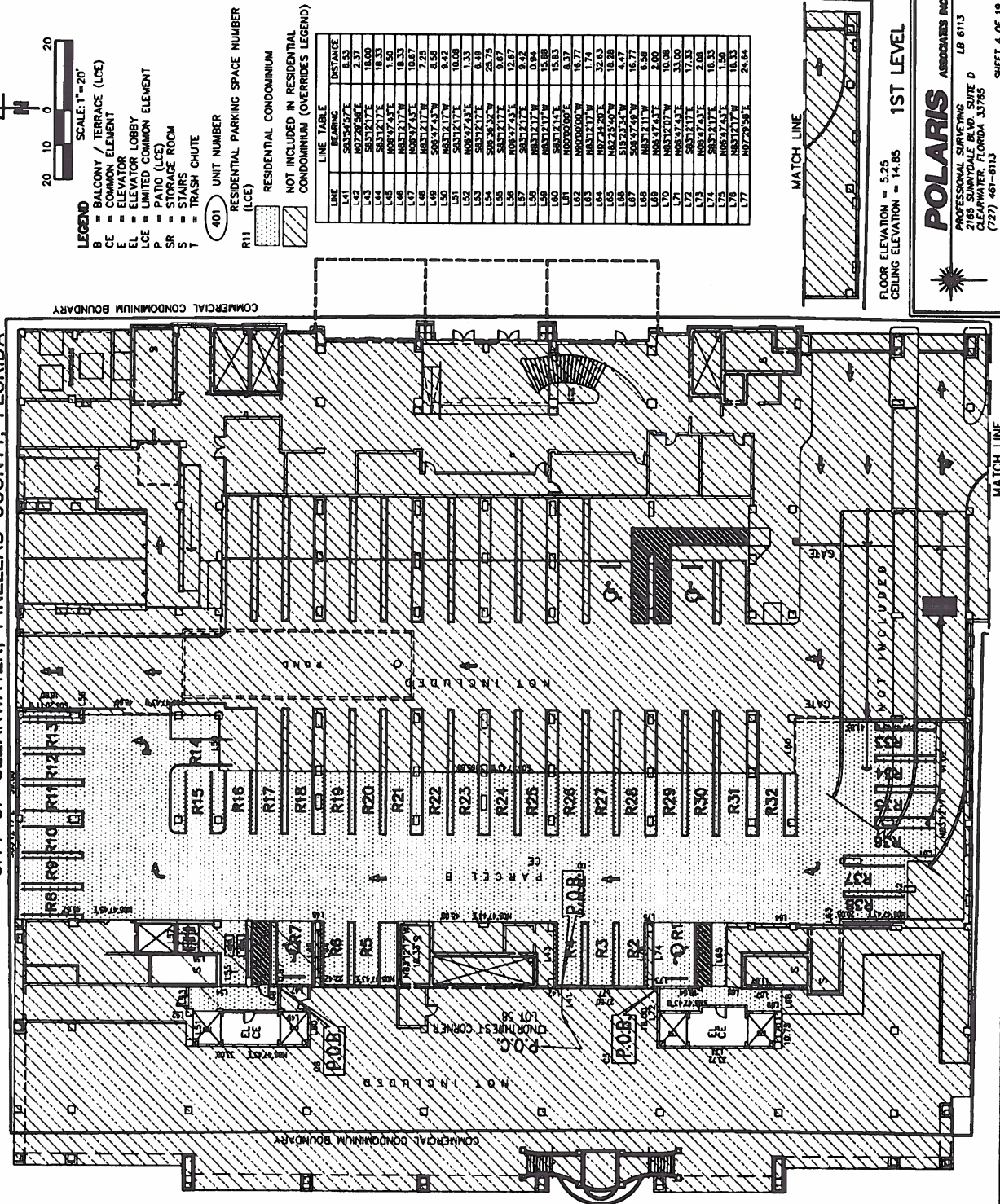
61 OF 137 PAGES





# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



**LEGEND**  
 B = BALCONY / TERRACE (LCE)  
 CE = COMMON ELEMENT  
 EL = ELEVATOR LOBBY  
 LCE = LIMITED COMMON ELEMENT  
 P = PATIO (LCE)  
 SR = STORAGE ROOM  
 S = STAIRS  
 T = TRASH CHUTE

**UNIT NUMBER**  
 401  
 RESIDENTIAL PARKING SPACE NUMBER  
 R11 (LCE)  
 RESIDENTIAL CONDOMINIUM  
 NOT INCLUDED IN RESIDENTIAL CONDOMINIUM (OVERRIDES LEGEND)

LINE	BEARING	DISTANCE
L41	S81°34'57"E	8.53
L42	N07°28'56"E	2.37
L43	S83°32'17"E	18.60
L44	S83°32'17"E	18.60
L45	N08°37'43"E	1.50
L46	N83°32'17"W	18.33
L47	N08°37'43"E	10.67
L48	N83°32'17"W	7.25
L49	S08°37'43"W	6.58
L50	S83°32'17"E	10.68
L51	S83°32'17"E	1.33
L52	N08°37'43"E	6.48
L53	S83°32'17"E	25.75
L54	S08°37'43"W	9.67
L55	S83°32'17"E	12.87
L56	N08°37'43"E	0.94
L57	N83°32'17"W	15.88
L58	S83°32'17"E	8.37
L59	N07°28'56"E	16.77
L60	N08°37'43"E	32.43
L61	N83°32'17"W	18.28
L62	S15°23'34"W	4.97
L63	S08°37'43"W	16.77
L64	N83°32'17"W	6.58
L65	N08°37'43"E	2.00
L66	N83°32'17"W	13.08
L67	S83°32'17"E	17.33
L68	N08°37'43"E	2.08
L69	S83°32'17"E	18.33
L70	N08°37'43"E	1.50
L71	N83°32'17"W	18.33
L72	N07°28'56"E	24.64

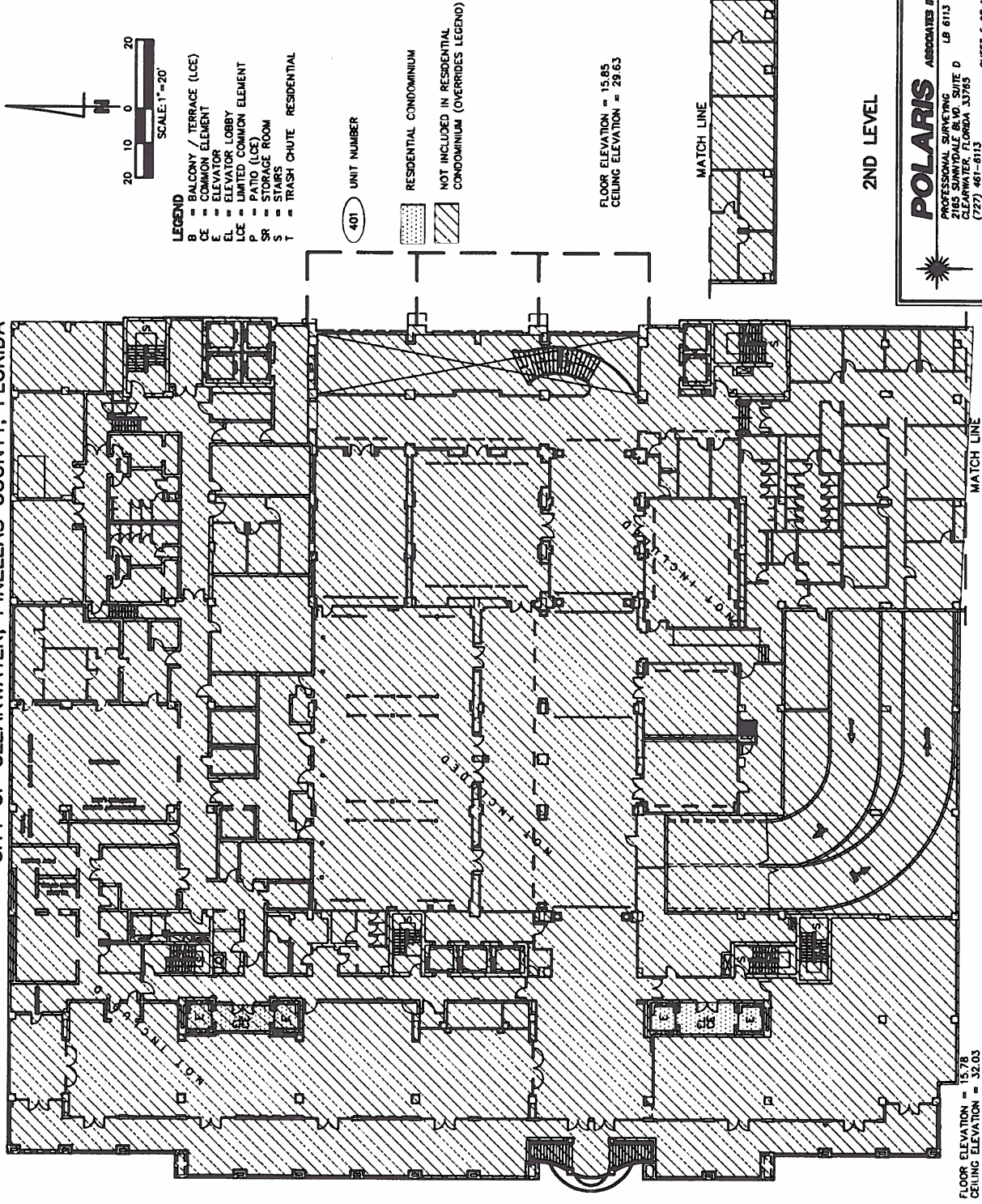
**1ST LEVEL**  
 FLOOR ELEVATION = 5.25  
 CEILING ELEVATION = 14.85

**POLARIS ASSOCIATES INC.**  
 PROFESSIONAL SURVEYING  
 2165 SUNNYDALE BLVD. SUITE D  
 CLEARWATER, FLORIDA 33765  
 (727) 461-6113  
 SHEET 4 OF 19



# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



**POLARIS ASSOCIATES INC.**  
PROFESSIONAL SURVEYING  
2105 SUNNYSIDE BLVD. SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6113

LB 6113  
SHEET 5 OF 19



# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



## LEGEND

- B = BALCONY / TERRACE (LCE)
- CE = COMMON ELEMENT
- E = ELEVATOR
- EL = ELEVATOR LOBBY
- LCE = LIMITED COMMON ELEMENT
- P = PATIO (LCE)
- SR = STAIRS
- S = STORAGE ROOM
- T = TRASH CHUTE

UNIT NUMBER

RESIDENTIAL CONDOMINIUM

NOT INCLUDED IN RESIDENTIAL CONDOMINIUM (OVERRIDES LEGEND)

LINE	BEARING	DISTANCE
L78	S87°15'18"W	0.32
L79	S87°15'18"E	0.32
L80	S08°44'44"W	2.92
L81	N08°15'16"W	8.42
L82	N08°44'44"E	7.92
L83	S87°15'18"E	9.10
L84	S08°44'44"W	17.17
L85	S08°44'44"W	7.92
L86	N08°15'16"W	8.42
L87	N08°44'44"E	7.92
L88	S87°15'18"E	7.31
L89	N08°15'16"W	8.42
L90	N08°44'44"E	7.92
L91	S87°15'18"E	8.42
L92	S08°44'44"W	7.92
L93	N08°15'16"W	17.17
L94	N08°44'44"E	9.42
L95	N08°15'16"W	8.42
L96	N08°44'44"E	7.92
L97	S87°15'18"E	8.42
L98	S08°44'44"W	7.92

FLOOR ELEVATION = 30.63  
CEILING ELEVATION = 37.98

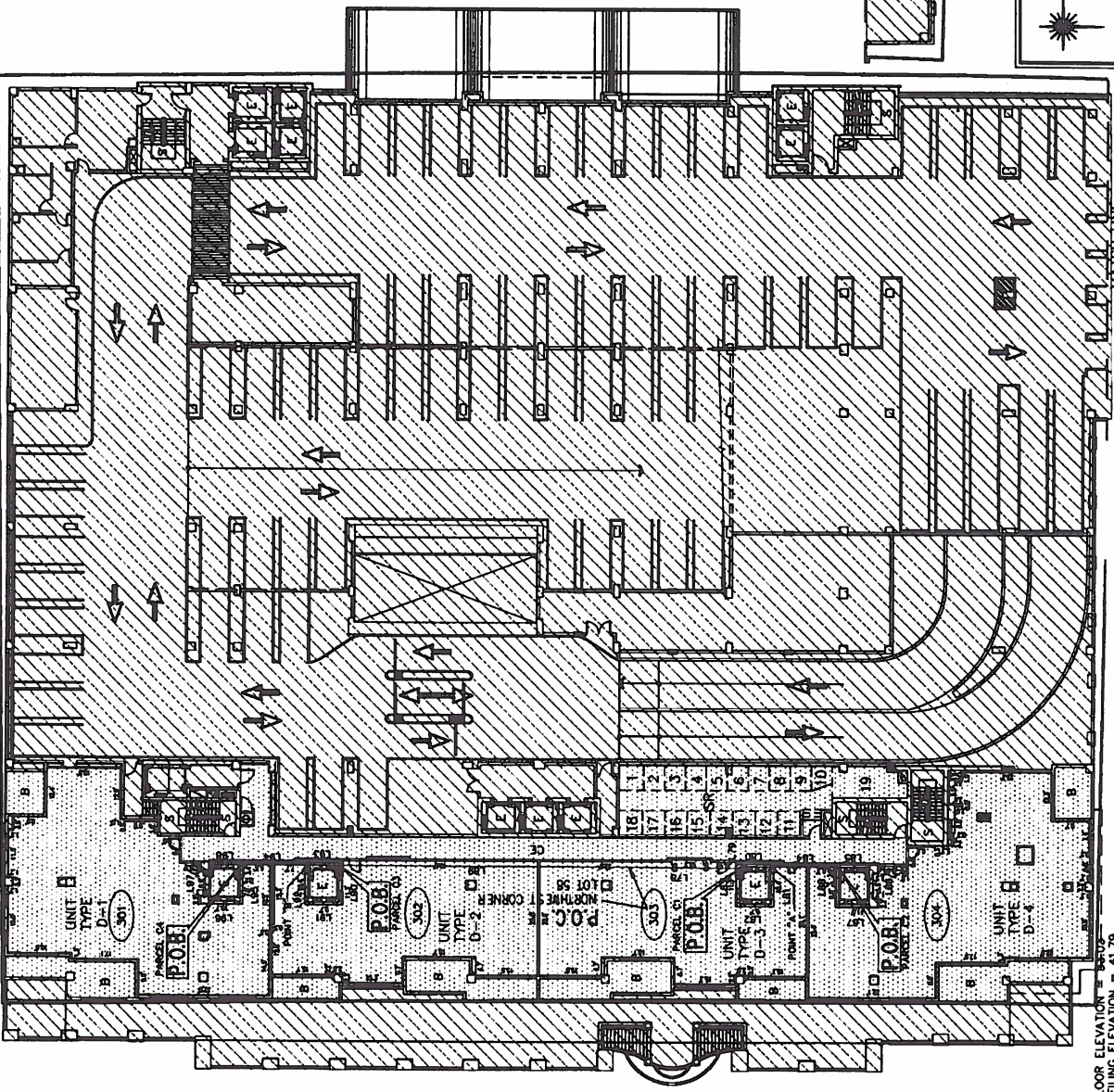
NOTE: STORAGE ROOM IS OPEN AND DOES NOT CONTAIN DIVIDING WALLS AT THIS TIME.

MATCH LINE

3RD LEVEL

**POLARIS ASSOCIATES INC.**  
PROFESSIONAL SURVEYING  
2765 SUNNYSIDE BLVD. SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6115

SHEET 6 OF 19

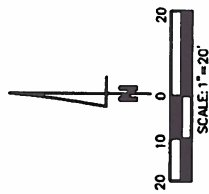


FLOOR ELEVATION = 30.63  
CEILING ELEVATION = 41.79



# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



## LEGEND

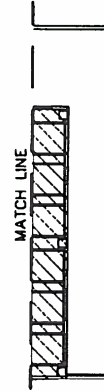
- B = BALCONY / TERRACE (LCE)
- CE = COMMON ELEMENT
- E = ELEVATOR
- EL = ELEVATOR LOBBY
- LCE = LIMITED COMMON ELEMENT
- P = PAINT (LCE)
- SR = STORAGE ROOM
- S = STAIRS
- T = TRASH CHUTE

UNIT NUMBER

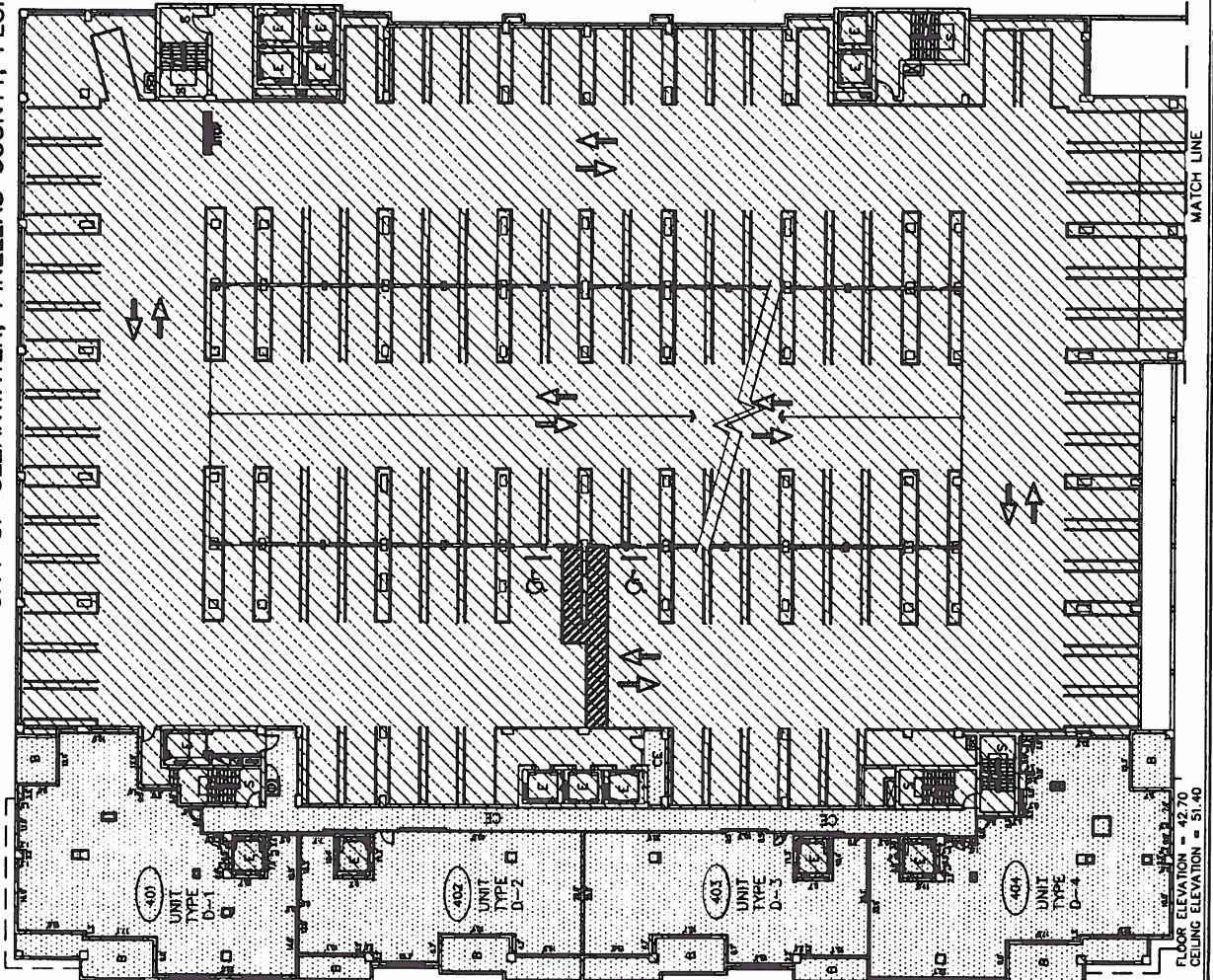
401

- RESIDENTIAL CONDOMINIUM
- NOT INCLUDED IN RESIDENTIAL CONDOMINIUM (OVERRIDES LEGEND)

FLOOR ELEVATION = 39.98  
CEILING ELEVATION = 46.41



4TH LEVEL



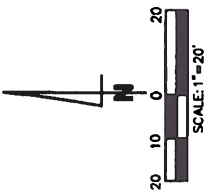
FLOOR ELEVATION = 42.70  
CEILING ELEVATION = 51.40

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SHEET 7 OF 19

# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA

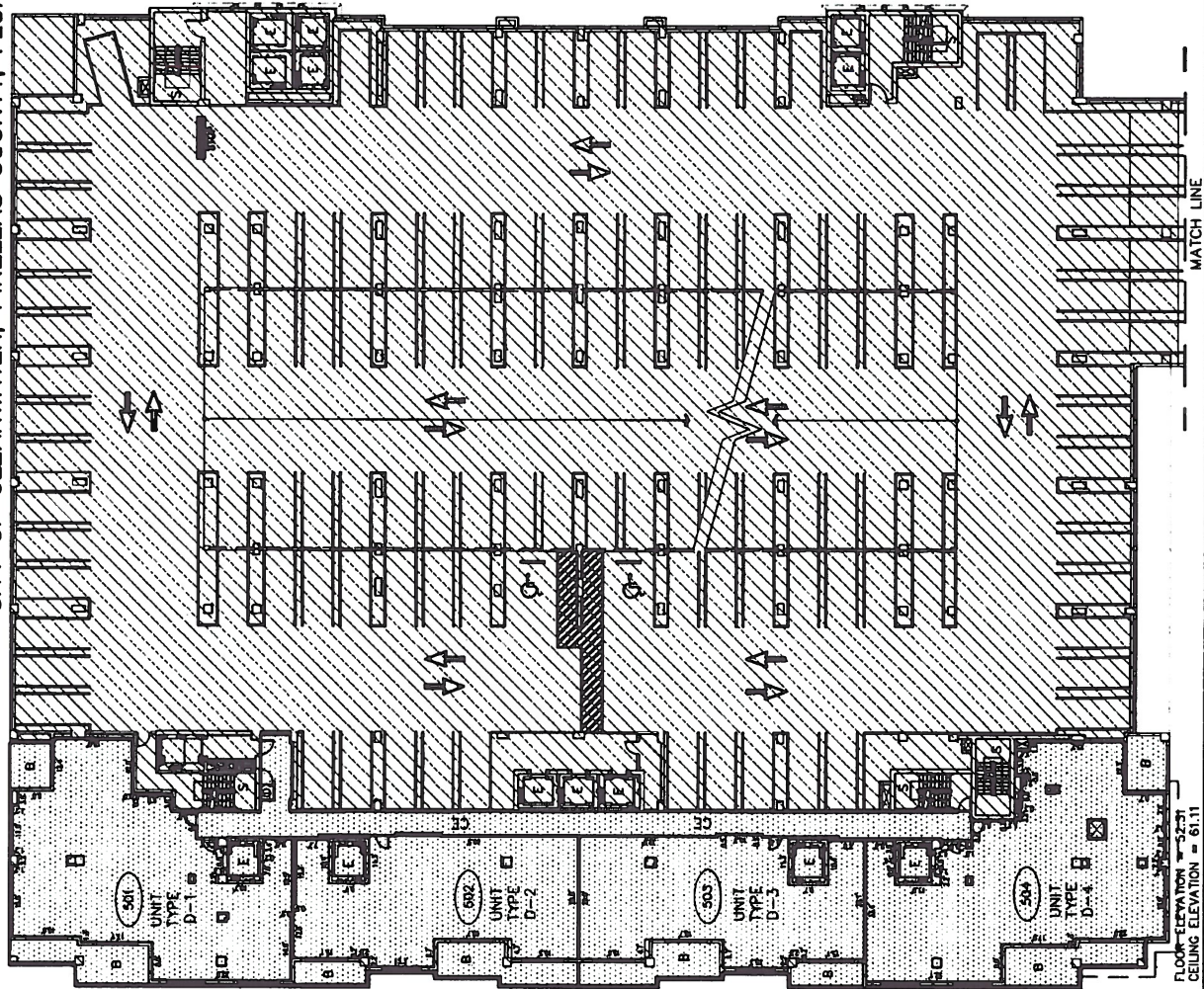


- LEGEND**
- B = BALCONY / TERRACE (LCE)
  - CE = COMMON ELEMENT
  - E = ELEVATOR
  - EL = ELEVATOR LOBBY
  - LCE = LIMITED COMMON ELEMENT
  - P = PATIO (LCE)
  - SR = STORAGE ROOM
  - S = STAIRS
  - T = TRASH CHUTE
- 401 UNIT NUMBER
- RESIDENTIAL CONDOMINIUM
- NOT INCLUDED IN RESIDENTIAL CONDOMINIUM (OVERRIDES LEGEND)

FLOOR ELEVATION = 47.41  
CEILING ELEVATION = 54.86



5TH LEVEL

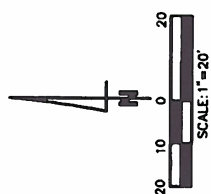


FLOOR ELEVATION = 52.73  
CEILING ELEVATION = 61.11

**POLARIS ASSOCIATES, INC.**  
PROFESSIONAL SURVEYING  
CLEARWATER, FLORIDA 33765  
LB 6113  
(727) 461-6113

SHEET 8 OF 19





## ONEBOT

- B = BALCONY / TERRACE (LCE)
- C = COMMON ELEMENT
- E = ELEVATOR
- EL = ELEVATOR LOBBY
- LCE = LIMITED COMMON ELEMENT
- P = PATIO (LCE)
- SR = STORAGE ROOM
- S = STAIRS
- T = TRASH CHUTE

UNIT NUMBER  
401

RESIDENTIAL CONDOMINIUM

**NOT INCLUDED IN RESIDENTIAL  
CONDOMINIUM (OVERRIDES LEGEND)**

FLOOR ELEVATION = 55.86  
CEILING ELEVATION = 63.36

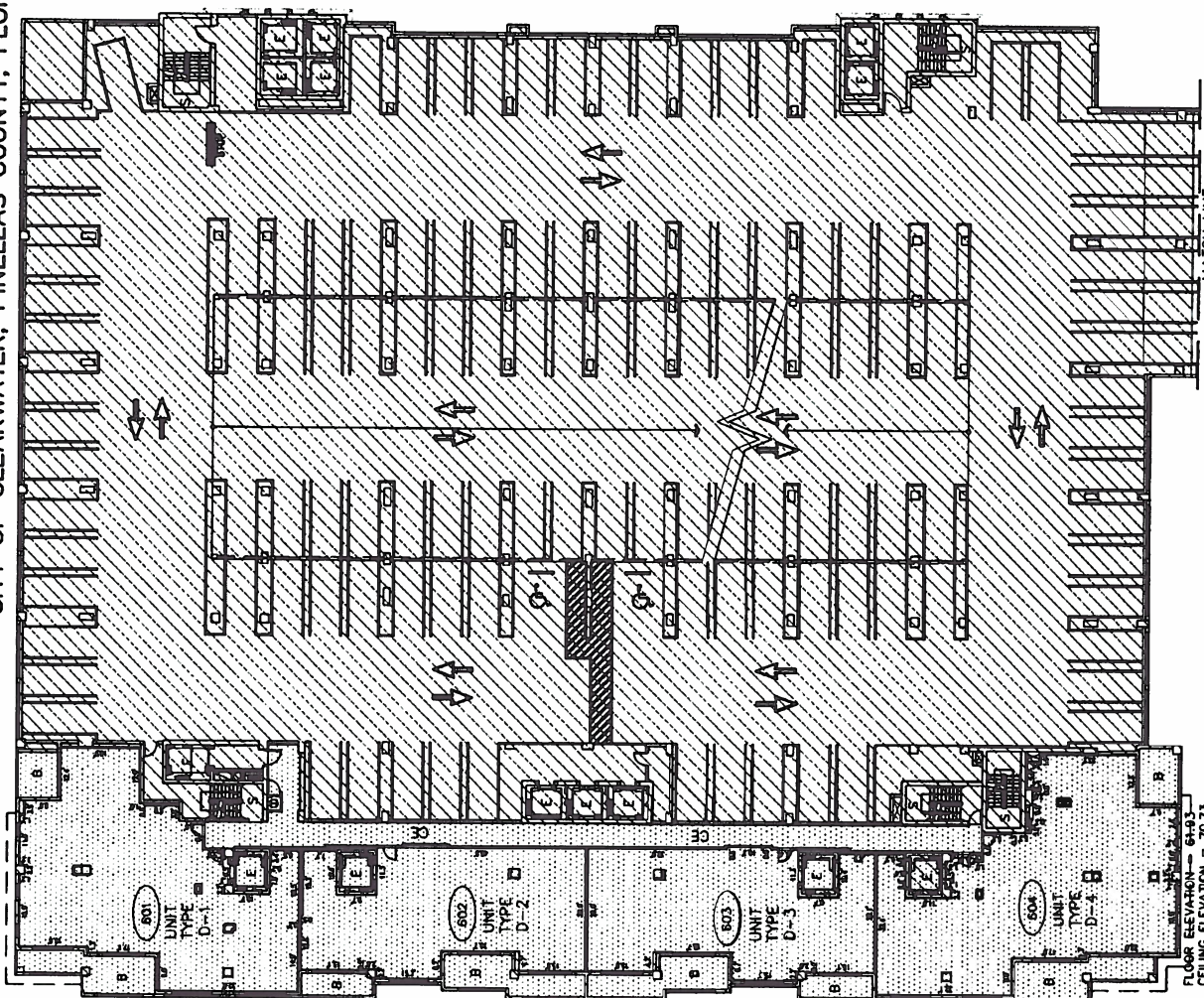
**MATCH LINE**

6TH LEVEL

# POLARIS

PROFESSIONAL SURVEYING  
2165 SUNNYDALE BLVD. SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6113

SHEET 9 OF 19

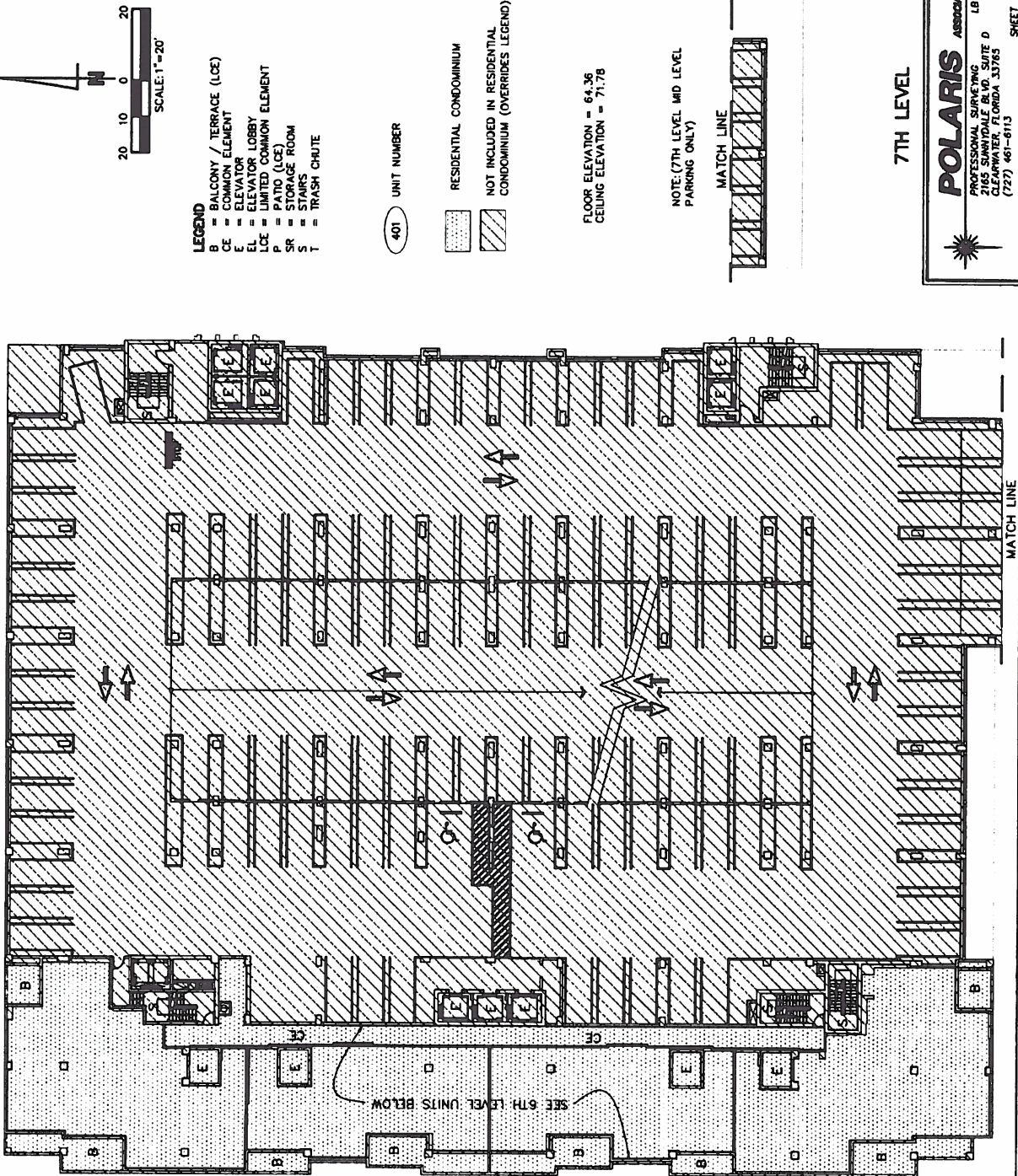


FLOOR ELEVATION = 61.93  
CEILING ELEVATION = 70.71



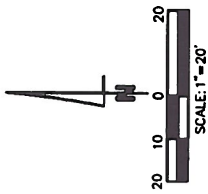
# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



## LEGEND

- B = BALCONY / TERRACE (LCE)
- CE = COMMON ELEMENT
- LCE = LIMITED COMMON ELEMENT
- L = LINEN CHUTE (CE)
- P = PATIO (LCE)
- SR = STAIRS
- S = STORAGE ROOM
- T = TRASH CHUTE

UNIT NUMBER



RESIDENTIAL CONDOMINIUM



NOT INCLUDED IN RESIDENTIAL  
CONDOMINIUM (OVERRIDES LEGEND)



FLOOR ELEVATION = 72.78  
CEILING ELEVATION = 82.78

MATCH LINE

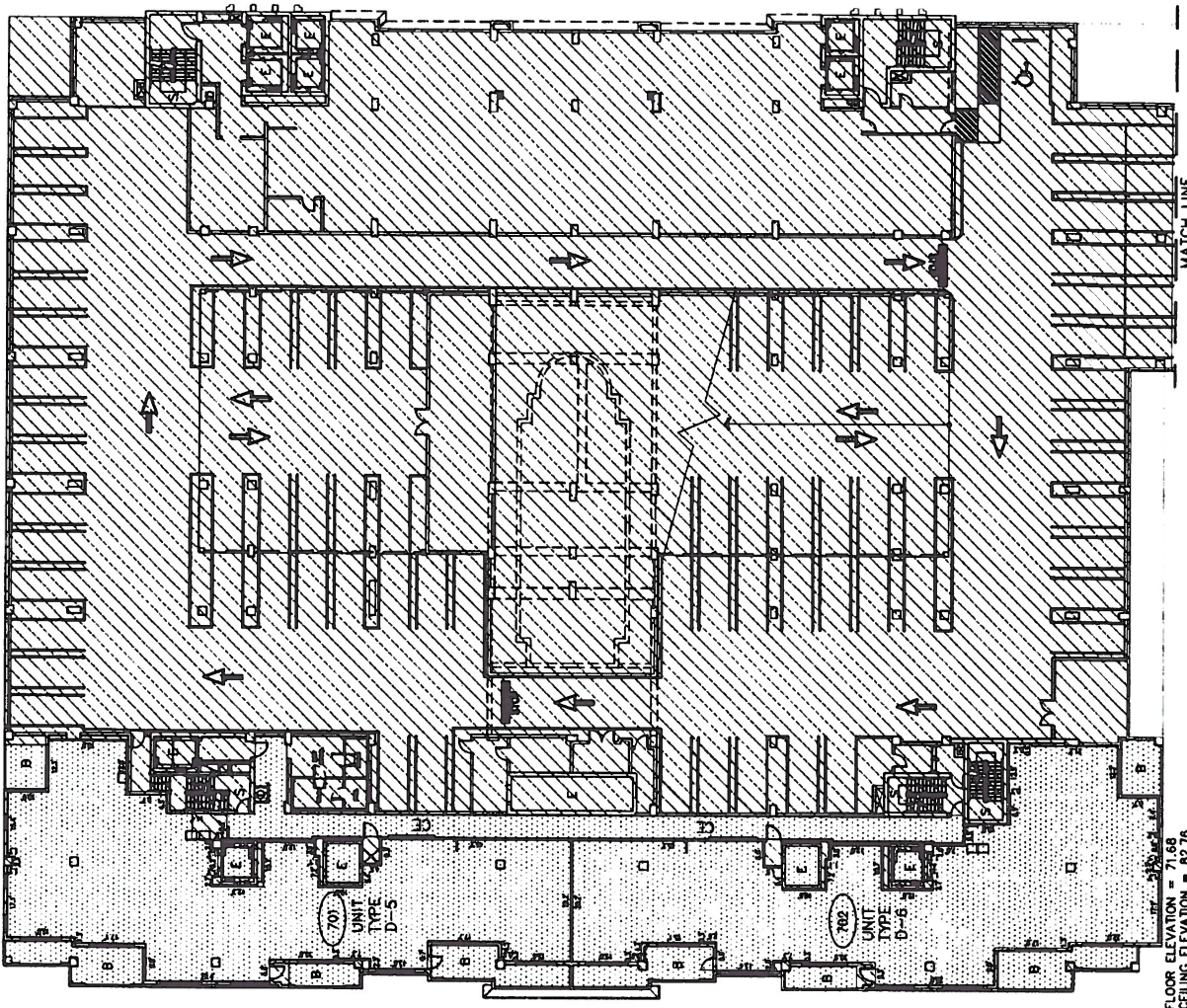


RESIDENTIAL 7TH LEVEL  
PARKING LEVEL 8



**POLARIS** ASSOCIATES INC.  
PROFESSIONAL SURVEYING  
2165 SUNNYPALE BLVD. SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6115

SHEET 11 OF 19



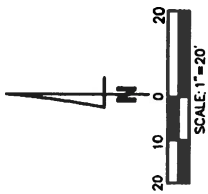
FLOOR ELEVATION = 71.66  
CEILING ELEVATION = 82.78

MATCH LINE



# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



## LEGEND

- B = BALCONY / TERRACE (LCE)
- CE = COMMON ELEMENT
- LCE = LIMITED COMMON ELEMENT
- L = LINEN CHUTE (CE)
- P = PATIO (LCE)
- SR = STORAGE ROOM
- S = STAIRS
- T = TRASH CHUTE

C402 DOOR DESIGNATION FOR CABANA

401 UNIT NUMBER

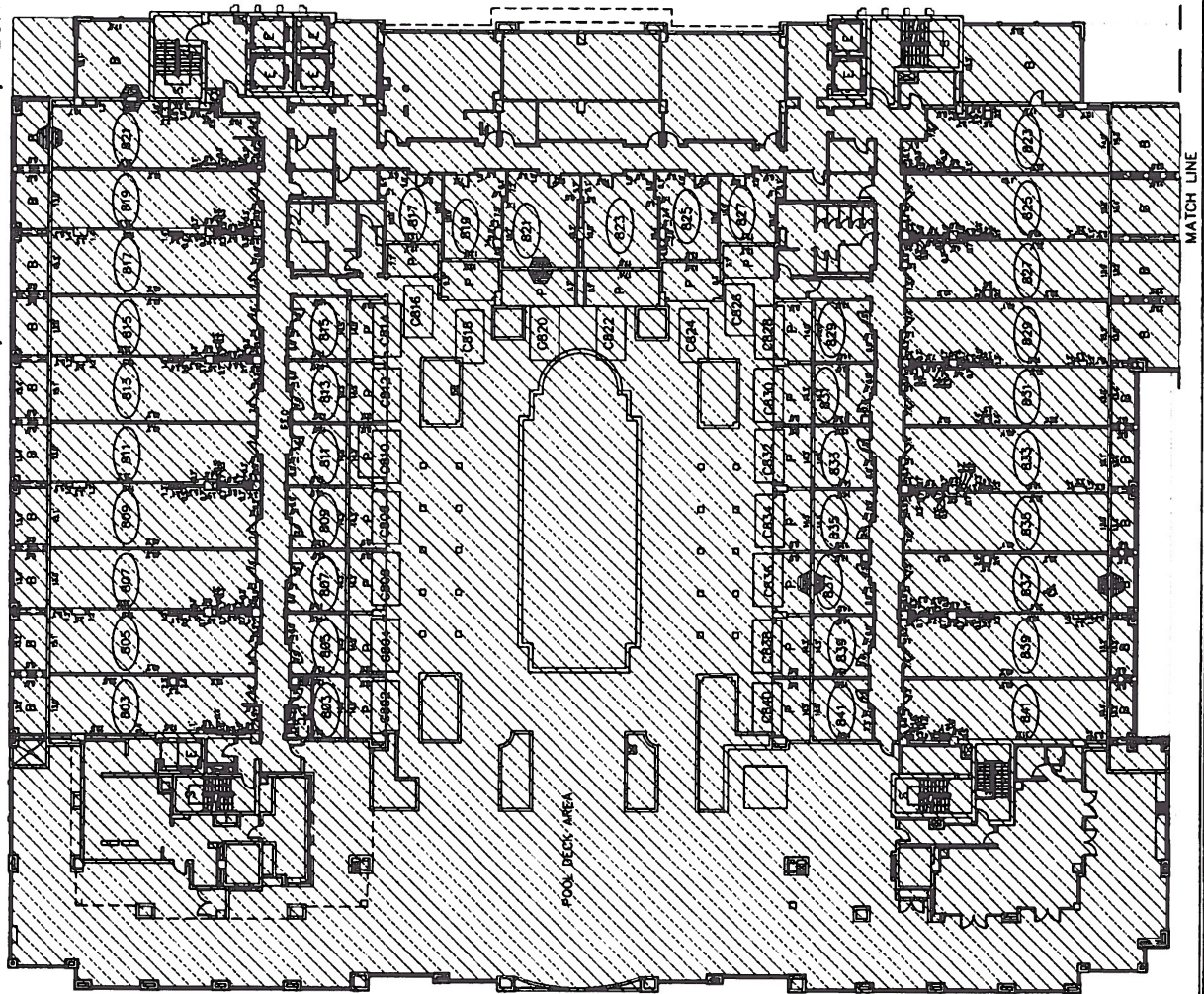
RESIDENTIAL CONDOMINIUM

NOT INCLUDED IN RESIDENTIAL  
CONDOMINIUM (OVERRIDES LEGEND)

FLOOR ELEVATION = 83.78  
CEILING ELEVATION = 92.02

MATCH LINE

8TH LEVEL

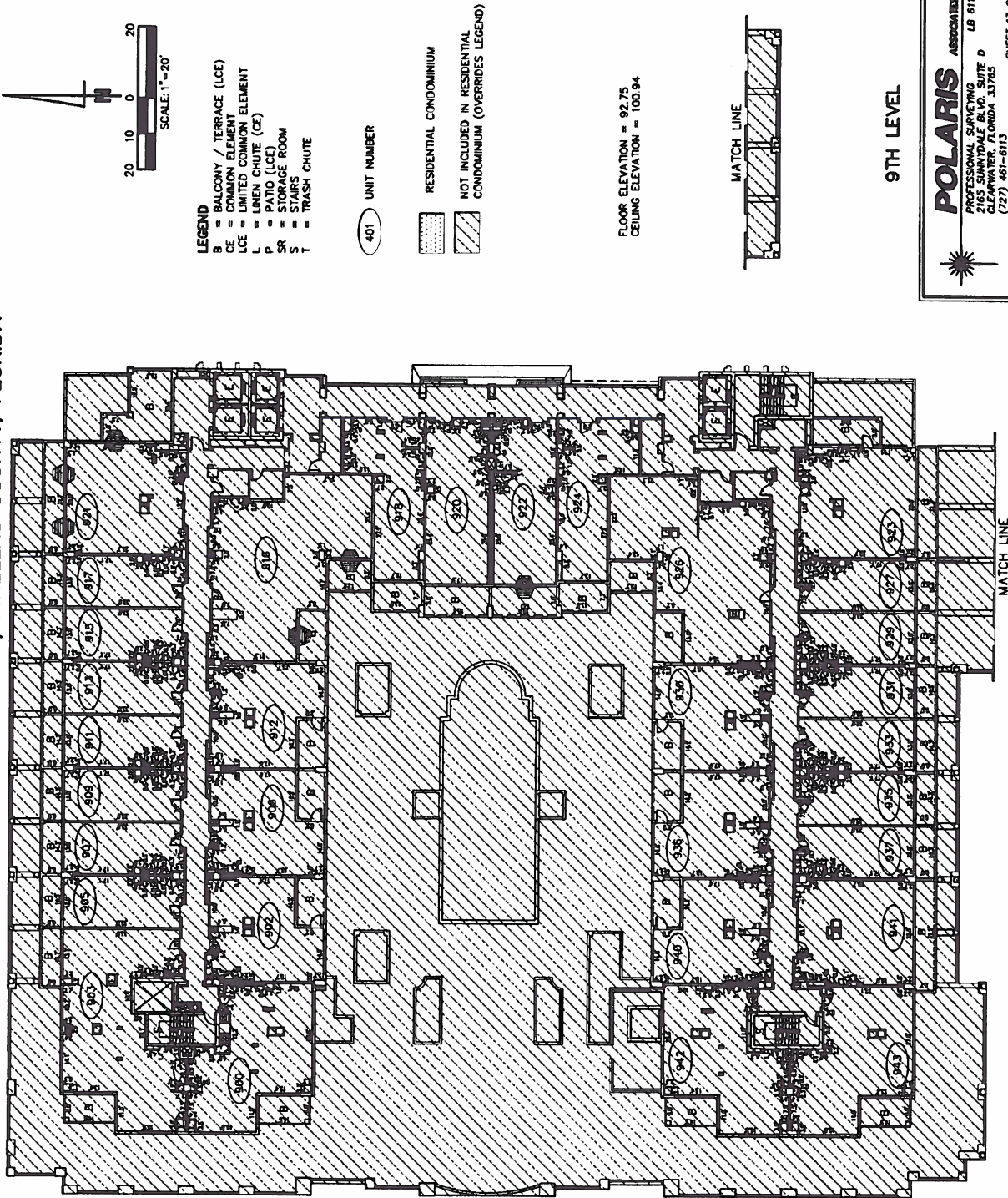


**POLARIS ASSOCIATES INC.**  
PROFESSIONAL SURVEYING  
CLEARWATER, FLORIDA 33765  
LB 6113  
(727) 461-6113

SHEET 12 OF 19

# AQUALEA RESIDENTIAL, A CONDOMINIUM

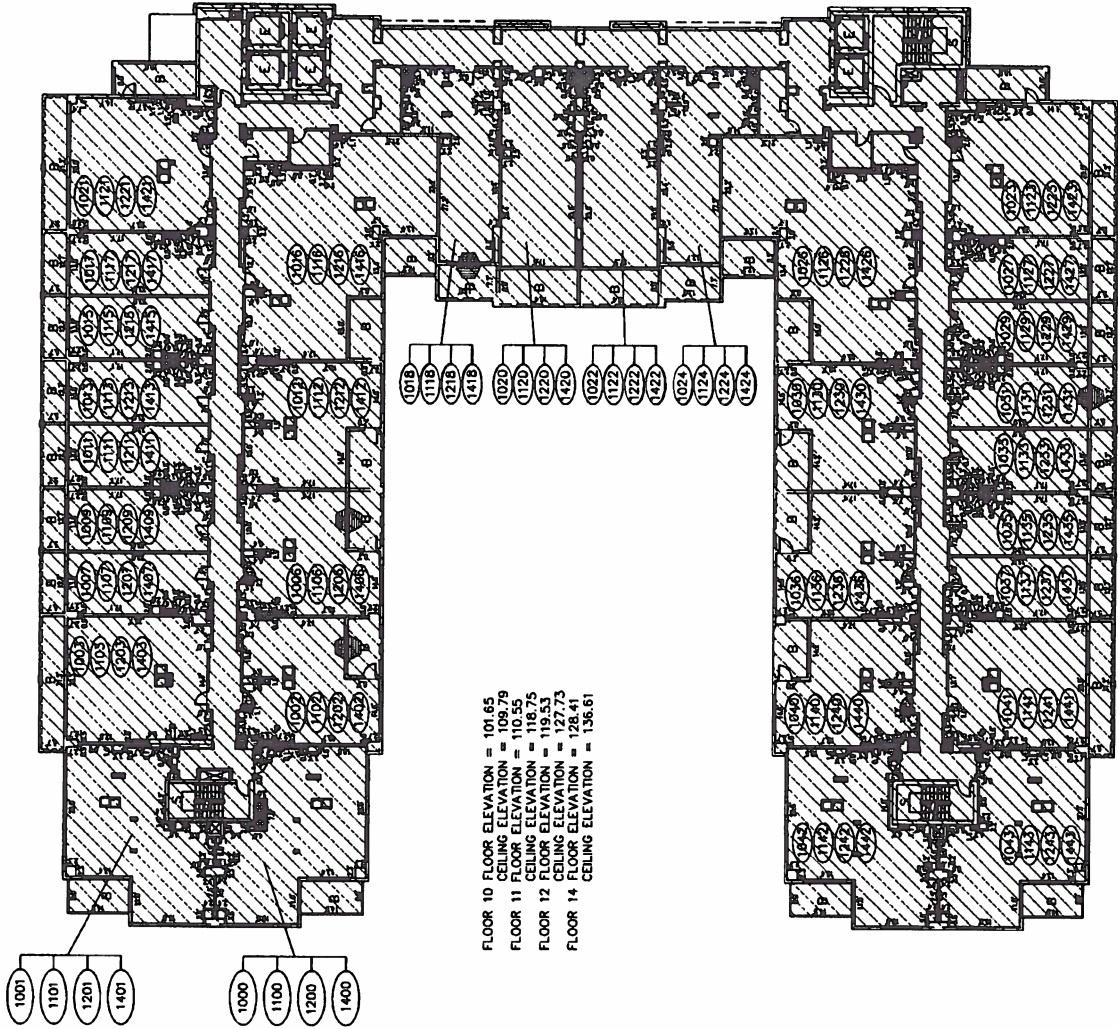
BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA





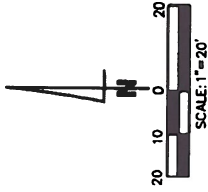
# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



## LEGEND

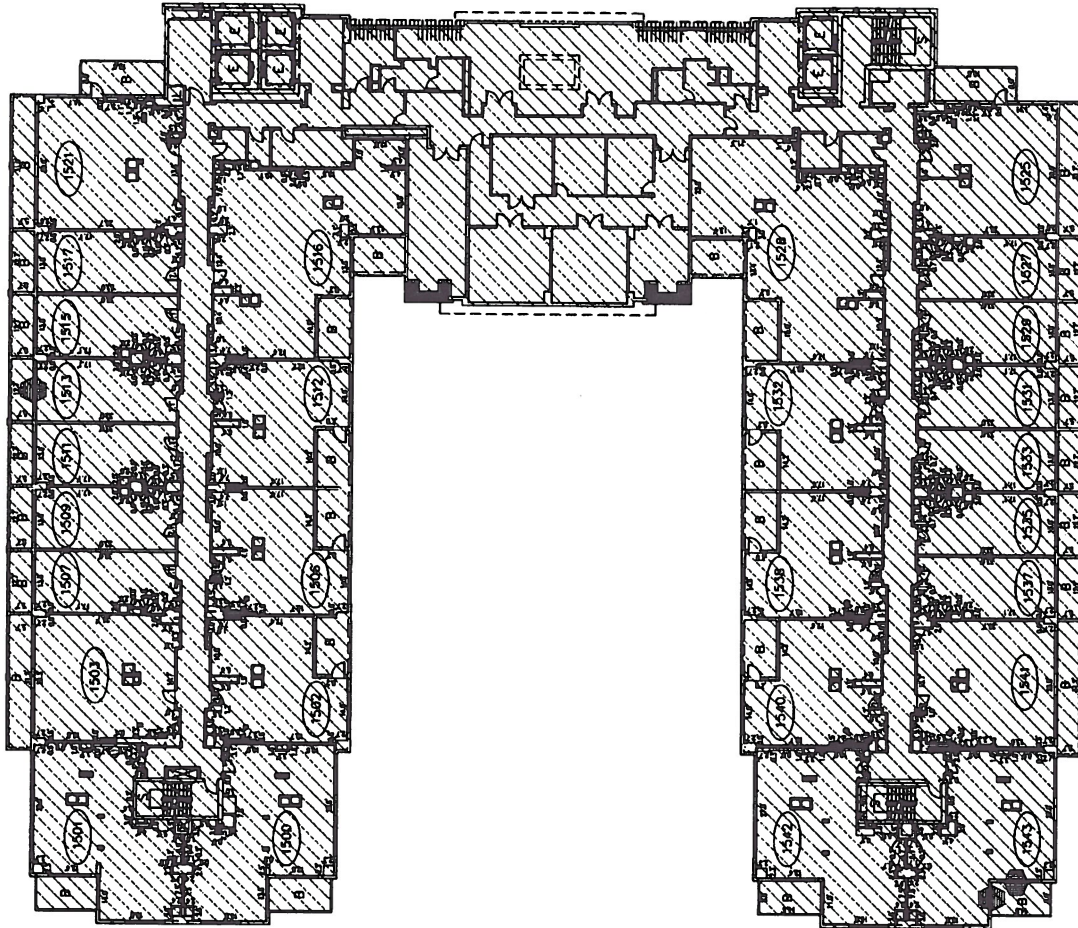
- B BALCONY / TERRACE (LCE)
- CE COMMON ELEMENT
- LCE LIMITED COMMON ELEMENT
- L LINEN CHUTE (CE)
- P PATIO (LCE)
- SR STORAGE ROOM
- S STAIRS
- T TRASH CHUTE

401 UNIT NUMBER

RESIDENTIAL CONDOMINIUM

NOT INCLUDED IN RESIDENTIAL  
CONDOMINIUM (OVERRIDES LEGEND)

15TH LEVEL

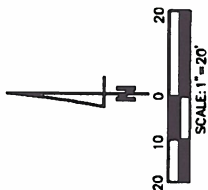
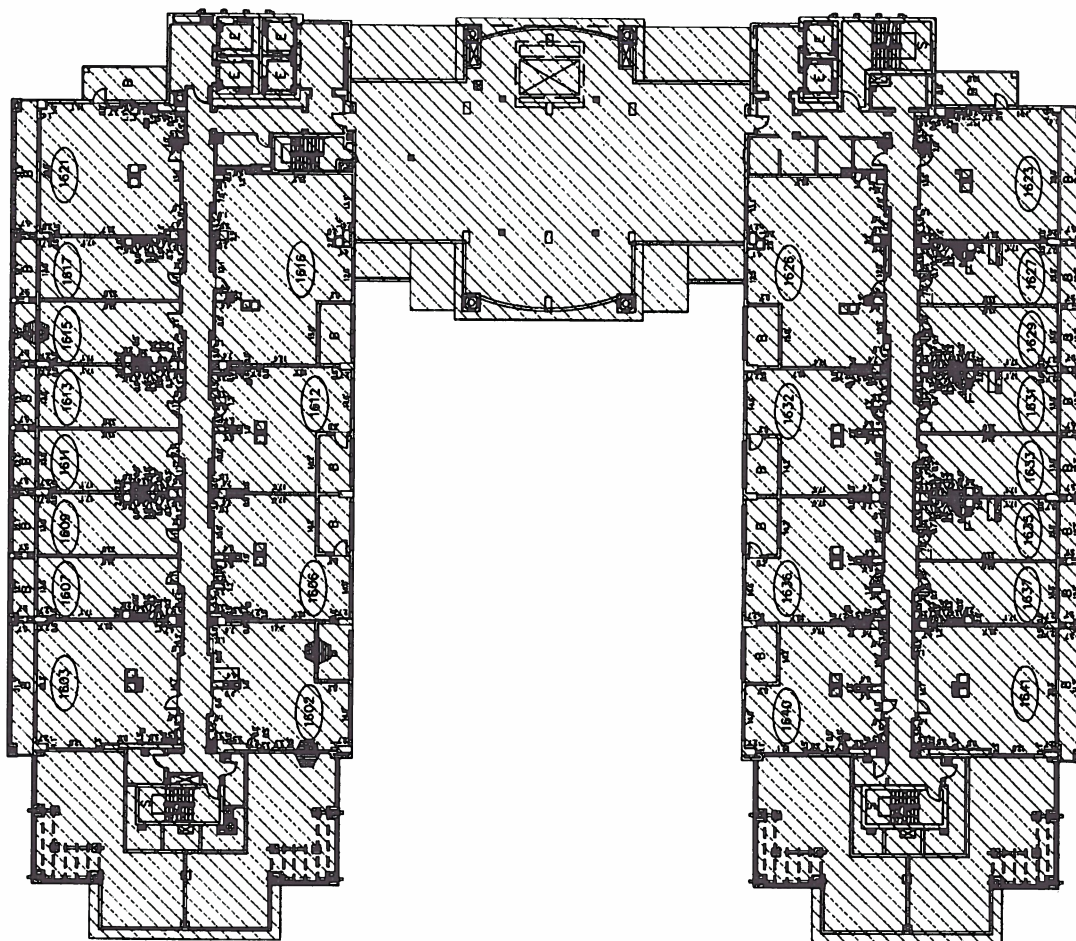


FLOOR ELEVATION = 137.38  
CEILING ELEVATION = 145.58



# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



## LEGEND

- B - BALCONY / TERRACE (LCE)
- CE - COMMON ELEMENT
- LCE - LIMITED COMMON ELEMENT
- L - LINEN CHUTE (LCE)
- P - PATIO (LCE)
- SR - STAIRS
- S - STORAGE ROOM
- T - TRASH CHUTE

401 UNIT NUMBER



RESIDENTIAL CONDOMINIUM  
NOT INCLUDED IN RESIDENTIAL  
CONDOMINIUM (OVERRIDES LEGEND)

16TH LEVEL

**POLARIS** ASSOCIATES INC.  
PROFESSIONAL SURVEYING  
2165 SUNNYDALE BLVD. SUITE D  
CLEARWATER, FLORIDA 33785  
(727) 461-8113

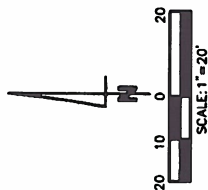


FLOOR ELEVATION = 146.28  
CEILING ELEVATION = 154.48

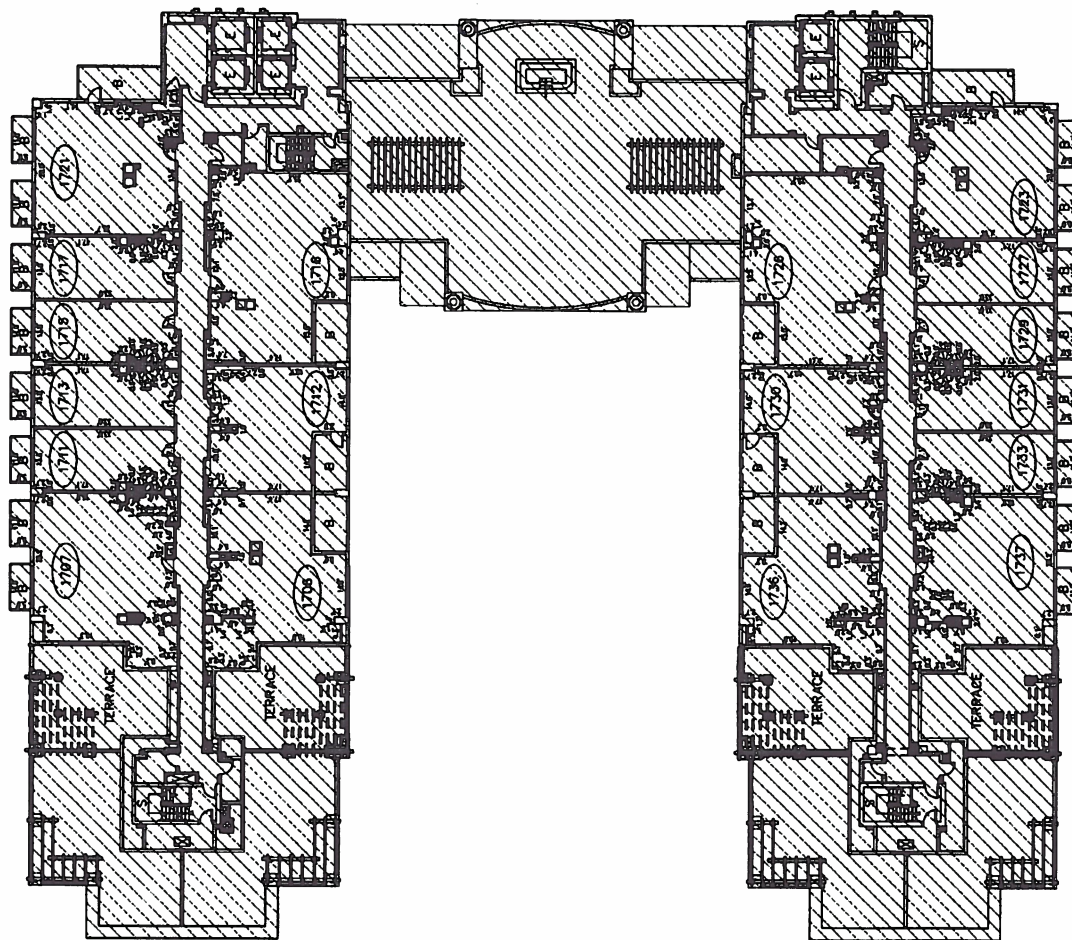
SHEET 16 OF 19

# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



- LEGEND**
- B = BALCONY / TERRACE (LCE)
  - CE = COMMON ELEMENT
  - LCE = LIMITED COMMON ELEMENT
  - L = LINEN CHUTE (CE)
  - SR = STAIRS
  - T = TRASH CHUTE
- 401 UNIT NUMBER
- RESIDENTIAL CONDOMINIUM
- NOT INCLUDED IN RESIDENTIAL CONDOMINIUM (OVERRIDES LEGEND)



17TH LEVEL

FLOOR ELEVATION = 155.18  
CEILING ELEVATION = 163.38

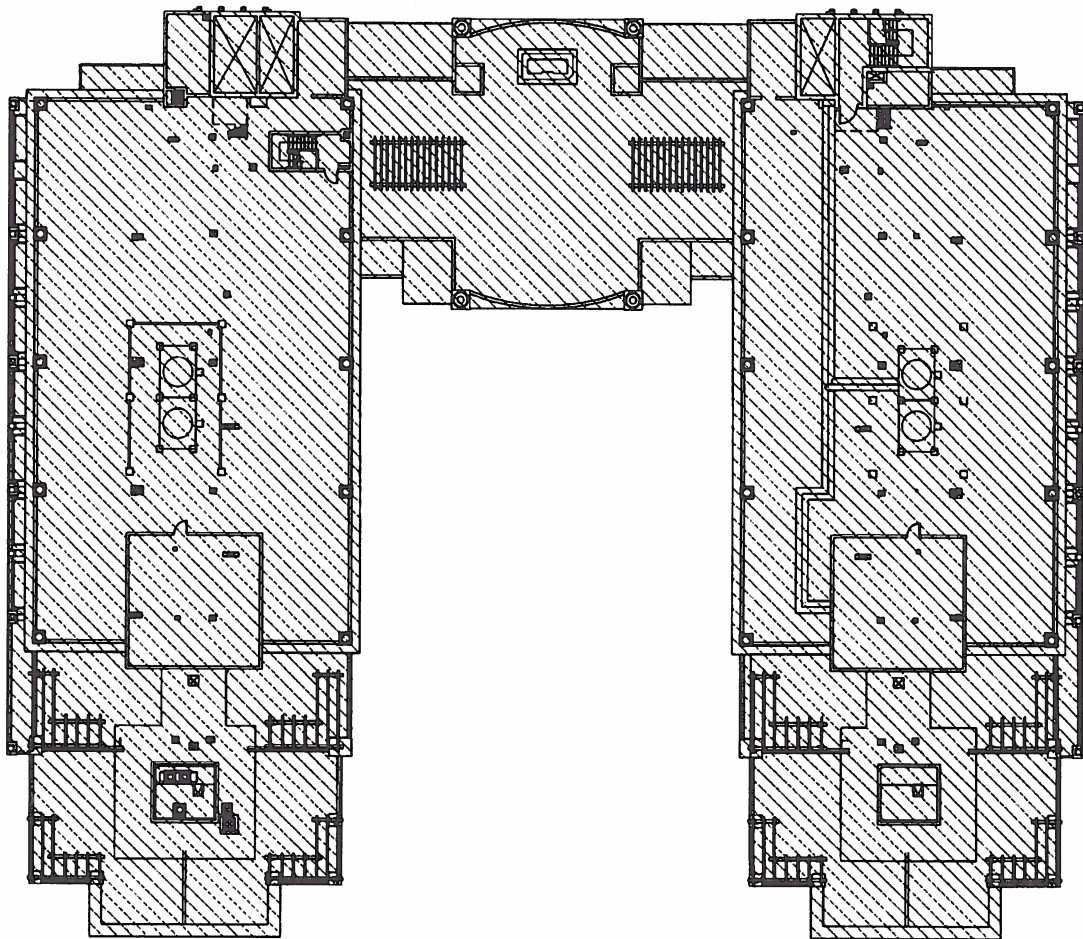
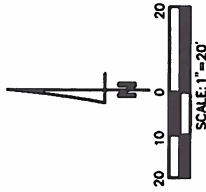
**POLARIS ASSOCIATES INC.**  
PROFESSIONAL SURVEYING  
2105 S.W. 10TH AVE., SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6113

LB 6113  
SITE D  
SHEET 17 OF 19



# AQUALEA RESIDENTIAL, A CONDOMINIUM

BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



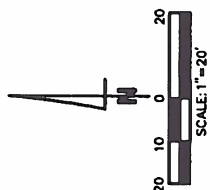
RESIDENTIAL CONDOMINIUM  
NOT INCLUDED IN RESIDENTIAL  
CONDOMINIUM (OVERRIDES LEGEND)

INTERMEDIATE ROOF

**POLARIS** ASSOCIATES INC.  
PROFESSIONAL SURVEYING  
2155 SANDHILL BLVD., SUITE D  
CLEARWATER, FLORIDA 34615  
(727) 461-6113  
SHEET 18 OF 19

# AQUALEA RESIDENTIAL, A CONDOMINIUM

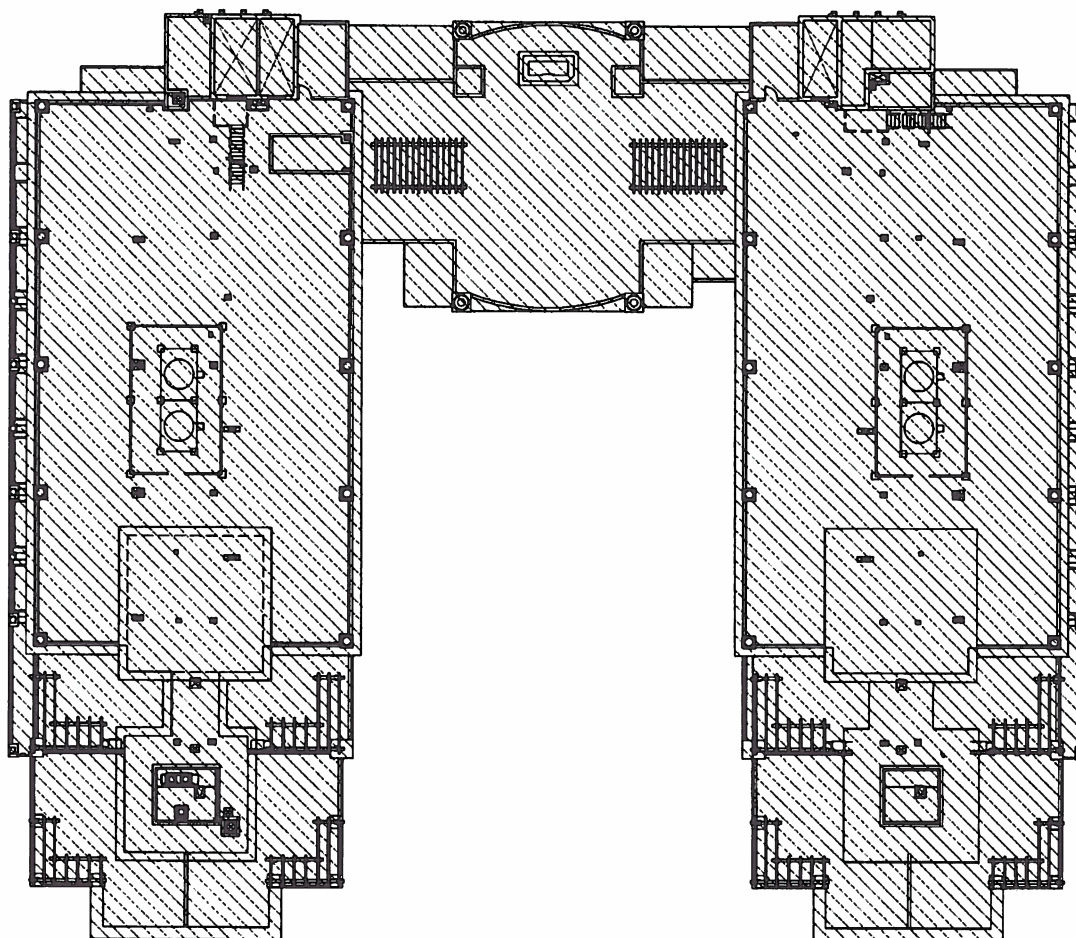
BEING A PORTION OF SECTION 8, TOWNSHIP 29 SOUTH, RANGE 15 EAST,  
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



RESIDENTIAL CONDOMINIUM  
NOT INCLUDED IN RESIDENTIAL  
CONDOMINIUM (OVERRIDES LEGEND)



ROOF



**POLARIS** ASSOCIATES INC.  
PROFESSIONAL SURVEYING  
2501 1ST AVENUE, SUITE D  
CLEARWATER, FLORIDA 33765  
(727) 461-6113  
SHEET 19 OF 19

**EXHIBIT "B"**

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**  
**FOR**  
**AQUALEA RESIDENCES CONDOMINIUM ASSOCIATION, INC.**  
**(A FLORIDA NOT-FOR-PROFIT CORPORATION)**

The undersigned Declarant, prior to the sale of any Units in the Condominium, hereby adopts these Amended and Restated Articles of Incorporation of Aqualea Residences Condominium Association, Inc. in accordance with Section 12.4 of the original Articles of Incorporation filed with the Secretary of the State of Florida on February 5, 2010.

**ARTICLE 1**  
**NAME**

The name of the corporation shall be AQUALEA RESIDENCES CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association," these Amended and Restated Articles of Incorporation as the "Articles," and the By-Laws of the Association as the "By-Laws."

**ARTICLE 2**  
**OFFICE**

The principal office and mailing address of the Association shall be 301 South Gulfview Blvd., Clearwater, FL 33767, or at such other place as may be subsequently designated by the Association board of directors (the "Board of Directors"). All books and records of the Association shall be kept at its principal office or at such other place as maybe permitted by the Florida Condominium Act (Chapter 718, Florida Statutes) (the "Condominium Act").

**ARTICLE 3**  
**PURPOSE**

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

**ARTICLE 4**  
**DEFINITIONS**

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



## ARTICLE 5 ASSOCIATION POWERS

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

**5.1 General.** The Association shall have all of the common-law and statutory powers of a corporation not for profit under the laws of the State of Florida, except as expressly limited or restricted by the terms of these Articles, the Declaration, the By-laws or the Condominium Act.

**5.2 Enumeration.** The Association shall have all of the powers and duties set forth in the Condominium Act, except as limited by these Articles, the By-Laws and the Declaration (to the extent that they are not in conflict with the Condominium Act). The Association shall also have all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:

- (a) To make and collect Assessments and other charges against members as Unit Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties,
- (b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration.
- (c) To maintain, repair, replace, reconstruct, add to and operate the Common Elements and/or Association Property, and other property acquired or leased by the Association.
- (d) To purchase insurance upon the Common Elements and Association Property and insurance for the protection of the Association, its officers, members of the Board of Directors (the "Directors") and Unit Owners.
- (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Common Elements and Association Property and for the health, comfort, safety and welfare of the Unit Owners (the "Rules and Regulations").
- (f) To approve or disapprove the leasing, transfer, ownership and possession of Units as may be provided by the Declaration.
- (g) To enforce by legal means the provisions of the Condominium Act, the Declaration, these Articles, the By-Laws, and the Rules and Regulations.
- (h) To contract for the management and maintenance of the Common Elements and Condominium Property and to authorize a management agent (who may be an affiliate of the Declarant, the Hotel Unit Owner or the operator of the Hotel) to assist the Association in carrying out its powers and duties. The Association and

its officers shall, however, retain at all times the powers and duties granted in the Declaration, the By-Laws, these Articles and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of Rules and Regulations and execution of contracts on behalf of the Association.

- (i) To employ personnel to perform the services required for the proper operation of the Common Elements and the Association Property.
- (j) To execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies. Each Unit Owner, by acceptance of the deed to such Unit Owner's Unit, and each mortgagee of a Unit Owner, by acceptance of a lien on said Unit, appoints and designates the President of the Association as such Unit Owner's and mortgagee's agent and attorney-in-fact to execute any and all such documents or consents.
- (k) The obligation to (i) operate and maintain the surface water management system in accordance with the permit issues by the District, (ii) carry out, maintain, and monitor any required wetland mitigation tasks, and (iii) maintain copies of all permitting actions with regard la the District.
- (l) To make and collect Assessments as defined in the Master Declaration of Covenants, Restrictions and Easements for Aqualea, upon the request of the Hotel Unit Owner.

**5.3 Association Property.** All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.

**5.4 Distribution of Income; Dissolution.** The Association shall not pay a dividend to its members and shall make no distribution of income to its members, directors or officers. Upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Florida Not For Profit Corporation Act (Chapter 617, Florida Statutes).

**5.5 Limitation.** The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Condominium Act, provided that in the event of conflict, the provisions of the Condominium Act shall control over those of these Articles, the Declaration and the By-Laws.

## **ARTICLE 6 MEMBERS**

**6.1 Membership.** The members of the Association shall consist of all of the record Unit Owners in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who were members at the time of such termination, and their successors and assigns (the "Members").

**6.2 Assignment.** The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.

**6.3 Voting.** On all matters upon which the Members shall be entitled to vote, each Member shall be entitled to vote the percentage voting interest ("Voting Interest") assigned to his or her Unit, which Voting Interest shall be equal to the Allocated Interest of the Unit in the Common Elements of the Association as set forth in the Declaration, as amended from time to time. All votes shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to cast the aggregate Voting Interests attributable to all Units owned.

**6.4 Meetings.** The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of Members other than the annual meeting.

#### **ARTICLE 7 TERM OF EXISTENCE**

The Association shall have perpetual existence.

#### **ARTICLE 8 OFFICERS**

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the Members and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal of officers from office, for filling officer vacancies and for the duties and qualifications of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

<u>President:</u>	Santosh Govindaraju 4600 West Cypress Street, Suite 120 Tampa, FL 33607
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<u>Vice President &amp; Secretary:</u>	Nikhil Sachdev 4600 West Cypress Street, Suite 120 Tampa, FL 33607
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<u>Treasurer:</u>	Dan Berman 3424 Peachtree Rd., Suite 2150 Atlanta, GA 30326
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## ARTICLE 9 DIRECTORS

**9.1 Number and Qualification.** The property, business and affairs of the Association shall be managed by the Board of Directors consisting of the number of Directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) Directors. Directors need not be members of the Association.

**9.2 Duties and Powers.** All of the duties and powers of the Association existing under the Condominium Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.

**9.3 Election and Removal.** Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

**9.4 Term of Declarant's Directors.** The Declarant of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.

**9.5 Directors.** The names and addresses of the members of the Board of Directors who shall hold office until their successors are elected and have taken office, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Santosh Govindaraju	4600 West Cypress Street, Suite 120 Tampa, FL 33607
Nikhil Sachdev	4600 West Cypress Street, Suite 120 Tampa, FL 33607
Dan Berman	3424 Peachtree Rd., Suite 2150 Atlanta, GA 30326

**9.6 Standards of Care.** A Director shall discharge his duties as a Director, including any duties as a member of a Committee: (a) in good faith; (b) with the care an ordinary prudent person in a like position would exercise under similar circumstances; and (c) in a manner reasonably believed to be in the best interests of the Association (the "Duty of Loyalty"). Further, unless a Director has knowledge concerning a matter in question that makes reliance unwarranted, a Director, in discharging his duties, may reasonably rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by: (1) one or more officers or employees of the Association with whom the Director reasonably

believes to be reasonable and competent in the manners presented; (2) legal counsel; (3) public accountants; (4) other persons as to matters the Director reasonably believes are within the persons' professional or expert competence; or (5) a committee of which the Director is not a member if the Director reasonably believes the Committee merits confidence. A Director is not liable for any action taken as a Director, or any failure to take action, if he performed the duties of his office in compliance with the foregoing standards.

## ARTICLE 10 INDEMNIFICATION

**10.1 Indemnitees and Indemnification for Non-Association Proceedings.** The Association shall indemnify any person who was or is a party to any legal proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a Director, officer, employee or agent (each, an "Indemnitee") of the Association, against civil liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of *nolo contendere* or its equivalent shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**10.2 Indemnification for Proceedings Brought by Association.** The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Director, officer, employee, or agent of the Association against expenses and amounts paid in settlement, with such indemnification amount not to exceed, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any aspect thereof. Such indemnification shall be authorized only if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the Association unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such court shall deem proper.

**10.3 Indemnification for Expenses.** To the extent that a Director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in subsection 10.1 or subsection 10.2, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.

**10.4 Determination of Applicability.** Any indemnification under subsection 10.1 or subsection 10.2 unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in subsection 10.1 or subsection 10.2. Such determination shall be made:

- (a) By the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such proceeding;
- (b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a committee duly designated by the Board of Directors (in which Directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;
- (c) By independent legal counsel
  - 1. selected by the Board of Directors prescribed in subsection 10.4(a), or the committee prescribed in subsection 10.4(b); or
  - 2. If a quorum of the Directors cannot be obtained for subsection 10.4(a), and the committee cannot be designated under subsection 10.4(b), selected by majority vote of the full Board of Directors (in which Directors who are parties may participate); or
- (d) By a majority of the Voting Interests of the Members of the Association who were not parties to such proceeding.

**10.5 Determination Regarding Expenses.** Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, as set forth in subsection 10.4(b). However, if the determination of permissibility is made by independent legal counsel, persons specified by subsection 10.4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

**10.6 Advancing Expenses.** Expenses incurred by an officer or Director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.

**10.7 Exclusivity; Exclusions.** The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its Directors, officers, employees, or agents, under any by-law, agreement, vote of Members or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such



office. However, indemnification or advancement of expenses shall not be made to or on behalf of any Director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

- (a) A violation of the criminal law, unless the Director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;
- (b) A transaction from which the Director, officer, employee, or agent derived an improper personal benefit; or
- (c) Willful misconduct or a conscious disregard for the best interests of the Association in a proceeding by or in the right of the Association to procure a judgment in its favor or in a proceeding by or in the right of the Members of the Association.

**10.8 Continuing Effect.** Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a Director, officer, employee, or agent, and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

**10.9 Application to Court.** Notwithstanding the failure of the Association to provide indemnification, and despite any contrary determination of the Board or of the Members in the specific case, a Director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

- (a) The Director, officer, employee, or agent is entitled to mandatory indemnification under subsection 10.3, in which case the court shall also order the Association to pay the Director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;
- (b) The Director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection 10.7; or
- (c) The Director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standards of conduct set forth in subsection 10.1, subsection 10.2, or subsection 10.7 unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or

acted in a manner he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful; and (b) such court further specifically determines that indemnification should be denied. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

**10.10 Definitions.** For purposes of this ARTICLE 10 the term "expenses" shall be deemed to include attorneys' fees, and paraprofessional fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, the term "agent" shall be deemed to include a volunteer; and the term "serving at the request of the Association" shall be deemed to include any service as a Director, officer, employee or agent of the Association that imposes duties on such persons.

**10.11 Amendment.** Anything to the contrary herein notwithstanding, no amendment to the provisions of this ARTICLE 10 shall be effective to preclude indemnification for any party that was eligible for indemnification prior to such amendment.

## **ARTICLE 11 BY-LAWS**

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

## **ARTICLE 12 AMENDMENTS**

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

**12.1 Notice.** Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.

**12.2 Adoption.** Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Condominium Act).

**12.3 Limitation.** No amendment shall make any changes in the qualifications for Association membership, nor in the voting rights or property rights of Members, nor any changes

in subsections 5.3, 5.4 or 5.5, without the approval in writing of all Members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Condominium Act, the Declaration or the By-Laws. Further no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Declarant or Institutional First Mortgagees, unless the Declarant or the Institutional First Mortgagees, as applicable, shall join in the execution of the amendment. No amendment to this subsection 12.3 shall be effective.

**12.4 Declarant Amendments.** Notwithstanding anything contained to the contrary herein, to the extent lawful, the Declarant may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Declarant alone.

**12.5 Recording.** A copy of each amendment shall be filed with the Florida Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Florida Secretary of State shall be recorded in the Public Records of Pinellas County, Florida, with an identification on the first page thereof of the book and page of said Public Records where the Declaration was recorded, which contains, as an exhibit, the initial recording of these Articles.

**ARTICLE 13  
REGISTERED OFFICE  
ADDRESS AND NAME OF REGISTERED AGENT**

The registered office of this corporation shall be at 101 East Kennedy Boulevard, Suite 1500, Tampa, FL 33602, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Lacey HC Willard.

**ARTICLE 14  
ADOPTION OF AMENDED AND RESTATED ARTICLES OF INCORPORATION**

These Amended and Restated Articles of Incorporation were adopted by the member(s) on November 7, 2014, and the number of votes cast for these Amended and Restated Articles of Incorporation was sufficient for approval.

IN WITNESS WHEREOF, the Declarant has affixed its signature the day and year set forth below.

**301 SOUTH GULFVIEW, LLC**, a Delaware limited liability company

By: GlassRatner Management & Realty Advisors LLC, a Georgia limited liability company, its Manager

By: Ronald L. Glass  
Name: Ronald L. Glass  
Title: Officer

Dated: November 7, 2014



**EXHIBIT "C"**

**AMENDED AND RESTATED BY-LAWS**  
**OF**  
**AQUALEA RESIDENCES CONDOMINIUM ASSOCIATION, INC.**  
A not-for-profit corporation organized  
under the laws of the State of Florida

**1. Identity.**

1.1 These are the Amended and Restated By-Laws of AQUALEA RESIDENCES CONDOMINIUM ASSOCIATION, INC. (the "Association"), a not-for-profit corporation incorporated under the laws of the State of Florida, and organized for the purposes set forth in its Articles of Incorporation (the "Association"), including administering the Aqualea Residences, a Condominium (the "Condominium"), located in Pinellas County, Florida, and subject to the Amended and Restated Declaration of Condominium of Aqualea Residences, as amended from time to time (the "Declaration").

1.2 Fiscal Year. The fiscal year of the Association shall be the calendar year.

1.3 Office. The office of the Association shall be at the Condominium or such other location within Pinellas County, Florida, as may from time to time be determined by the Association Board of Directors (the "Board").

**2. Definitions.**

2.1 For convenience, these Amended and Restated By-Laws shall be referred to as the "By-Laws" and the Amended and Restated Articles of Incorporation of the Association as the "Articles." Owners of units in the Condominium (the "Units") are members of the Association and shall be referred to as either the "Members" or the "Unit Owners." The members of the Board shall be referred to as the "Directors." The other terms used in these By-Laws shall have the same definitions and meanings as those set forth in the Declaration unless herein provided to the contrary, or unless the context otherwise requires.

**3. Association Members.**

3.1 Annual Meeting. There shall be an annual meeting of the Unit Owners. The annual meeting shall be held on the date, at the place and at the time determined by the Board from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting. The purpose of the annual meeting shall be, except as provided herein to the contrary, to elect the Directors, and to transact any other business authorized to be transacted by the Unit Owners, or as stated in the notice of the meeting sent to the Unit Owners in advance thereof. Unless changed by the Board, the first annual meeting shall be held in the month of April following the year in which the Declaration is filed.

3.2 Special Meetings. Special meetings of the Unit Owners shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board and must be called by the President or the Secretary upon receipt of a written request from a majority of the Unit Owners. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting. Special meetings may also be called by the Unit Owners in the manner provided for in the Act. Notwithstanding the foregoing, (i) as to special meetings regarding the adoption of the Condominium's estimated operating budget, reference should be made to Section 10.1 of these By-Laws; and (ii) as to special meetings regarding recall of Directors, reference should be made to Section 4.3 of these By-Laws.

3.3 Participation by Unit Owners at Meetings. Subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board, the Unit Owners shall have the right to attend and speak at the (1) annual and special meetings of the Unit Owners, (2) committee meetings, and (3) Board meetings at which a quorum of the Members is present with reference to all designated agenda items. A Unit Owner has the right to speak at such meetings with reference to all designated agenda items, but has no right to speak with respect to items not specifically designated on the agenda, provided, however, that the Board may permit an Unit Owner to speak on such items in its discretion. The Association may adopt written reasonable rules governing the frequency, duration, and manner of Unit Owner statements at meetings, which are set forth in these By-Laws. Every Unit Owner who desires to speak at a meeting may do so, provided that the Unit Owner has filed a written request with the Secretary of the Association not less than 24 hours prior to the scheduled time for commencement of the meeting. Further, unless waived by the chairman of the meeting (which may be done in the chairman's sole and absolute discretion and without being deemed to constitute a waiver as to any other subsequent speakers), all Unit Owners speaking at a meeting shall be limited to a maximum of three (3) minutes per speaker. Also, any Unit Owner may tape record or videotape a meeting, subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board:

- (a) The only audio and video equipment and devices which Unit Owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions;
- (b) Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting;
- (c) Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording; and
- (d) At least 48 hours (or 24 hours with respect to a Board meeting) prior written notice shall be given to the Secretary by any Unit Owner desiring to make an audio- or video-taping of the meeting.

3.4 Notice of Unit Owner Meetings. Notice of a meeting of Unit Owners (annual or special), stating the time and place and the purpose(s) for which the meeting is called, shall be given by the President or Secretary. Written notice of the annual or special meeting of Unit Owners, which notice must include an agenda, shall be mailed, hand delivered, or electronically

transmitted to each Unit Owner at least fourteen (14) days prior to the annual meeting, unless a Unit Owner waives in writing the right to receive notice of the annual meeting, and shall be posted in a conspicuous place on the Condominium Property at least fourteen (14) continuous days preceding the annual meeting. Notice shall be hand delivered, electronically transmitted or sent by regular mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing of notice shall be to the address of the Unit Owner as last furnished to the Association by the Unit Owner. However, if a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one address initially identified for that purpose by the Declarant and thereafter as one or more of the Unit Owners shall so advise the Association in writing; yet, if no address is given or if the Owners disagree, notice shall be sent to the address for the Unit Owner as set forth on the deed of the Unit. The Board shall adopt by rule, and give notice to Unit Owners of a specific location on the Condominium Property upon which all notices of Unit Owner meetings shall be posted; however, if there is no Condominium Property upon which notices can be posted, this requirement of posting notice shall not apply. In lieu of or in addition to the physical posting of notice of any Unit Owner meeting on the Condominium Property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the Association. However, if broadcast notice is used in lieu of a notice posted physically on the Condominium Property, the notice and agenda must be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required under the Florida Condominium Act. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

**3.5 Waiver of Notice.** Notice of specific Unit Owner meetings (annual or special) may be waived before or after the meeting and the attendance of any Unit Owner (or person authorized to vote for such Unit Owner), either in person or by proxy, shall constitute such Unit Owner's waiver of notice of such meeting, and waiver of any and all objections to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when the Unit Owner's (or the Unit Owner's authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

An officer of the Association, or the manager or other person providing notice of the Association meeting shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the Association affirming that the notice was mailed or hand delivered, in accordance with Section 718.112(d)(2), Florida Statutes. No other proof of notice of Unit Owner meetings shall be required.

**3.6 Quorum.** A quorum at Unit Owners' meetings shall be attained by the presence, either in person or by proxy (limited or general), of persons entitled to cast in excess of one-third (33 1/3%) of the Voting Interests of Unit Owner/Members entitled to vote at the subject meeting. Voting Interests of a Unit Owner that have been suspended by the Association in accordance with the provisions of the Act may not be counted towards the total number of Voting Interests

necessary to constitute a quorum, the number of Voting Interests required to conduct an election or the number of Voting Interests required to approve any action.

3.7 Voting.

(a) Number of Votes. Except as provided in Section 3.12 hereof, in any meeting of Unit Owners, the Unit Owners shall be entitled to cast the Voting Interests designated for their Unit as set forth in the Articles. The vote of a Unit shall not be divisible.

(b) Majority Vote. The acts approved by a majority of the Voting Interests present in person or by proxy at a Unit Owners meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes, except where otherwise provided by law, the Declaration, the Articles, or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the Members" shall mean a majority of the Voting Interests entitled to be cast by the Members and not a majority of the Members themselves and shall further mean more than 50% of the then total authorized Voting Interests present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of Members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of the Members and not of the Members themselves.

(c) Voting Member. If a Unit is owned by one person, that person's right to vote shall be established by the roster of Unit Owners. If a Unit is owned by more than one person, those persons (including husbands and wives) shall decide among themselves as to who shall cast the vote of the Unit. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Unit shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Unit is owned by more than one individual, a corporation, a partnership or a trust, the person entitled to cast the vote for the Unit shall be designated by a ("Voting Certificate"). In the case of a corporation the Voting Certificate shall be signed by an appropriate officer of the corporation and filed with the Secretary, with such person need not being a Unit Owner. Voting Certificates shall be valid until revoked or until superseded by a subsequent Voting Certificate or until a change in the ownership of the Unit concerned. A Voting Certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a Voting Certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote attributable to such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

(d) Liability of Association. The Association may act in reliance upon any writing or instrument or signature, whether original or facsimile, which the Association, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any



person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. So long as the Association acts in good faith, the Association shall have no liability or obligation with respect to the exercise of voting interests, and no election shall be invalidated (in the absence of fraud) on the basis that the Association permitted or denied any person the right to exercise a Voting Interest. In addition, the Board may impose additional requirements respecting the exercise of Voting Interests (e.g., the execution of a Voting Certificate).

3.8 Proxies. Votes to be cast at meetings of the Association membership may be cast in person or by proxy. Except as specifically provided herein, the Unit Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form approved by the Division. No Voting Interest or consent right allocated to a Unit owned by the Association shall be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies shall be permitted to the extent permitted by the Florida Condominium Act. Limited proxies and general proxies may be used to establish a quorum. No proxy, limited or general, shall be used in the election of Directors. General proxies may be used for other matters for which limited proxies are not required and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as above described), name the person(s) voting by proxy and the person authorized to vote for such person(s) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Each proxy shall contain the date, time and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. There shall be no limitation on the number of proxies which may be held by any person (including a designee of the Declarant). If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in its place. If such provision is not made, substitution is not permitted.

3.9 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the Unit Owner/Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

3.10 Order of Business. If a quorum has been attained, the order of business at annual Unit Owners' meetings, and, if applicable, at other Unit Owners' meetings, shall be:

- (a) Collect any ballots not yet cast;
- (b) Call to order by President;

- (c) Appointment by the President of a chairman of the meeting (who need not be a Unit Owner or a Director);
- (d) Appointment of inspectors of election;
- (e) Counting of ballots for election of Directors;
- (f) Proof of notice of the meeting or waiver of notice;
- (g) Reading of minutes;
- (h) Reports of officers;
- (i) Reports of committees;
- (j) Unfinished business;
- (k) New business;
- (l) Adjournment.

Such order may be waived in whole or in part try direction of the chairman.

3.11 Minutes of Meeting. The minutes of all meetings of the Unit Owners shall be kept in a book available for inspection by the Unit Owners or their authorized representatives and the Directors at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

3.12 Action Without A Meeting. As permitted in in Section 718.112(2)(d)(4) of the Florida Condominium Act, any approval by the Unit Owners at a meeting shall be made at a duly noticed meeting of Unit Owners and shall be subject to all requirements of the Florida Condominium Act or the applicable Condominium documents relating to Unit Owner decision making, except that Unit Owners may take action by written agreement without meetings, on matters for which action by written agreement without meetings is expressly allowed by the By-Laws or Declaration or any statute that provides for such action. Anything to the contrary herein notwithstanding, to the extent lawful, any action required or which may be taken at any annual or special meeting of Unit Owners, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the Unit Owners (or persons authorized to cast the vote of any such Unit Owners as elsewhere herein set forth) having not less than the minimum number of Voting Interests that would be necessary to authorize or take such action at a meeting of the Unit Owners at which all the Unit Owners (or authorized persons) entitled to vote thereon were present and voted, being a majority of Voting Interests entitled to be cast. In order to be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by the approving Unit Owners having the requisite number of Voting Interests and entitled to vote on such action, and delivered to the Secretary, or any other authorized agent of the Association. Written consent shall not be effective to take the corporate action referred to in the consent unless signed by the

Unit Owners having the requisite number of Voting Interests necessary to authorize the action within sixty (60) days of the date of the earliest dated consent and delivered to the Association as aforesaid. Any written consent may be revoked prior to the date the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Secretary, or other authorized agent of the Association. Within ten (10) days after obtaining such authorization by written consent, notice must be given to the Unit Owners who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. A consent signed in accordance with the foregoing has the effect of a meeting vote and may be described as such in any document.

#### **4. Directors.**

4.1 Membership. The affairs of the Association shall be governed by a Board of not less than three (3) nor more than seven (7) Directors, the exact number to be determined in the first instance in the Articles, and, thereafter, except as provided herein, from time to time upon majority vote of the Unit Owners. Directors must be natural persons who are 18 years of age or older, and Members of the Association, except appointees of the Declarant, need not be Members. Any person who has been convicted of any felony in the State of Florida or in a United States District or Territorial Court, has been convicted of any offense in another jurisdiction which would be considered a felony if committed in Florida, unless such person's civil rights have been restored for at least five (5) years as of the date the person seeks election to the Board is not eligible for Board membership (provided, however, that the validity of any Board action is not affected if it is later determined that a member of the Board is ineligible for Board membership due to having been convicted of a felony). Any Member who is delinquent in the payment of any monetary obligation due to the Association is not eligible to be a candidate for election to the Board and may not be listed on the ballot.

Directors may not vote at Board meetings by proxy or by secret ballot.

4.2 Election of Directors. Election of Directors shall be held at the annual Unit Owners' meeting, except as herein provided to the contrary. The Directors shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the Board, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless provided for in the Florida Condominium Act. Not less than sixty (60) days prior to a scheduled election, the Association shall mail, deliver, or electronically transmit, whether by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each Unit Owner entitled to vote, a first notice of the date of election along with a certification form provided by the Division attesting that he or she has read and understands, to the best of his or her ability, the governing documents of the Association and the provision of Chapter 718 and any applicable rules. Any Unit Owner or other eligible person desiring to be a candidate for the Board, as a Director, shall give written notice to the Secretary not less than forty (40) days prior to the scheduled election of Directors. Then, not less than fourteen (14) days prior to the date of the annual Unit Owners' meeting, together with the written notice of the Unit Owners' meeting and its agenda sent in accordance with Section 3.4 above and a ballot which shall list all Director candidates, the Association shall then mail, deliver or electronically transmit a second notice of the election meeting to all Unit Owners

entitled to vote therein. Upon request of a Director candidate, the Association shall include an information sheet, no larger than 8½ inches by 11 inches, which must be furnished by the candidate to the Association not less than thirty-five (35) days before the election, along with the signed certification form provided for herein, to be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery or electronic transmission and copying to be borne by the Association. The Association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper. The Division shall by rule establish voting procedures consistent with the provisions contained in Section 718.112(2)(d)(3), Florida Statutes, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. The election of Directors shall be by written ballot or voting machine at the annual Unit Owners' meeting, except as otherwise provided in these By-Laws. Proxies shall in no event be used in electing the Directors at general elections or to fill vacancies caused by a Director resignation or otherwise, provided, however, that limited proxies may be used to fill a vacancy resulting from the recall of a Director, in the manner provided by the rules of the Division. Similarly, no Unit Owner shall permit any other person to vote his or her ballot, and any such ballots improperly cast shall be deemed invalid, provided any Unit Owner who violates this provision may be fined by the Association in accordance with Section 718.303, Florida Statutes. A Unit Owner who needs assistance in casting the ballot for the reasons stated in Section 101.051, Florida Statutes, may obtain assistance in casting the ballot. The regular election shall occur on the date of the annual Unit Owners' meeting. Elections shall be decided by a plurality of those ballots and Voting Interests cast by the Unit Owners. There shall be no quorum requirement, however at least twenty percent (20%) of the eligible Voting Interests must be cast in order to have a valid election of the Directors. There shall be no cumulative voting in the election of the Directors.

Within 90 days after being elected or appointed to the Board, each newly elected or appointed director shall certify in writing to the Secretary of the Association that he or she has read the Declaration, Articles of Incorporation, By-Laws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Members. In lieu of this written certification, within 90 days after being elected or appointed to the Board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the Director serves on the Board without interruption. A Director who fails to timely file the written certification or educational certificate is suspended from service on the Board until the requirements of this paragraph are met. The Board may temporarily fill the vacancy during the period of suspension. The Secretary shall cause the Association to retain a Director's written certification or educational certificate for inspection by the Members for 5 years after a Director's election or the duration of the Director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any Board action.



Notwithstanding the provisions of this Section 4.2, an election for the Directors is not required unless more candidates file notices of intent to run or are nominated than Director vacancies exist on the Board.

#### 4.3 Vacancies and Removal.

(a) Except as to vacancies resulting from removal of a Director by Unit Owners (as addressed in subsection (b) below), vacancies in the Board occurring between annual Unit Owners' meetings shall be filled by a majority vote of the remaining Directors at any Board meeting (even if the remaining Directors constitute less than a quorum or consist of a sole remaining Director), provided that all vacancies in directorships to which Directors were appointed by the Declarant pursuant to the provisions of paragraph 4.15 hereof shall be filled by the Declarant without the necessity of any meeting. In the alternative, the Board may hold an election to fill the Director vacancy, in which case the election procedures must conform to the requirements of Section 4.2 of these By-Laws, unless the Association has opted out of the statutory election process, in which case, these By-Laws control. Unless otherwise provided in these By-Laws, a Director appointed or elected under this Section shall fill the vacancy for the unexpired term of the Director seat being filled.

(b) Subject to the provisions of Section 718.301, Florida Statutes, any Director elected by the Unit Owners (other than the Declarant) may be recalled and removed from office, with or without cause, by vote or agreement in writing of a majority of all the Voting Interests of the Unit Owners at a special meeting of Unit Owners called for that purpose or by written agreement signed by a majority of all Voting Interests. A special meeting of the Unit Owners to recall a Director or Directors may be called by ten percent (10%) of the Unit Owner Voting Interests giving notice of the meeting as required for a meeting of Unit Owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this removal purpose.

If the recall is approved by a majority of all Voting Interests cast at a meeting, the recall will be effective as provided in this Section. The Board shall duly notice and hold a Board meeting within five (5) full business days of the adjournment of the Unit Owner meeting to recall one or more Directors. At the meeting, the Board shall either certify the recall, in which case such Director or Directors shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all records and property of the Association in their possession or shall proceed as set forth in the following two paragraphs.

If the proposed recall is by an agreement in writing by a majority of all Unit Owner Voting Interests, the agreement in writing or a copy thereof shall be served on the Association by certified mail or by personal service in the manner authorized by Chapter 48, Florida Statutes, and the Florida Rules of Civil Procedure. The Board shall duly notice and hold a meeting of the Board within five (5) full business days after receipt of the agreement in writing. At the meeting, the Board shall either certify the written agreement to recall a Director or Directors, in which case such Director or

Directors shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all records and property of the Association in their possession, or proceed as discussed in the next paragraph.

If the Board determines not to certify the written agreement to recall a Director or Directors, or does not certify the recall by a vote at a meeting, the Board shall, within five (5) full business days after the meeting, file with the Division a petition for arbitration pursuant to the procedures in Section 718.1255, Florida Statutes. For the purposes of this section, the Members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to a Director or Directors, the recall will be effective upon mailing of the final order of the arbitration to the Association. If the Association fails to comply with the order of the arbitrator, the Division may take action pursuant to Section 718.501, Florida Statutes. Any Director or Directors so recalled shall deliver to the Board any and all records in their possession within five (5) full business days of the effective date of the recall.

If the Board fails to duly notice and hold a Board meeting within five (5) business days of service of an agreement in writing or within five (5) full business days of adjournment of the Unit Owner recall meeting, the recall shall be deemed effective and the Director or Directors so recalled shall immediately turn over to the Board any and all records and property of the Association in their possession.

If a vacancy occurs on the Board as a result of a recall and less than a majority of the Directors are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors, notwithstanding any provision to the contrary in this Section. If vacancies occur on the Board as a result of a recall and a majority or more of the Directors are removed, the vacancies shall be filled in accordance with the procedural rules to be adopted by the Division, which rules need not be consistent with this Section. Those rules must provide procedures governing the conduct of the recall election as well as the operation of the Association during the period after a recall but prior to the recall election.

(c) Anything to the contrary herein notwithstanding, until a majority of the Directors are elected by Members other than the Declarant, neither the first Directors of the Association, nor any Directors replacing them, nor any Directors named by the Declarant, shall be subject to removal by Unit Owners other than the Declarant. The first Directors and the Directors replacing them may be removed and replaced by the Declarant without the necessity of any meeting.

(d) If a vacancy on the Board results in the inability to obtain a quorum of Directors in accordance with these By-Laws, any Owner may give notice of his or her intent to apply to the circuit court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. The form of the notice shall be as set forth in Section 718.1124(1), Florida Statutes. Such notice must be provided by the Unit Owner to the Association by certified mail or personal delivery, must be posted in a conspicuous place on the Condominium Property, and must be

provided to every Unit Owner of the Association by certified mail or personal delivery. The notice must be posted and mailed or delivered at least thirty (30) days prior to the filing of a petition seeking receivership. Notice by mail to a Unit Owner shall be sent to the address used by the County property appraiser for notice to the Unit Owner. If the Association fails to fill the vacancy(ies) within thirty (30) days after the notice is posted and mailed or delivered, the Unit Owner may proceed with the petition. If a receiver is appointed, all Unit Owners shall be given written notice of such appointment as provided in Section 718.127, Florida Statutes. The Association shall be responsible for the salary of the receiver, court costs and attorney's fees. The receiver shall have all powers and duties of a duly constituted Board, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

4.4 Term. Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual Unit Owners' meeting and subsequently until his/her successor is duly elected and has taken office, or until he/she is removed in the manner elsewhere provided. Notwithstanding the foregoing, any Director designated by the Declarant shall serve at the pleasure of the Declarant and may be removed and replaced by the Declarant at any time.

4.5 Organizational Meeting. The organizational meeting of the newly-elected or appointed Directors shall be held within ten (10) days of their election or appointment. The Directors calling the organizational meeting shall give the remaining Directors at least three (3) days advance notice thereof, stating the time and place of the meeting.

4.6 Meetings. Meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Meetings of the Board may be held by telephone conference, video conference, or other similar real-time electronic or video communications with those Directors so attending being counted toward the quorum requirement and entitled to vote as if attending in person, provided that a telephone or video speaker or similar device is used so that the conversation of those Directors attending by electronic means may be heard by the Directors and any Unit Owners attending such meeting in person. Notwithstanding the foregoing, Directors may not cast their votes by electronic mail. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Meetings of the Board and any committee thereof at which a quorum of the members of that committee are present shall be open to all Unit Owners. Any Unit Owner may tape record or videotape meetings of the Board, in accordance with the rules of the Division. The right to attend such meetings includes the right to speak at such meetings with respect to all designated agenda items. The Association may adopt written reasonable rules governing the frequency, duration and manner of Unit Owner statements. Adequate notice of all such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours preceding the meeting, except in the event of an emergency. If 20 percent (20%) of the Voting Interests petition the Board to address an item of business, the Board shall, at its next regular Board meeting or at a special meeting of the Board, but not later than 60 days after the receipt of the petition, place the item on the agenda. Any item

not included on the notice may be taken up on an emergency basis by at least a majority plus one of the Directors. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. Notwithstanding the foregoing, written notice of any meeting of the Board at which non-emergency special assessments, or at which amendment to rules regarding Unit use will be considered, proposed, discussed or approved, shall be mailed, delivered or electronically transmitted to all Unit Owners and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14)-day notice shall be made by an affidavit executed by the Secretary (the person providing such notice) and filed among the official records of the Association. The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium Property or Association Property upon which all notices of the Board and/or committee meetings shall be posted. If there is no Condominium Property or Association Property upon which notices can be posted, notices of the Board meetings shall be mailed, delivered, or electronically transmitted at least fourteen (14) days before the meeting to each Unit Owner. In lieu of or in addition to the physical posting of notice of any Board meeting on the Condominium Property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the Association. However, if broadcast notice is used in lieu of a notice posted physically on the Condominium Property, the notice and agenda must be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required by the Florida Condominium Act. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special Assessments against Unit Owners are to be considered for any reason shall specifically state that the Assessments will be considered and the nature, estimated cost, and description of the purpose for such Assessments. Meetings of a committee to take final action on behalf of the Board or make recommendations to the Board regarding the Association budget are subject to the provisions of this Section. Meetings of a committee that do not take final action on behalf of the Board or make recommendations to the Board regarding the Association budget are subject to the provisions of this Section, unless those meetings are exempted by these Bylaws. Notwithstanding any other law, the requirement that the Board meetings and committee meetings be open to the Unit Owners is inapplicable to meetings between the Board or a committee and the Association's attorney, with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice. Special meetings of the Board may be called by the President, and must be called by the President or Secretary at the written request of one-third (33⅓%) of the Directors or where required by the Florida Condominium Act. A Director or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the Director or committee did not attend. His agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

4.7 Waiver of Notice. Any Director may waive notice of a Board meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a Board meeting shall constitute a waiver of notice of such meeting, and a waiver of any and all objections to the place of the meeting, to the time of the meeting or the manner in which it has been called or convened, except when a Director states



at the beginning of the meeting, or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened.

4.8 Quorum. A quorum at Board meetings shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.

4.9 Adjourned Meetings. If, at any proposed meeting of the Board, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled Board meeting is given as required hereunder. At any newly scheduled Board meeting, any business that might have been transacted at the Board meeting as originally called may be transacted as long as notice of such business to be conducted at the rescheduled Board meeting is given, if required (e.g., with respect to budget adoption).

4.10 Joinder In Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the Board meeting, but such joinder shall not be used as a vote for or against any particular action taken and shall not allow the applicable Director to be counted as being present for purposes of quorum.

4.11 Presiding Officer. The presiding officer at the Board meetings shall be the President (who may, however, designate any other Unit Owner to preside). In the absence of the President, the Vice President shall preside. In the absence of the presiding officer, the Directors present shall designate one of the Directors to preside.

4.12 Order of Business. If a quorum has been attained, the order of business at the Board meetings shall be:

- (a) Proof of due notice of meeting;
- (b) Reading and disposal of any unapproved minutes;
- (c) Reports of officers and committees;
- (d) Election of officers;
- (e) Unfinished business;
- (f) New business;
- (g) Adjournment.

Such order may be waived in whole or in part by direction of the presiding officer.

4.13 Minutes of Meetings. The minutes of all meetings of the Board shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Directors

at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.

4.14 Committees. The Board may by resolution also create committees and appoint persons to such committees and vest in such committees such powers and responsibilities as the Board shall deem advisable.

4.15 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the Board shall consist of three (3) Directors and three (3) officers during the period that the Declarant is entitled to appoint a majority of the Directors, as hereinafter provided. The officers shall include a president (the "President"), a secretary (the "Secretary"), and a treasurer (the "Treasurer") (collectively, the "Officers") who shall perform the duties of such officers customarily performed by officers of corporations and as set forth in these By-Laws and the Articles. The Declarant shall have the right to appoint all of the Directors until Unit Owners other than the Declarant own fifteen percent (15%) or more of the Units in the Condominium that will ultimately be operated by the Association. When Unit Owners other than the Declarant own fifteen percent (15%) or more of the Units in the Condominium, the Unit Owners other than the Declarant shall be entitled to elect not less than one-third (33⅓%) of the Directors. Upon the election of such director(s), the Declarant shall forward to the Division the name and mailing address of the Director(s) elected. Unit Owners other than the Declarant are entitled to elect not less than a majority of the Directors: (a) three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (b) three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (c) when all of 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 Declarant in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Declarant in the ordinary course of business; (e) when the Declarant files a petition seeking protection in bankruptcy; (f) when a receiver for the Declarant is appointed by a circuit court and is not discharged within 30 days after such appointment; or (g) seven (7) years after recordation of the Original Declaration, whichever occurs first. The Declarant is entitled (but not obligated) to elect at least one (1) Director as long as the Declarant holds for sale in the ordinary course of business five percent (5%) of the Units, in condominiums with fewer than five hundred (500) units, and two percent (2%) in condominiums with more than five hundred (500) units, that will be operated ultimately by the Association. Following the time the Declarant relinquishes control of the Association, the Declarant may exercise the right to vote any Declarant-owned units in the same manner as any other Unit Owner except for purposes or reacquiring control of the Association or selecting the majority of the Directors of the Board.

The Declarant may transfer control of the Association to the Unit Owners other than the Declarant prior to such dates in its sole discretion by causing enough of its appointed Directors to resign, whereupon it shall be the affirmative obligation of the Unit Owners other than the Declarant to elect the Directors and assume control of the Association. Provided at least sixty (60) days' notice of the Declarant's decision to cause its appointees to resign is given to the Unit Owners, neither the Declarant, nor such appointees, shall be liable in any manner in connection

with such resignations even if the Unit Owners other than the Declarant refuse or fail to assume control.

Within seventy-five (75) days after the Unit Owners other than the Declarant are entitled to elect a Director, or sooner if the Declarant has elected to accelerate such event as aforesaid, the Association shall call, and give not less than sixty (60) days' notice of an election for the Director or Directors of the Board. The notice may be given by any Unit Owner if the Association fails to do so. As stated above, upon election of the first Unit Owner other than the Declarant to the Board, the Declarant shall forward to the Division the name and mailing address of the Unit Owner Director.

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

- (a) Assessments of the Declarant as a Unit Owner for capital improvements; or
- (b) Any action by the Association that would be detrimental to the sales of Units by the Declarant. However, an increase in the Assessments for common expenses without discrimination against the Declarant shall not be deemed to be detrimental to the sales of units.

At the time the Unit Owners other than the Declarant elect a majority of the Directors, the Declarant shall relinquish control of the Association and such Unit Owners shall accept control. At that time (except as to subparagraph (g), which may be no more than ninety (90) days thereafter), the Declarant shall deliver to the Association, at the Declarant's expense, all property of the Unit Owners and of the Association held or controlled by the Declarant, including, but not limited to, the following items, if applicable to the Condominium:

- (a) The original or a photocopy of the recorded Declaration, and all amendments thereto. If a photocopy is provided, the Declarant must certify by affidavit that it is a complete copy of the actual recorded Declaration.
- (b) A certified copy of the Articles of the Association.
- (c) A copy of the By-Laws of the Association.
- (d) The minute books, including all minutes, and other books and records of the Association, if any.
- (e) Any rules and regulations which have been adopted.
- (f) Resignations of the resigning officers and Directors who were appointed by the Declarant.
- (g) The financial records, including financial statements of the Association, and source documents from the incorporation of the Association through the date of the turnover (as hereafter defined). The records shall be audited for the period

from the incorporation of the Association or from the period covered by the last audit, if applicable, 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, Florida Statutes. 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 billings, cash receipts and related records to determine that the Declarant was charged and paid the proper amounts of Assessments.

- (h) Association funds or the control thereof.
- (i) All tangible personal property that is the property of the Association or is or was represented by the Declarant to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such property.
- (j) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment, and for the construction and installation of all mechanical components serving the Improvements and the Condominium Property, with a certificate in affidavit form, of the Declarant, an agent of the Declarant or an architect or engineer authorized to practice in Florida that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the mechanical components serving the Improvements and the Condominium Property.
- (k) A list of the names and addresses of all contractors, subcontractors and suppliers, of which the Declarant had knowledge at any time in the development of the Condominium, utilized in the construction or remodeling of the improvements and the landscaping of the Condominium and/or Association Property.
- (l) Insurance policies.
- (m) Copies of any Certificates of Occupancy which may have been issued for the Condominium Property.
- (n) Any other permits issued by governmental bodies applicable to the Condominium Property which have been issued by governmental bodies and are in force or were issued within one (1) year prior to the date the Unit Owners take control of the Association.
- (o) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.



- (p) A roster of the Unit Owners and their addresses and telephone numbers, if known, as shown on the Declarant's records.
- (q) Leases of the Common Elements and other leases to which the Association is a party, if applicable.
- (r) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or 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.
- (s) All other contracts to which the Association is a party.

If, during the period prior to time that the Declarant relinquishes control of the Association and provides the above-described documents to the Association, any provision of the Florida Condominium Act or any rule promulgated thereunder is violated by the Association, the Declarant is responsible for such violation(s) and is subject to administrative action provided for in the Florida Condominium Act for such violation(s) and is liable for such violations(s) to third parties.

Notwithstanding the foregoing, the Declarant, who was not the original developer of the Condominium, shall not be liable for any violations by the Association prior to the date on which the Declarant elected or appointed a majority of the Board of Directors, and the Declarant is not required to deliver items and documents not in the possession of the Declarant if some items were or should have been in existence before the Declarant acquisition of the Units. If, despite a good faith effort to obtain the documents and materials that must be provided to the Association as set forth above, the Declarant was not able to obtain such documents and materials, the Declarant must certify in writing to the Association the names or descriptions of the documents and materials that were not obtainable by the Declarant. Delivery of such certificate shall relieve the Declarant of responsibility for delivering the documents and materials referenced in the certificate. Further, the responsibility of the Declarant to provide the audit required by Florida Statutes Section 718.301(4) is only for the period during which the Declarant elected or appointed a majority of the Board of Directors.

**4.16 Response to Unit Owner Inquiry.** When a Unit Owner files a written inquiry by certified mail with the Board, the Board shall respond in writing to the Unit Owner within thirty (30) days of receipt of the inquiry. The Board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division. If the Board requests advice from the Division, the Board shall, within ten (10) days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within sixty (60) days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. The failure to provide a substantive response to the inquiry as provided herein precludes the Board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The Association may through its Board adopt reasonable rules and regulations regarding the frequency and manner of responding to Unit Owner inquiries, one of which may be that the Association is only obligated to respond to one

(1) written inquiry per Unit in any given thirty-day (30-day) period. In such case, any additional inquiry or inquiries must be responded to in the subsequent thirty-day (30-day) period, or periods, as applicable.

## 5. Authority.

5.1 Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Condominium and may take all acts, through the proper Officers of the Association, necessary in executing such powers, except such acts which by law, the Declaration, the Articles or these By-Laws may not be delegated to the Board by the Unit Owners. Such powers and duties of the Board shall include, without limitation (except as limited elsewhere herein), the following:

- (a) Operating and maintaining all Common Elements and the Association Property;
- (b) Determining the expenses required for the operation of the Association and the Condominium and adopting a budget;
- (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements and the Association Property.
- (d) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium and Association Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 14 hereof.
- (e) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring title to, or an interest in, property in the name of the Association, or its designee, for the use and benefit of its members. The power to acquire personal property shall be exercised by the Board and the power to acquire real property shall be exercised as described herein and in the Declaration.
- (g) Purchasing, leasing or otherwise acquiring Units or other Property, including without limitation, Units at foreclosure or other judicial sales, all in the name of the Association, or its designee.
- (h) Selling, leasing, mortgaging or otherwise dealing with Units acquired, and subleasing Units leased, by the Association, or its designee.
- (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (j) Obtaining and reviewing insurance for the Condominium and Association Property.

- (k) Making repairs, additions and improvements to, or alterations of, the Condominium Property and the Association Property, and repairs to and restoration of the Condominium and the Association Property in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (l) Enforcing obligations of the Unit Owners under applicable law and the Condominium Documents, making and collecting assessments and fees from and against Unit Owners, allocating profits and expenses, and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
- (m) Levying fines against the appropriate Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners. No fine shall be levied except after giving reasonable notice and opportunity for a hearing to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. Notice of such hearing shall be delivered to the Unit Owner and any other affected party no less than fourteen (14) days before such hearing and shall include: (a) a statement of the date, time and place of the hearing; (b) a statement of the provisions of the Declaration Articles, By-Laws, or rules and regulations which have allegedly been violated; and (c) a short plain statement of the matters asserted by the Association. The Unit Owner and any other affected party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing must be held before a committee of other Unit Owners who are neither Board members nor persons residing in a Board member's household. If the committee does not agree with the fine, the fine may not be levied. No fine may exceed \$100.00 per violation, however, a fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing, provided however, that no such fine shall in the aggregate exceed \$1,000.00. No fine shall become a lien upon a Unit.
- (n) Purchasing or leasing the Units for use by resident superintendents and other similar persons or for the general use and enjoyment of the Unit Owners.
- (o) Borrowing money on behalf of the Association or the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements (if the need for the funds is unanticipated) or the acquisition of real property, and granting mortgages on and/or security interests in Association-owned property; provided, however, that the consent of the Unit Owners of at least two-thirds (66⅔%) of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum which would cause the total

outstanding indebtedness of the Association to exceed \$250,000.00. If any sum borrowed by the Board on behalf of the Condominium pursuant to the authority contained in this subparagraph (o) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in the Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Owner's Unit.

- (p) Subject to the provisions of Section 5.2 below, contracting for the management and maintenance of the Condominium, the Association, and the Association Property and authorizing a management agent (who may be an affiliate of the Declarant) 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 and the Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, the Articles, these By-Laws, and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (q) At its discretion, but within the parameters of the Florida Condominium Act, authorizing Unit Owners or other persons to use portions of the Common Elements or Association Property for private parties and gatherings and imposing reasonable charges for such private use.
- (r) Executing all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plot, unities of title, covenants in lieu thereof, etc.). In that regard, each Unit Owner, by acceptance of the deed to such Unit Owner's Unit, and each mortgagee of a Unit Owner, by acceptance of a lien on said Unit, appoints and designates the President of the Association as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- (s) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws, and in the Florida Condominium Act; (ii) all powers incidental thereto; and (iii) all other powers of a Florida corporation not for profit.
- (t) The limited power to convey a portion of the Common Elements to a condemning authority for the purpose of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.
- (u) Collecting Assessments (as defined in the Declaration and the Master Declaration).



5.2 Contracts. Any contract which is not to be fully performed within one (1) year from the making thereof, for the purchase, lease or renting of materials or equipment to be used by the Association in accomplishing its purposes, and all contracts for the provision of services, shall be in writing. Where a contract for purchase, lease or renting materials or equipment, or for the provision of services, requires payment by the Association on behalf of the Condominium in the aggregate exceeding \$5,000.00, the Association shall obtain competitive bids for the materials, equipment or services. Nothing contained herein shall be construed to require the Association to accept the lowest bid. Notwithstanding the foregoing, contracts with employees of the Association and contracts for attorney, accountant, architect, community association manager, engineering and landscape architect services shall not be subject to the provisions hereof. Further, nothing contained herein is intended to limit the ability of the Association to obtain needed products and services in an emergency; nor shall the provisions hereof apply if the business entity with which the Association desires to contract is the only source of supply within Pinellas County, Florida.

## 6. Officers.

6.1 Executive Officers. The executive Officers of the Association shall be a President, a Vice-President, a Treasurer, and a Secretary (none of whom need be Directors), all of whom shall be elected by the Board and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. All officers shall be Members of the Association except officers appointed by the Declarant. A person may hold more than one office, except that the President may not also be the Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board from time to time shall elect such other Officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers, other than designees of the Declarant, must be Unit Owners (or authorized representatives of corporate/partnership/trust Unit Owners).

6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association. The President shall also serve as the Voting Member on behalf of the Condominium and as a Director of the Master Association.

6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice president of an association and as maybe required by the Directors or the President.

6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the Unit Owners. The Secretary shall attend to the giving of all notices to the Unit Owners and Directors and other notices required by law. The Secretary shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as maybe required by the Directors or the President.

6.5 **Treasurer.** The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. The Treasurer shall submit a treasurer's report to the Board at reasonable intervals and shall perform all other duties incident to the office of treasurer and as may be required by the Directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board.

6.6 **Declarant Appointees.** No officer appointed by the Declarant may be removed except as provided in Section 4.14 hereof and by law.

7. **Fiduciary Duty.** The Officers and Directors, as well as any manager employed by the Association, have a fiduciary relationship to the Unit Owners. No Officer, Director or manager shall solicit, offer to accept, or accept anything of service of value for which consideration has not been provided, for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the Association. Any such Officer, Director or manager who knowingly so solicits, offers to accept or accepts anything of service of value shall, in addition to all other rights and remedies of the Association and Unit Owners, be subject to a civil penalty in accordance with the Florida Condominium Act. Notwithstanding the foregoing, this section shall not prohibit an Officer, Director or manager from accepting services or items received in connection with trade fairs or education programs.

8. **Compensation.** Neither Directors nor Officers shall receive compensation for their services as such, but this provision shall not preclude the Board from employing a Director or an Officer as an employee of the Association, nor preclude contracting with a Director or an Officer for the management of the Condominium or for any other service to be supplied by such Director or Officer. Directors and Officers shall be compensated for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

9. **Resignations.** Any Director or Officer may resign his/her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event, the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Units owned by any Director or Officer (other than appointees of the Declarant or Officers who were not Unit Owners) shall constitute a written resignation of such Director or Officer.

10. **Fiscal Management.** The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

10.1 **Budget.**

(a) **Adoption by Board; Items.** The Board shall from time to time, and at least annually, prepare a budget for all Condominiums governed and operated by the Association (which shall be detailed and shall show the amount budgeted by accounts

and expense classifications, including, if applicable, but not limited to, those expenses listed in Section 718.504(21), Florida Statutes), determine the amount of the Assessments payable by the Unit Owners to meet the expenses of such Condominium(s) and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition, if the Association maintains Limited Common Elements with the cost to be shared only by those entitled to use the Limited Common Elements as provided for in Section 718.113(1), Florida Statutes, the budget or a schedule attached thereto shall show amounts budgeted therefor. If, after turnover of control of the Association to the Unit Owners pursuant to Section 718.301, Florida Statutes ("Turnover"), any of the expenses listed in Section 718.504(21), Florida Statutes, are not applicable, they need not be listed.

In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance (to the extent required by law). These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000.00. The amount of reserves shall be computed by means of a formula which is based upon the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement and reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. Reserves shall not be required if the Unit Owners of the Association have, by a majority vote at a duly called meeting of Unit Owners, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. Prior to Turnover, reserves may only be waived or reduced upon the vote of a majority of all non-Declarant Voting Interests voting in person or by limited proxy at a duly called meeting of the Association. If a meeting of the Unit Owners has been called to determine whether to waive or reduce the funding of reserves, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect. Following Turnover, the Declarant may vote its Voting Interests for all Units owned by Declarant to waive or reduce the funding of reserves.

Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for any other purposes is approved in advance by a majority vote at a duly called meeting of the Association. Prior to Turnover, the Declarant-controlled Association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all non-Declarant Voting Interests, voting in person or by limited proxy at a duly called meeting of the Association.

The only Voting Interests which are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the Voting Interests of the Units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes

other than purposes for which the reserves were intended shall contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.**

The adoption of a budget for the Condominium shall comply with the requirements hereinafter set forth:

1. Notice of Meeting. Any meeting at which a proposed annual budget of the Association will be considered by the Board or the Unit Owners shall be open to all Unit Owners. At least fourteen (14) days prior to such a meeting, the Board shall hand deliver to each Unit Owner, mail to each Unit Owner at the address last furnished to the Association by the Unit Owner, or electronically transmit to the location furnished by the Unit Owner for that purpose, a notice of such meeting and a copy of the proposed annual budget. An Officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement, and such affidavit shall be filed among the official records of the Association.
2. Special Membership Meeting. If the Board of Directors adopts in any fiscal year an annual budget which requires assessments against the Unit Owners which exceed one hundred fifteen percent (115%) of such Assessments for the preceding fiscal year, the Board of Directors shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board of Directors receives, within twenty-one (21) days following the adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all Voting Interests of the Unit Owners. The special meeting shall be conducted within sixty (60) days following the adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board of Directors shall hand deliver to each Unit Owner, or mail to each Unit Owner at the address last furnished to the Association, a notice of the meeting. An officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with this notice requirement and such affidavit shall be filed among the official records of the Association. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board of Directors shall take effect as scheduled.
3. Determination of Budget Amount. Any determination of whether assessments exceed one hundred fifteen percent (115%) of assessments for the preceding fiscal year shall exclude any authorized provision for reasonable reserves for



repair or replacement of the Condominium Property, anticipated expenses of the Association that the Board of Directors does not expect to be incurred on a regular or annual basis, or assessments for betterments to the Condominium Property.

4. Proviso. As long as the Declarant is in control of the Board, the Board shall not impose Assessments for a year greater than one hundred fifteen percent (115%) of the prior fiscal year's Assessments, as herein defined, without the approval of a majority of all Voting Interests.

(b) Adoption By Membership. If the Board is unable to adopt a budget for a fiscal year in accordance with the requirements of subsection 10.1(a) above, the Board may call a special meeting of the Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection, or propose a budget in writing to the Unit Owners, and if such budget is adopted by the Unit Owners, upon ratification by the majority of the Board, it shall become the budget for such year.

10.2 Assessments. Assessments against Unit Owners for their share of the items of the budget shall be determined for the applicable fiscal year annually at least twenty (20) days preceding the year for which the Assessments are determined. The manner of collecting Assessments from the Unit Owners shall be in accordance with these By-Laws. Assessments shall be made against Units, as set forth in this section, in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Assessments for this Condominium shall be due in equal monthly installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the Assessments are determined. If the annual Assessments are not determined as required, the Assessments shall be presumed to have been determined in the amount of the last year's prior Assessments, and monthly (or quarterly) installments on such Assessments shall be due upon each installment payment date until changed by the amended Assessments. If the annual Assessments prove to be insufficient, the budget and the Assessments may be amended at any time by the Board, subject to the provisions of Section 10.1 hereof, if applicable. The unpaid Assessments for the remaining portion of the fiscal year for which amended Assessments are made shall be payable in as many equal installments as there are full months (or quarters) of the fiscal year left as of the date of such amended Assessments, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

As provided in Section 718.116, Florida Statutes, a Unit Owner, regardless of how his or her title to the Unit has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all the Assessments and charges coming due while a Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous owner for all the unpaid Assessments and charges due and payable up to the time of transfer of title to

the Unit to the Unit Owner. Liability may not be avoided by waiver of the use or enjoyment of any of the Common Elements or the Association Property or by abandonment of the Unit for which the Assessments are made. The liability of a First Mortgagee or its successor or assignees who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments that become due prior to the mortgagee's acquisition of title is limited to the lesser of: (1) the Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association, or (2) one percent (1.0%) of the original mortgage debt. This limitation of the Assessments shall not apply unless the First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to, or reasonably discoverable by the mortgagee. The person acquiring title shall pay the due Assessment amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount due when it is due shall entitle the Association to record a claim of lien against the parcel and proceed as provided in Section 10.5 for the collection of unpaid Assessments.

**Assessment Collection Interest and Late Fees:** Assessments paid on or before ten (10) days after the due date shall not bear interest, but all sums not paid on or before ten (10) days after the due date shall bear interest at the highest lawful rate from time to time (now at eighteen percent (18%) per annum) from the due date until the date of full payment. In addition to such interest, the Association may charge an administrative fee in an amount not to exceed the greater of Twenty-Five Dollars (\$25.00) or five percent (5%) of each late Assessment installment payment. All late Assessment payments upon account shall be first applied to interest accrued, then to any costs and reasonable attorney's fees and then to the Assessment payment first due. All interest collected shall be credited to the Common Expense account.

**Liens for Unpaid Assessments:** The unpaid portion of an Assessment, including an accelerated Assessment, as permitted under Section 10.5, which is due, together with costs, interest and reasonable attorneys' fees for collection, shall be secured by a claim of lien upon the Unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association in accordance with the requirements of Section 718.118, Florida Statutes (the "Claim of Lien"). To be valid, the Claim of Lien must state (1) the description of the Unit; (2) the name of the record Unit Owner; (3) the name and address of the Association; (4) the amount due; and (5) the due dates. The Claim of Lien must be executed and acknowledged by an Officer or authorized agent of the Association. No Claim of Lien shall be effective longer than one (1) year after the Claim of Lien was recorded unless, within that time, an action at law to enforce the Claim of Lien is commenced, as discussed in the following paragraph. The 1-year effective period for the Claim of Lien 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. Upon payment in full, the person making the payment is entitled to a satisfaction of the Claim of Lien.

**Collection Suit for Unpaid Assessments and Charges:** If the Assessments remain delinquent under the provisions of this Section, the Association, at its option, may enforce collection of the delinquent Assessments by a suit at law, by foreclosure of the lien securing the Assessments, or by another remedy available under the laws of the State of Florida, and in any event, the Association shall be entitled to recover the Assessments which are delinquent at the time of collection, judgment or decree, together with those which have become due by acceleration, plus any interest thereon, and all costs incident to the collection and the proceedings, including reasonable attorneys' fees, including appeals. The Association must deliver or mail by certified mail to the Unit Owner a written notice of its intention to foreclose the Claim of Lien at least thirty (30) days before commencing foreclosure, unless notice of contest of the Claim of Lien has been filed. The Claim of Lien created by Section 718.118(5)(a) of the Act shall secure only the Assessments, interest, costs and attorneys' fees, not fines, charges or other fees.

10.3 Special Assessments and Assessments for Capital Improvements. Special Assessments and Capital Improvement Assessments (as defined in the Declaration) shall be levied as provided in the Declaration and shall be paid in such manner as the Board may require in the notice of such assessments. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in the notice to Unit Owners of adoption of same. However, upon completion of such specific purpose or purposes, any excess funds will be considered part of the Common Surplus, and may, at the discretion of the Board, either be returned to the Unit Owners or be applied as a credit towards future Assessment liability.

10.4 Depository. The depository of the Association shall be such bank or banks in the State of Florida, which bank or banks must be insured by the FDIC, as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from the Assessments or otherwise may be commingled into a single fund or divided into more than one fund, as determined by a majority of the Board. In addition, a separate reserve account should be established for the Association in such a depository for monies specifically designated as reserves for capital expenditures or deferred maintenance. Reserve and operating funds of the Association shall not be commingled unless combined for investment purposes, provided that the funds so commingled shall be accounted for separately and the combined account balance of such commingled funds may not, at any time, be less than the amount identified as reserve funds in the combined account.

10.5 Acceleration of Installments Upon Default. If a Unit Owner is in default in the payment of the Assessments, the Board or its agent may accelerate the balance of the current budget years' Assessments upon thirty (30) days' prior written notice to the Unit Owner and the filing of a Claim of Lien, and the then unpaid balance of the current budget year's Assessments shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Unit Owner, or not less than ten (10) days after the mailing of such notice to him by certified mail, whichever shall first occur.

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

10.7 Accounting Records and Reports. The Association shall maintain accounting records in the State of Florida, according to accounting practices normally used by similar associations. The records shall be open to inspection by the Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied to the Unit Owners at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures of the Association, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of the Assessments, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within ninety (90) days following the end of the fiscal year, the Association shall prepare and complete, or contract for the preparation and completion of a financial report for the preceding fiscal year (the "Financial Report"). Within twenty-one (21) days after the final Financial Report is completed by the Association, or received from a third party, but not later than one hundred twenty (120) days following the end of the fiscal year, the Board shall mail or furnish by personal delivery a copy of the Financial Report to each Unit Owner, or a notice that a copy of the Financial Report will be mailed or hand delivered to the Unit Owner, without charge, upon receipt of a written request from the Unit Owner.

The Financial Report shall be prepared in accordance with the rules adopted by the Division and as required by Section 718.111(13), Florida Statutes. The type of Financial Report to be prepared shall, unless modified in the manner set forth below, be based upon the Association's total annual revenues, as follows:

(a) **REPORT OF CASH RECEIPTS AND EXPENDITURES** – If the Association's revenues are less than \$100,000.00 or if the Association operates less than fifty (50) Units (regardless of revenue), it shall prepare a report of cash receipts and revenues [or, if determined by the Board, the Association may prepare any of the reports described in subsections (b), (c) or (d) below in lieu of the report described in this Section (a)].

(b) **COMPILED FINANCIAL STATEMENTS** – If the Association's revenues are equal to or greater than \$100,000.00, but less than \$200,000.00, it shall prepare compiled financial statements [or, if determined by the Board, the Association may prepare any of the reports described in subsections (c) or (d) below in lieu of the report described in this Section (b)].



(c) **REVIEWED FINANCIAL STATEMENTS** – If the Association's revenues are equal to or greater than \$200,000.00, but less than \$400,000.00, it shall prepare reviewed financial statements [or, if determined by the Board, the Association may prepare the report described in subsection (d) below in lieu of the report described in this Section (c)].

(d) **AUDITED FINANCIAL STATEMENTS** – If the Association's revenues are equal to or exceed \$400,000.00, it shall prepare audited financial statements.

A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: (1) costs for security; (2) professional and management fees and expenses; (3) taxes; (4) costs for recreation facilities; (5) expenses for refuse collection and utility services; (6) expenses for lawn care; (7) costs for building maintenance and repair; (8) insurance costs; (9) administration and salary expenses; (10) reserves accumulated and expended for capital expenditures; (11) deferred maintenance; and any other category for which the Association maintains reserves.

The Association may prepare or cause to be prepared, without a meeting of or approval by the Unit Owners: (1) compiled, reviewed, or audited financial statements, if the Association is required to prepare a report of cash receipts and expenditures; (2) reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or (3) audited financial statements if the association is required to prepare reviewed financial statements.

If approved by a majority of the Voting Interests present at a properly called meeting of the Association, the Association may prepare or cause to be prepared: (1) a report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement; (2) a report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or (3) a report of cash receipts and expenditures, a compiled financial statement or a reviewed financial statement in lieu of an audited financial statement. Such meeting and approval must occur prior to the end of the fiscal year and is effective only for the fiscal year in which the vote is taken.

**10.8 Application of Payment.** All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration or as otherwise determined by the Board.

**10.9 Notice of Meetings.** Notice of any meeting where regular Assessments against the Unit Owners are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of any such Assessments.

**11. Roster of Unit Owners.** Each Unit Owner shall file with the Association a copy of the deed or other document showing his ownership to a Unit. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Unit Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.

**12. Parliamentary Rules.** Except when specifically or impliedly waived by the chairman of a meeting (either a Unit Owners' meeting or Directors' meeting), *Robert's Rules of Order* (latest edition) shall govern the conduct of the Association or Board meetings when not in conflict with the Florida Condominium Act, the Declaration, the Articles or these By-Laws; provided, however, that a strict or technical reading of *Robert's Rules of Order* shall not be made so as to frustrate the will of the persons properly participating in said meeting.

**13. Amendments.** Except as may be provided in the Declaration to the contrary, these By-Laws may be amended in the following manner.

**13.1 Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.

**13.2 Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by not less than one-third (33⅓%) of the Voting Interests held by the Unit Owners. Directors and Unit Owners not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:

- (a) by not less than a majority of the Voting Interests of all Unit Owners represented at a meeting at which a quorum has been attained and by not less than two-thirds (66⅔%) of the entire Board; or
- (b) after Turnover, by not less than eighty percent (80%) of the Voting Interests of the Unit Owners represented at a meeting in which a quorum has been attained.

**13.3 Proviso.** No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant, Hotel Unit Owner or mortgagees of Units without the consent of said Declarant, Hotel Unit Owner and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or the Declaration. No amendment to this Section shall be valid. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing By-laws shall contain the full text of the By-laws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure will hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw \_\_\_\_ for present text." Nonmaterial errors or omissions in the bylaw process will not invalidate an otherwise properly promulgated amendment.

**13.4 Execution and Recording.** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of these By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or assistant secretary of the Association with the formalities of a deed, or by the Declarant alone if the amendment has been adopted consistent with the provisions of the

Declaration allowing such action by the Declarant. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of Pinellas County, Florida, with an identification on the first page of the amendment of the book and page of said public records where the Declaration is recorded.

**14. Rules and Regulations.** The Board of Directors may, from time to time, create rules and regulations concerning the use of portions of the Condominium and the Association Property, and thereafter modify, amend or add to such rules and regulations, except that subsequent to Turnover, Unit Owners holding a majority of the Voting Interests may overrule the Board with respect to any such modifications, amendments or additions. Copies of any such rules and regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Declarant.

**15. Official Records.** From the inception of the Association, the Association shall maintain for the Condominium a copy of each of the following, where applicable, which shall constitute the official records of the Association:

15.1 A copy of the plans, permits, warranties, and other items provided by the Declarant pursuant to Section 718.301(4), Florida Statutes;

15.2 A photocopy of the recorded Declaration and the declaration of condominium of each condominium operated by the Association and of each amendment to each declaration of condominium;

15.3 A photocopy of the recorded By-Laws of the Association and all amendments to the Bylaws;

15.4 A certified copy of the Articles or other documents creating the Association and all amendments thereto;

15.5 A copy of the current rules and regulations of the Association;

15.6 A book or books containing the minutes of all meetings of the Association, of the Board, and of the Unit Owners, which minutes shall be retained for a period of not less than seven (7) years.

15.7 A current roster of all the Unit Owners, their mailing addresses, the Unit identifications, voting certifications, and if known, telephone numbers. The Association shall also maintain the electronic mailing addresses and the numbers designated by Unit Owners for receiving notices sent by electronic transmission of those Unit Owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by Unit Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. However, the Association shall not be liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices:

15.8 All current insurance policies of the Association, the Condominium, and all condominiums operated by the Association;

15.9 A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility'

15.10 Bills of Sale or transfer for all personal property owned by the Association;

15.11 Accounting records for the Association and the separate accounting records for the Condominium and each condominium which the Association operates. All accounting records shall be maintained for a period of not less than seven (7) years. Any person who knowingly or intentionally defaces or destroys accounting records required to be maintained by Chapter 718, Florida Statutes, is personally subject to civil penalty pursuant to Section 718.501(1)(d), Florida Statutes. The accounting records shall include, but not be limited to:

- (a) Accurate, itemized, and detailed records for all receipts and expenditures.
- (b) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.
- (c) All audits, reviews, accounting statements, and financial reports of the Association or Condominium.
- (d) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained by the association.
- (e) Ballots, sign-in sheets, voting proxies and all other papers relating to voting by the Unit Owners which shall be maintained for a period of one (1) year from the date of the meeting to which the document relates.
- (f) All rental records where the Association is acting as agent for the rental of the Units.
- (g) A copy of the current Question and Answer Sheet, as described in Section 718.504, Florida Statutes, and in the form promulgated by the Division, which shall be updated annually.
- (h) All other records of the Association not specifically listed above which are related to the operation of the Association.
- (i) A copy of the inspection report as provided in 718.301(4)(p).

The official records of the Association shall be maintained in Pinellas County, Florida, or if in another county in the State of Florida, then within twenty-five (25) miles of the Condominium.



The official records of the Association shall be open to inspection by any Unit Owner or the authorized representative of such Unit Owner at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at a reasonable expense, if any, of the Unit Owner. The Association may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying. The failure of an Association to provide the official records to a Unit Owner or his authorized representative within ten (10) working days after receipt of a written request therefor shall create a rebuttable presumption that the Association willfully failed to comply with this paragraph. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. Any person who knowingly or intentionally defaces or destroys accounting records that are required by Chapter 718, or knowingly or intentionally fails to create or maintain accounting records that are required by Chapter 718, is personally subject to a civil penalty pursuant to Section 718.501(1)(d). The Association shall maintain on the Condominium Property an adequate number of copies of the Declaration, the Articles, the By-Laws and the rules and regulations, and all amendments to the foregoing, as well as the Question and Answer Sheet and year-end financial information required by the Florida Condominium Act, on the Condominium Property to ensure their availability to Unit Owners and prospective purchasers. Further, the Association shall prepare the Question and Answer Sheet and update it annually. The Association may charge its actual costs for preparing and furnishing these documents to those persons requesting same. Notwithstanding the provisions of this Section 15, the following records shall not be accessible to Unit Owners:

1. Any record protected by the lawyer-client privilege as described in Section 90.502, Florida Statutes, and any record protected by the work-product privilege including any record prepared by an Association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation or imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.
2. Information obtained by the Association in connection with the approval of the lease, sale or other transfer of a Unit.
3. Medical records of Unit Owners.
4. Social security numbers, driver's license numbers, credit card numbers, and other personal identifying information of any person.

**16. Certificate of Compliance.** A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Board as evidence of compliance of the Units to the applicable condominium fire and life safety code.

**17. Provision of Information to Purchasers or Lienholders.** The Association or its authorized agent shall not be required to provide a prospective purchaser or lienholder with information about the Condominium or the Association other than information or documents required by the Act to be made available or disclosed. The Association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current Unit Owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, provided that such fee does not exceed \$150.00 plus the reasonable cost of photocopying and any attorneys' fees incurred by the Association in connection with the Association's response. An Association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

**18. Transfer Fees.** No charge shall be made by the Association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a Unit unless the Association is required to approve such transfer, and a fee for such approval is provided for in the Declaration, Articles, or By-Laws. Any such fee may be preset, but in no event may such fee exceed \$100 per applicant other than a husband/wife or a parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. The foregoing notwithstanding, the Association may, if the authority to do so appears in the Declaration or Bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of one (1) month's rent, into an escrow account maintained by the Association. The security deposit shall protect against damages to the Common Elements or Association Property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of Chapter 83, Florida Statutes.

**19. Arbitration.** Any "dispute" arising under the Condominium Documents or the Florida Condominium Act shall be subject to mandatory nonbinding arbitration as provided for in Section 718.1255, Florida Statutes, with the mandatory nonbinding arbitration being required prior to the institution of any court litigation involving a dispute with the Association. The decision of an arbitrator shall be final; however, such a decision shall not be deemed final agency action. Nothing in this Section or the Florida Condominium Act shall be construed to foreclose parties from later proceeding in a trial *de novo* unless the parties have agreed that the arbitration is binding. If such judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial *de novo*. The purpose of this mediation is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

As used in this Section, "dispute" means any disagreement between two or more parties that involves:

19.1 The authority of the Board, under the Florida Condominium Act or the Condominium Documents, to:

- (a) Require any Unit Owner to take any action, or not to take any action, involving that Unit Owner's Unit or the appurtenances thereto; or
- (b) Alter or add to a common area or Common Element.
- (c) The failure of a governing body, when required by the Florida Condominium Act or a Condominium Document, to:
  - 1. Properly conduct elections;
  - 2. Give adequate notice of meetings or other actions;
  - 3. Properly conduct meetings; or
  - 4. Allow inspection of books and records.

"Dispute" does not include any disagreement that primarily involves: (1) title to any Unit of Common Element; (2) the interpretation or enforcement of any warranty; (3) the levy of a fee or an Assessment, or the collection of an assessment levied against a party; (4) the eviction or other removal of a tenant from a Unit; (5) alleged breaches of fiduciary duty by one or more Directors; or (6) claims for damages to a Unit based upon the alleged failure of the Association to maintain the Common Elements or the Condominium Property.

**20. Electronic Transmission.** For purposes hereof, "electronic transmission" means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers. Notwithstanding the provision for electronic transmission of notices by the Association, same may be only be sent to Unit Owners that consent to receipt of Association notices by electronic transmission (and only for long as such consent remains in effect). Further, in no event may electronic transmission be used as a method of giving notice of a meeting called in whole or in part regarding the recall of a Director.

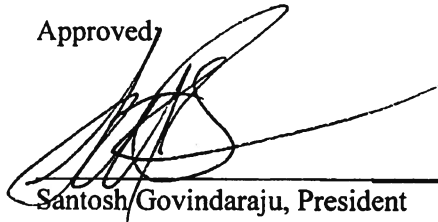
**21. Construction.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

**22. Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.

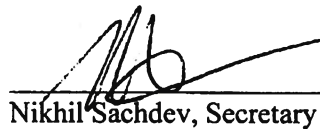
[SIGNATURE PAGE FOLLOWS]

The foregoing was adopted as the Amended and Restated By-Laws of AQUALEA RESIDENCES CONDOMINIUM ASSOCIATION, INC., a not-for-profit corporation under the laws of the State of Florida, as of the 10<sup>th</sup> day of November, 2014.

Approved



Santosh/Govindaraju, President



Nikhil Sachdev, Secretary



**EXHIBIT "D"**

**ALLOCATED INTERESTS AND VOTING INTERESTS**  
**FOR**  
**AQUALEA RESIDENCES, A CONDOMINIUM**

<b>Unit</b>	<b>Allocated Interests/Voting Interests</b>	<b>Square Footage</b>
301	5.717%	2,505
302	4.055%	1,777
303	4.080%	1,788
304	6.173%	2,705
401	5.717%	2,505
402	4.055%	1,777
403	4.080%	1,788
404	6.173%	2,705
501	5.717%	2,505
502	4.055%	1,777
503	4.080%	1,788
504	6.173%	2,705
601	5.717%	2,505
602	4.055%	1,777
603	4.080%	1,788
604	6.173%	2,705
701	9.768%	4,280
702	10.130%	4,439
<b>TOTAL</b>	<b>100.000%</b>	<b>43,819</b>

**SCHEDULE 1****GUARANTEED MONTHLY ASSESSMENTS**

<b>Unit Number</b>	<b>Residential Condominium Regular Monthly Assessments</b>	<b>Condominium Shared Facilities Monthly Assessments under Master Declaration</b>	<b>General Shared Facilities Monthly Assessments under Master Declaration</b>	<b>Basic Hotel Services Monthly Assessments under Master Declaration</b>	<b>Total Guaranteed Monthly Assessments</b>	<b>Total Guaranteed Annual Assessments</b>
301	\$424.40	\$269.52	\$723.60	\$131.47	<b>\$1,548.99</b>	<b>\$18,587.84</b>
302	\$301.02	\$191.17	\$513.24	\$93.25	<b>\$1,098.68</b>	<b>\$13,184.15</b>
303	\$302.88	\$192.35	\$516.40	\$93.83	<b>\$1,105.46</b>	<b>\$13,265.46</b>
304	\$458.25	\$291.02	\$781.32	\$141.96	<b>\$1,672.55</b>	<b>\$20,070.57</b>
401	\$424.40	\$269.52	\$723.60	\$131.47	<b>\$1,548.99</b>	<b>\$18,587.84</b>
402	\$301.02	\$191.17	\$513.24	\$93.25	<b>\$1,098.68</b>	<b>\$13,184.15</b>
403	\$302.88	\$192.35	\$516.40	\$93.83	<b>\$1,105.46</b>	<b>\$13,265.46</b>
404	\$458.25	\$291.02	\$781.32	\$141.96	<b>\$1,672.55</b>	<b>\$20,070.57</b>
501	\$424.40	\$269.52	\$723.60	\$131.47	<b>\$1,548.99</b>	<b>\$18,587.84</b>
502	\$301.02	\$191.17	\$513.24	\$93.25	<b>\$1,098.68</b>	<b>\$13,184.15</b>
503	\$302.88	\$192.35	\$516.40	\$93.83	<b>\$1,105.46</b>	<b>\$13,265.46</b>
504	\$458.25	\$291.02	\$781.32	\$141.96	<b>\$1,672.55</b>	<b>\$20,070.57</b>
601	\$424.40	\$269.52	\$723.60	\$131.47	<b>\$1,548.99</b>	<b>\$18,587.84</b>
602	\$301.02	\$191.17	\$513.24	\$93.25	<b>\$1,098.68</b>	<b>\$13,184.15</b>
603	\$302.88	\$192.35	\$516.40	\$93.83	<b>\$1,105.46</b>	<b>\$13,265.46</b>
604	\$458.25	\$291.02	\$781.32	\$141.96	<b>\$1,672.55</b>	<b>\$20,070.57</b>
701	\$725.12	\$460.50	\$1,236.33	\$224.63	<b>\$2,646.58</b>	<b>\$31,758.95</b>
702	\$751.99	\$477.57	\$1,282.15	\$232.95	<b>\$2,744.66</b>	<b>\$32,935.95</b>