

INDEX TO DECLARATION OF CONDOMINIUM

OF

RIVER FLY-IN, A CONDOMINIUM

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EXHIBIT 1 TO THE PROSPECTUS

DECLARATION OF CONDOMINIUM

OF

RIVER FLY-IN, A CONDOMINIUM

RIVER FLY-IN CONDOMINIUM, INC., a Florida Corporation, hereinafter called "Developer," does hereby make, declare, and establish this Declaration of Condominium (hereinafter sometimes called "this Declaration"), as and for a plan of condominium unit ownership for RIVER FLY-IN, A CONDOMINIUM consisting of real property and improvements thereon as hereinafter described.

All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall rule perpetually unless terminated as provided herein and shall be binding upon all parties or persons subsequently owning property in said condominium, and in consideration of receiving and by acceptance of a conveyance, grant, devise, lease, or mortgage, all grantees, devisees, leasees, and assigns and all parties claiming by, through or under such persons, agree to be bound by all provisions hereof. Both the burdens imposed and the benefits shall run with each unit and the interests in the common property as herein defined. River Fly-In Condominium Inc., submits property to condominium ownership.

GLOSSARY OF TERM AND DEFINITIONS

- 1) "Assessment" means a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.
- (2) "Association" means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.
- (3) "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.
- (4) "Board of administration" or "board" means the board of directors or other representative body which is responsible for administration of the association.
- (5) "Buyer" means a person who purchases a condominium unit. The term "purchaser" may be used interchangeably with the term "buyer."
- (6) "Bylaws" means the bylaws of the association as they are amended from time to time.
- (7) "Committee" means a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the proposed annual budget or to take action on behalf of the board.
- (8) "Common elements" means the portions of the condominium property not included in the units.
- (9) "Common expenses" means all expenses properly incurred by the association in the performance of its duties, including expenses specified in s. 718.115.
- (10) "Common surplus" means the amount of all receipts or revenues, including assessments, rents, or profits, collected by a condominium association which exceeds common expenses.
- (11) "Condominium" means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.
- (12) "Condominium parcel" means a unit, together with the undivided share in the common elements appurtenant to the unit.
- (13) "Condominium property" means the lands, leaseholds, and personal property that are

subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

(14) "Conspicuous type" means bold type in capital letters no smaller than the largest type, exclusive of headings, on the page on which it appears and, in all cases, at least 10-point type. Where conspicuous type is required, it must be separated on all sides from other type and print. Conspicuous type may be used in a contract for purchase and sale of a unit, a lease of a unit for more than 5 years, or a prospectus or offering circular only where required by law.

(15) "Declaration" or "declaration of condominium" means the instrument or instruments by which a condominium is created, as they are from time to time amended.

(16) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include:

(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy;

(b) A cooperative association that creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners are the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion;

(c) A bulk assignee or bulk buyer as defined in s. 718.703; or

(d) A state, county, or municipal entity acting as a lessor and not otherwise named as a developer in the declaration of condominium.

(17) "Division" means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

(18) "Land" means the surface of a legally described parcel of real property and includes, unless otherwise specified in the declaration and whether separate from or including such surface, airspace lying above and subterranean space lying below such surface. However, if so defined in the declaration, the term "land" may mean all or any portion of the airspace or subterranean space between two legally identifiable elevations and may exclude the surface of a parcel of real property and may mean any combination of the foregoing, whether or not contiguous, or may mean a condominium unit.

(19) "Limited common elements" means those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

(20) "Multicondominium" means real property containing two or more condominiums, all of which are operated by the same association.

(21) "Operation" or "operation of the condominium" includes the administration and management of the condominium property and the association.

(22) "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

(23) "Residential condominium" means a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35) shall

govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404.

(24) "Special assessment" means any assessment levied against a unit owner other than the assessment required by a budget adopted annually.

(25) "Structural integrity reserve study" means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed by an engineer licensed under chapter 471 or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

(26) "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

(27) "Unit owner" or "owner of a unit" means a record owner of legal title to a condominium parcel.

(28) "Voting certificate" means a document which designates one of the record title owners, or the corporate, partnership, or entity representative, who is authorized to vote on behalf of a condominium unit that is owned by more than one owner or by any entity.

(31) "Voting interests" means the voting rights distributed to the association members pursuant to s. 718.104(4)(j).

I.

ESTABLISHMENT OF CONDOMINIUM

The Developer is the owner of the fee simple title to that certain real property situate in Merritt Island, County of Brevard, and State of Florida, which property is more particularly described as follows; to-wit:

**SEE SHEET 2 OF EXHIBIT "A" ATTACHED HERETO AND INCORPORATED
HEREIN BY REFERENCE AND MADE A PART HEREOF**

and on which property the Developer owns one (1) ten (10) story building containing a total of one-hundred twelve (112) residential units. There are one-hundred fifty (150) enclosed parking spaces including four (4) handicapped parking spaces located on Floors 1 and 2 of the Condominium Building. There are ninety-seven (97) open parking spaces including three (3) handicapped parking spaces located on the condominium property together with other appurtenant improvements as hereinafter described. There are thirty-six (36) Type B1 units each of which has two (2) bedrooms, two (2) baths and contains approximately 1,334 square feet. There are ten (10) Type B1a units each of which has two (2) bedrooms, two (2) baths and contains approximately 1,334 square feet. There are four (4) Type B1b units each of which has two (2) bedrooms, two (2) baths and contains approximately 1,334 square feet. There are ten (10) Type B1c units each of which has two (2) bedrooms, two (2) baths and contains approximately 1,334 square feet. There is one (1) Type B2 unit which has two (2) bedrooms, two (2) baths and a study and contains approximately 1,794 square

feet. There are six (6) Type B3 units each of which has two (2) bedrooms, two (2) baths and contains approximately 1,419 square feet. There are eight (8) Type B3a units each of which has two (2) bedrooms, two (2) baths and contains approximately 1,419 square feet. There are four (4) Type B4 units each of which have two (2) bedrooms, two (2) baths and a study and contains approximately 1,711 square feet. There is one Type B4a unit which has two (2) bedrooms, two (2) baths and a study and contains approximately 1,711 square feet. There is one (1) Type B4b unit which has two (2) bedrooms, two (2) baths and a study and contains approximately 1,711 square feet. There is one (1) Type B5 unit which has two (2) bedrooms, two (2) baths and a study and contains approximately 1,711 square feet. There are two (2) Type B6 units each of which has two (2) bedrooms, two (2) baths and contains approximately 1,334 square feet. There are four (4) Type B6a units each of which has two (2) bedrooms, two (2) baths and contains approximately 1,334 square feet. There are four (4) Type C1 units each of which has three (3) bedrooms, three (3) baths and contains approximately 2,178 square feet. There is one (1) Type C1a unit which has three (3) bedrooms, three (3) baths and contains approximately 2,178 square feet. There is one (1) Type C1b unit which has three (3) bedrooms, three (3) baths and contains approximately 2,178 square feet. There is one (1) Type C1c unit which has three (3) bedrooms, three (3) baths and contains approximately 2,178 square feet. There is one (1) Type C1d unit which has three (3) bedrooms, three (3) baths and contains approximately 2,260 square feet. There is one (1) Type C2 unit which has three (3) bedrooms, three and one-half (3 1/2) baths and contains approximately 1,630 square feet. There are four (4) Type C3 units each of which has three (3) bedrooms, three and one-half (3 1/2) baths and contains approximately 1,630 square feet. There are two (2) Type C3a units each of which has three (3) bedrooms, two and one-half (2 1/2) baths and contains approximately 1,630 square feet. There are three (3) Type C4 units each of which has three (3) bedrooms three and one-half (3 1/2) baths and contains approximately 1,715 square feet. The graphic description of each floor is shown on Sheets 6 through 13 inclusive, of Exhibit A to the Declaration of Condominium. The Developer, RIVER FLY-IN CONDOMINIUM, INC. reserves the right to designate the garage parking spaces for the exclusive use of the unit owners, and upon such designation, the garage parking spaces and storage spaces shall become limited common elements. The Developer reserves the right to charge a fee for the assignment of the garage parking spaces. For legal description, survey and plot plan of the condominium see Exhibit A to the Declaration of Condominium. The Developer estimates the Condominium will be completed on or before October 31, 2023 but time is not of the essence. The Developer does hereby submit the above described real property, together with the improvements thereon, to condominium ownership pursuant to the Florida Condominium Act, and hereby declares the same to be known and identified as RIVER FLY-IN, A CONDOMINIUM, hereinafter referred to as the "condominium". The Developer shall retain the right to short term lease all units owned by the Developer and for the ones assigned by Unit Owners through Developer sponsored River Fly-In, LLC, Unit Owner Rental Program.

The provisions of the Florida Condominium Act are hereby adopted herein by express reference and shall govern the condominium and the rights, duties and responsibilities of unit owners hereof, except where permissive variances therefrom appear in the Declaration and the By-Laws and Articles of Incorporation of RIVER FLY-IN CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit.

The definitions contained in the Florida Condominium Act shall be the definition of like terms as used in this Declaration and exhibits hereto unless other definitions are specifically set forth.

II.

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Attached hereto and made a part hereof, and marked Exhibit A consisting of seventeen (17) pages, are boundary surveys of the entire premises, a graphic plot plan of the overall planned improvements, and graphic descriptions of the improvements in which units are located, and plot plans thereof, identifying the units, the common elements and the limited common elements, and their respective locations and dimensions.

Said surveys, graphic descriptions and plot plans were prepared by:

Kane Surveying
Joel A. Seymour

Professional Land Surveyor
No. 7838, State of Florida

and have been certified in the manner required by the Florida Condominium Act. Each unit is identified and designated by a specific number. No unit bears the same numerical designation as any other unit. The specific numbers identifying each unit are listed on Sheets 8 through 13, inclusive of Exhibit A.

The units are located on the lands described in Exhibit A.

The Recreational Facilities consist of a swimming pool and club house.

Recreational Facilities may be expanded or added without the consent of the unit owners or the Association.

III.

OWNERSHIP OF UNITS AND APPURTENANT SHARE IN COMMON ELEMENTS AND COMMON SURPLUS, AND SHARE OF COMMON EXPENSES

Each unit shall be conveyed as an individual property capable of independent use and fee simple ownership and the owner or owners of each unit shall own, as an appurtenance to the ownership of each said unit, an undivided one-one-hundred twelfth (1/112) share of all common elements of the condominium, which includes, but is not limited to, ground support area, walkways, yard area, parking areas, foundations, etc., and substantial portions of the exterior walls, floors, ceiling and walls between units. The space within any of the units and common elements shall not be further subdivided. Any undivided interest in the common property is hereby declared to be appurtenant to each unit and such undivided interest shall not be separate from the unit and such interest shall be deemed conveyed, devised, encumbered or otherwise included with the unit even though such interest is not expressly mentioned or described in the conveyance, or other instrument. Any instrument, whether a conveyance, mortgage or otherwise, which describes only a portion of the space within any unit shall be deemed to describe the entire unit owned by the person executing such instrument and an undivided one-one-hundred twelfth (1/112) interest in all common elements of the condominium.

The Developer hereby, and each subsequent owner of any interest in a unit and in the common elements, by acceptance of a conveyance or any instrument transferring an interest, waives the right of partition of any interest in the common elements under the laws of the State of Florida as it exists now or hereafter until this condominium unit project is terminated according to the provisions hereof or by law. Any owner may freely convey an interest in a unit together with an undivided interest in the common elements subject to the provisions of this Declaration. The Developer hereby reserves the right to remove any party walls between any condominium units owned by the Developer in order that the said units may be used together as one (1) integral unit provided the amendment is approved by a majority of the total voting interests in the condominium. All assessments and voting rights, however, shall be calculated as if such units were as originally designated on the exhibits attached to this Declaration, notwithstanding the fact that the several units are used as one.

All owners of units shall have as an appurtenance to their units a perpetual easement of ingress to and egress from their units over streets, walks, terraces and other common elements from and to the public highways bounding the condominium complex, and a perpetual right or easement, in common with all persons owning an interest in any unit in the condominium complex, to the use and enjoyment of all public portions of the buildings and to other common facilities (including but not limited to facilities as they now exist) located in the common elements.

All property covered by the exhibits hereto shall be subject to a perpetual easement for encroachments which now exist or hereafter may exist caused by settlement or movement of the buildings, and such encroachments shall be permitted to remain undisturbed and such easement shall continue until such encroachment no longer exists.

All units and the common elements shall be subject to a perpetual easement in gross granted to RIVER FLY-IN CONDOMINIUM ASSOCIATION, INC., and its successors, for ingress and egress for the purpose of having its employees and agents perform all obligations and duties of the

Association set forth herein. The Association shall have the right to grant utility easements under, through or over the common elements and such other easements as the Board, in its sole discretion, shall decide. The consent of the unit owners to the granting of any such easement shall not be required.

The common expenses shall be shared and the common surplus shall be owned in the same proportion as each such unit owner's share of the ownership of the common elements, that is one-hundred twelve (1/112).

IV.

**UNIT BOUNDARIES, COMMON ELEMENTS,
AND LIMITED COMMON ELEMENTS**

The units of the condominium consist of that volume of space which is contained within the decorated or finished exposed interior surfaces of the perimeter walls, floors (excluding carpeting and other floor coverings) and ceilings of the units, the boundaries of the units are more specifically shown in Exhibit A, attached hereto. The dark solid lines on the floor plans hereinabove mentioned represent the perimetrical boundaries of the units, while the upper and lower boundaries of the units, relating to the elevations of the units, are shown in notes on said plan. The term "unit" shall mean a part of the condominium property which is subject to exclusive ownership of the construction of which has been substantially completed as evidenced by a Certificate of Occupancy or its equivalent by the appropriate governmental agency.

There are limited common elements appurtenant to each of the units in this condominium, as shown and reflected by the floor and plot plans. These limited common elements are reserved for the use of the units appurtenant thereto, to the exclusion of other units, and there shall pass with a unit, as an appurtenance thereto, the exclusive right to use the limited common elements so appurtenant. In addition there are one-hundred fifty (150) enclosed garage parking spaces, including four (4) handicapped parking spaces and ninety-seven (97) open parking spaces, including three (3) handicapped parking spaces as shown on Sheets 4, 6 and 7 of Exhibit "A". The Developer reserves the right to designate the unit which shall be entitled to the exclusive use of the garage parking spaces for fee. After such designation the garage parking spaces shall be appurtenant to the unit and shall become a limited common element.

Unit owners have the right to transfer garage parking spaces and storage spaces to other units or unit owners pursuant to Section 718.106(2)(b), Florida Statutes. Any transfer of garage parking spaces shall be subject to rules promulgated by the Association.

The common elements of the condominium consist of all of the real property, improvements and facilities of the condominium other than the units and shall include easements through the units for conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the units, limited common elements and common elements and easements of support in every portion of a unit which contributes to the support of improvements and shall further include all personal property held and maintained for the joint use and enjoyment of all the owners of the units.

Except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the Declaration as provided therein or as required under Section 718.110(1)(a), Florida Statutes, and shall not be considered an amendment pursuant to Section 718.110(4).

There are located on the common elements of the condominium property swale areas for the purpose of water retention and these areas are to be perpetually maintained by the Association so that they will continue to function as water retention areas.

V.

**ADMINISTRATION OF CONDOMINIUM BY
RIVER FLY-IN CONDOMINIUM ASSOCIATION, INC.**

The operation and management of the condominium shall be administered by RIVER FLY-IN

CONDOMINIUM ASSOCIATION, INC., a corporation not for profit, organized and existing under the laws of the State of Florida, hereinafter referred to as the "Association."

The Association shall make available to unit owners, lenders and the holders and insurers of the first mortgage on any unit, current copies of the condominium documents and other rules governing the condominium, and other books, records and financial statements of the Association.

The Association also shall be required to make available to prospective purchasers current copies of the Declaration, By-Laws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared. "Available" shall at least mean available for inspection upon request, during normal business hours or under other reasonable circumstances.

The Association, upon written request from any of the agencies or corporations which have an interest or prospective interest in the condominium, shall prepare and furnish within a reasonable time a financial statement of the Association for the immediately preceding fiscal year.

The Association shall have all of the powers and duties set forth in the Florida Condominium Act and, where not inconsistent therewith, those powers and duties set forth in this Declaration, Articles of Incorporation and By-Laws of the Association. True and correct copies of the Articles of Incorporation and the By-Laws are attached hereto, made a part hereof, and marked Exhibit B and Exhibit C, respectively.

VI.

MEMBERSHIP AND VOTING RIGHTS

The Developer and all persons hereafter owning a vested present interest in the fee title to any one of the units shown on the exhibits hereto and which interest is evidenced by recordation of a proper instrument in the Public Records of Brevard County, Florida, shall automatically be members and their memberships shall automatically terminate when they no longer own such interest.

There shall be a total of one-hundred twelve (112) votes to be cast by the owners of the condominium units. Such votes shall be apportioned and cast as follows: The owner of each condominium unit (designated as such on the exhibits attached to this Declaration) shall be entitled to cast one (1) vote. Where a condominium unit is owned by a corporation, partnership or other legal entity or by more than one (1) person, all the owners thereof shall be collectively entitled to the vote assigned to such unit and such owners shall, in writing, designate an individual who shall be entitled to cast the vote on behalf of the owners of such condominium unit of which he/she is a part until such authorization shall have been changed in writing. The term, "owner," as used herein, shall be deemed to include the Developer.

All of the affairs, policies, regulations and property of the Association shall be controlled and governed by the Board of Administration of the Association who are all to be elected annually by the members entitled to vote, as provided in the By-Laws of the Association. Each director shall be the owner of a condominium unit (or a partial owner of a condominium unit where such unit is owned by more than one (1) individual, or if a unit is owned by a corporation, including the Developer, any duly elected officer or officers of an owner corporation may be elected a director or directors).

The owners shall place members on the Board or Administration in accordance with the schedule as follows: When unit owners other than the Developer own fifteen percent (15%) or more of the units in a condominium that will be operated ultimately by an Association, the unit owners other than a Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Administration of the Association. Unit owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Administration of the Association: (a) Three years after fifty (50%) percent of the units that will be operated ultimately by the Association have been conveyed to purchasers; (b) Three (3) months after ninety (90%) percent of the units that will be operated ultimately by the Association have been conveyed to purchasers; (c) When all the units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (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 Developer in the ordinary course of business; or (e) When the developer files a petition seeking protection in bankruptcy; (f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the

receiver that transfer of control would be detrimental to the association or its members; or (g) Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration. Following the time the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned units in the same manner as any other unit owner.

The Developer reserves the right to transfer control of the Association to unit owners other than the developer at any time, in its sole discretion. The unit owners shall take control of the Association if the Developer so elects prior to the time stated in the above schedule.

VII.

COMMON EXPENSES, ASSESSMENTS, COLLECTION LIEN AND ENFORCEMENT, LIMITATIONS

The Board of Administration of the Association shall propose annual budgets in advance for each fiscal year which shall contain estimates of the cost of performing the functions of the Association, including but not limited to the common expense budget, which shall include, but not be limited to, the estimated amounts necessary for maintenance, and operation of common elements and limited common elements, landscaping, street and walkways, office expense, utility services, replacement and operating reserve, casualty insurance, liability insurance, administration and salaries. Failure of the board to include any item in the annual budget shall not preclude the board from levying an additional assessment in any calendar year for which the budget has been projected. Each unit owner shall be liable for the payment to the Association of one-one-hundred twelfth (1/112) of the common expenses as determined in said budget.

Common expenses include the expenses of the operation, maintenance, repair, replacement or protection of the common elements and Association property, costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as common expense by the Condominium Act, the Declaration, the documents creating the Association or the By-Laws. Common expenses also include reasonable transportation services, insurance for the directors and officers, road maintenance and operation expenses, in-house communications and security services which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the condominium. However, such common expenses must either have been services or items provided on or after the date control of the Association is transferred from Developer to unit owners or must be services or items provided for in the condominium documents or By-Laws. Unless the manner of payment or allocation of expenses is otherwise addressed in the Declaration of Condominium, the expenses of any items or services required by any federal, state or local governmental entity to be installed, maintained or supplied to the condominium property by the Association including, but not limited to, fire safety equipment or water and sewer service where a master meter serves the condominium shall be common expenses whether or not such items or services are specifically identified as common expenses in the Declaration of Condominium, Articles of Incorporation or By-Laws of the Association.

The cost of communication services as defined in Chapter 202, Florida Statutes, information services or internet services obtained pursuant to a bulk contract is a common expense.

Common expenses include the 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 authorized and approved pursuant to Section 624.462, Florida Statutes.

River Fly-In Condominium Association provides central air conditioning to the units, and electric meters for this service is billed by FPL to the association and not unit owners. Electrical

expense associated with this service is to be prorated based upon the square footage of each unit, and added to the monthly common association fee to each unit owner. While at the time of recording of this document, exact expense associated with this service is not certain, a rough estimate, subject to change following determination of exact electrical usage over course of first 12 months period, will be; for Rotax unit type \$64, Lycoming unit type \$83, Continental unit type \$79, and Rolls Royce unit type \$104 per month for each such unit.

If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed-in-lieu of foreclosure thereof, the unpaid share of common expenses or assessments are collectable from all the unit owners in the condominium in which the unit is located.

Except as otherwise provided in the Condominium Act, funds for payment of the common expenses of the condominium shall be collected by assessments against the units in that condominium in the proportions or percentages provided in the Declaration of Condominium. Each unit's share of the common expenses of the condominium and common surplus of the condominium shall be the same as the unit's appurtenant ownership interest in the common elements.

After adoption of the budget and determination of the annual assessment per unit, as provided in the By-Laws, the Association shall assess such sum by promptly notifying all owners by delivering or mailing notice thereof to the voting member representing each unit at such member's most recent address as shown by the books and records of the Association. One-twelfth (1/12) of the annual assessment for the unit as set forth in the Estimated Operating Budget shall be due and payable in advance to the Association on the first (1st) day of each month.

Each initial unit owner other than the Developer shall pay at closing a contribution in an amount at least equal to two monthly assessments for common expenses to the Developer. The present monthly assessment is \$595.00 per month, therefore, the current contribution is \$1190.00. Electrical charge for central air conditioning to be added to this contribution as defined in after-mentioned paragraph. This contribution shall not be credited as advance maintenance payments for the unit.

Special assessments may be made by the Board of Administration from time to time to meet other needs or requirements of the Association in the operation and management of the condominium and to provide for emergencies, repairs or replacements, and infrequently recurring items of maintenance. However, any special assessment in excess of one-thousand dollars (\$1,000.00) which is not connected with an actual operating, managerial or maintenance expense of the condominium, shall not be levied without the prior approval of the members owning a majority of the units in the condominium.

The specific purpose or purposes of any special assessment approved in accordance with the condominium documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit towards future assessments.

The liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

The record owners of each unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, made by the Association and for all costs of collection of delinquent assessments. In the event assessments against a unit are not paid within thirty (30) days after their due date, the Association shall have the right to foreclose its lien for such assessments.

Assessments and installments on assessments which are not paid when due, bear interest at the rate of eighteen (18%) percent per annum from the due date until paid. The Association may, in addition to such interest, charge an administrative fee up to the greater of \$25.00 or five (5%) percent of each installment of the assessment for each delinquent installment for which the payment is late. Any payment received by the Association must be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable

notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is subject to Chapter 687 or Section 718.303(3), Florida Statutes.

The Association is authorized by the By-Laws to approve or disapprove a proposed lease of a unit not participating in the vacation rental management program, and as long as that lease is for a term of seven (7) months or more. Grounds for disapproval may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time approval is sought.

The Association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided herein, the lien is effective from and shall relate back to the recording of the Declaration of Condominium or in the case of a lien on a parcel located in a phase condominium, the last to occur of the recording of the original Declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the Public Records of Brevard County, Florida. Nothing in this Section shall be construed to bestow upon any lien, mortgage or certified judgment of record on April 1, 1992, including the lien for unpaid assessments created herein, a priority which by law the lien, mortgage or judgment did not have before that date.

To be valid a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the Association, the amount due and the due dates. It must be executed and acknowledged by an officer or authorized agent of the Association. The lien is not effective longer than one (1) year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The one (1) year period is automatically 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 parcel owner or any other person claiming any interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney's 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 lien.

By recording a notice in substantially the following form, a unit owner or his or her agent or attorney may require the Association to enforce a recorded claim of lien against his or her condominium parcel:

Notice of Contest of Lien

TO: RIVER FLY-IN CONDOMINIUM ASSOCIATION, INC.
735 Pilot Lane
Merritt Island, Florida 32952

You are notified that the undersigned contests the claim of lien filed by you on _____, 20____, and recorded in Official Records Book ____at Page ____of the Public Records of Brevard County, Florida, and that the time within which you may file suit to enforce your lien is limited to ninety (90) days from the date of service of this notice.

Executed this ____day of _____, 20____.

Signed: _____
Owner or Attorney

After the Notice of Contest of Lien has been recorded, the Clerk of the Circuit Court shall mail a copy of the recorded Notice to the Association by certified mail, return receipt requested at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the Notice service is complete upon mailing. After service, the Association has ninety (90) days in which to file an action to enforce the lien; and if the action is not filed with the ninety (90) day period, the lien is void. However, the ninety (90) day period shall be extended for any length of time that the Association is prevented from filing its action because of an automatic stay resulting from the filing a bankruptcy petition by the unit or by any other person claiming an interest in the parcel.

The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage on real property is foreclosed and may also bring an action to recover a money

judgment for the unpaid assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or any action to recover a money judgment for unpaid assessments.

No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid assessments, 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 attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his last known address; and upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a Notice of Contest of Lien as provided above. The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the Association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

If the unit owner remains in possession of the unit after a foreclosure judgment has been entered, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit. 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 the Receiver shall be paid by the party which does not prevail in the foreclosure action.

The Association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage or convey it.

A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

Within fifteen (15) days after receiving a written request therefore from a unit owner or his or her designee or a unit mortgagee or his or her designee, the Association shall provide a certificate signed by an officer or agent of the Association stating all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel.

Any person other than the owner who relies upon such certificate shall be protected thereby.

A summary proceeding pursuant to Section 51.011, Florida Statutes, may be brought to compel compliance with this Section, and in any such action the prevailing party is entitled to recover reasonable attorney fees.

Notwithstanding any limitation on transfer fees contained in Section 718.112(2)(i), Florida Statutes, the Association or its authorized agent may charge a reasonable fee for the preparation of the certificate. The amount of the fee must be included on the certificate.

The authority to charge a fee for the certificate shall be established by a written resolution adopted by the Board or provided by a written management, bookkeeping or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of the unit but the closing does not occur and no later than thirty (30) days after the closing for which the certificate was sought, the preparer receives a written request accompanying by reasonable documentation that the sale did not occur from the payor that is not the unit owner, the fee shall be refunded to that payor within thirty (30) days after receipt of the request. The refund is the obligation of the unit owner and the Association may collect it from that owner in the same manner as an assessment as provided in this Section.

Any first mortgagee may make use of any unit acquired as may facilitate its sale including, but not limited to, the showing of the property and the display of "For Sale" signs and neither the other unit owners nor the association shall interfere with the sale of such units.

As to priority between the lien of a recorded mortgage and the lien for any assessment, the lien for assessment shall be subordinate and inferior to any recorded mortgage, unless the assessment is

secured by a claim of lien which is recorded prior to the recording date of the mortgage.

Any person purchasing or encumbering a unit shall have the right to rely upon any statement made in writing by an officer of the Association regarding assessments against units which have already been made and which are due and payable to the Association, and the Association and the members shall be bound thereby.

In addition the Association may accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed-in-lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amount paid by the owner.

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 became 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 (1%) percent of the original mortgage debt. The provisions of this paragraph apply only if 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 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 parcel and proceed in the same manner as provided in this Section for the collection of unpaid assessments.

The term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage.

If the unit owner remains in possession of the unit after a foreclosure judgment has been entered, the Court, in its discretion, may require the unit owner to pay a reasonable rental for the unit. 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 rents. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the tenant pay the future monetary obligations related to the condominium unit to the Association, and the tenant must make such payment. The demand is continuing in nature and, upon demand, the tenant must pay the monetary obligations to the Association until the Association releases the tenant or the tenant discontinues tenancy in the unit. The Association must mail written notice to the unit owner of the Association's demand that the tenant make payments to the Association. The Association shall, upon request, provide the tenant with written receipts for payments made. A tenant who acts in good faith in response to a written demand from an Association is immune from any claim from the unit owner.

If a tenant prepaid rent to the unit owner before receiving the demand from the Association and provides written evidence of paying the rent to the Association within fourteen (14) days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the Association to be credited against the monetary obligations of the unit owner to the Association.

The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing at least ten (10) days before the date the rent is due. The liability of

the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the unit owner in the amount of monies paid to the Association under this Section.

The Association may issue notices under Section 83.56, Florida Statutes, and may sue for eviction under Section 83.59-83.625, Florida Statutes, as if the Association were a landlord under part II of Chapter 83, Florida Statutes, if the tenant fails to pay a required payment to the Association. However, the Association is not otherwise considered a landlord under Chapter 83, Florida Statutes, and specifically has no duties under Section 83.51, Florida Statutes.

The tenant 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.

VIII.

INSURANCE COVERAGE, USE AND DISTRIBUTION OF PROCEEDS, REPAIR OR RECONSTRUCTION AFTER CASUALTY, CONDEMNATION

A. Type and Scope of Insurance Coverage Required

1. Insurance for Fire and Other Perils

The Association shall obtain, maintain, and pay the premiums upon, as a common expense, a "master" or "blanket" type policy of property insurance covering all of the common elements and limited common elements, (except land, foundation and excavation costs) including fixtures, to the extent they are part of the common elements of the condominium, building service equipment and supplies, and other common personal property belonging to the Association. All references herein to a "master" or "blanket" type policy of property insurance shall denote single entity condominium insurance coverage.

The "master" policy shall provide adequate hazard insurance and shall be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The full insurable value shall be determined at least once every 36 months.

An Association or group of Associations may provide adequate hazard insurance through a self-insurance fund that complies with the requirements of Sections 624.460-624.488, Florida Statutes.

The Association may also provide adequate hazard insurance coverage for a group of no fewer than three communities created and operating under the Florida Condominium Act by obtaining and maintaining for such communities insurance coverage sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event. Such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. No policy or program providing such coverage shall be issued or renewed after July 1, 2008, unless it has been reviewed and approved by the Office of Insurance Regulation. The review and approval shall include approval of the policy and related forms pursuant to Sections 627.410 and 627.411, Florida Statutes, approval of the rates pursuant to Section 627.062, Florida Statutes, a determination that the loss model approved by the commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss, and a determination that complete and accurate disclosure of all material provisions is provided to condominium unit owners prior to execution of the agreement by a condominium association.

When determining the adequate amount of hazard insurance coverage, the Association may consider deductibles as determined by Section 718.112(11), Florida Statutes, and amendments thereto.

Prior to transfer of control of the Association from the Developer to unit owners other than the Developer, the Association shall exercise its best efforts to obtain and maintain insurance as described herein. Failure to obtain and maintain adequate hazard insurance during any period of developer control constitutes a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless the members can show

that despite such failure, they have made their best efforts to maintain the required coverage.

Policies may include deductibles as determined by the Board as follows:

- a. The deductibles shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in Brevard County, Florida.
- b. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.
- c. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board. Such meeting shall be open to all unit owners in the manner set forth in Section 718.112(2)(e), Florida Statutes.

Upon transfer of control of the Association by the Developer to unit owners other than the Developer, the Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association property, the common elements, and the condominium property that is required to be insured by the Association as provided herein.

Every hazard insurance policy issued or renewed for the purpose of protecting the Condominium shall provide primary coverage for:

- a. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.
- b. All alterations or additions made to the condominium property or association property pursuant to Section 718.113(2), Florida Statutes.
- c. The coverage shall exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.

Every hazard insurance policy issued or renewed to an individual unit owner must conform to the requirements of Section 627.714, Florida Statutes.

All reconstruction work after a casualty loss shall be undertaken by the Association except as otherwise authorized in this section. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board of administration. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A unit owner shall obtain all required governmental permits and approvals prior to commencing reconstruction.

Unit owners are responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry casualty insurance, and any such reconstruction work undertaken by the Association shall be chargeable to the unit owner and enforceable as an assessment pursuant to Section 718.116, Florida Statutes.

Policies are unacceptable where: (i) under the terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against borrowers, FEDERAL HOME LOAN MORTGAGE CORPORATION, hereinafter referred to as FHLMC, FEDERAL NATIONAL MORTGAGE ASSOCIATION, hereinafter referred to as FNMA, or the designee of FHLMC or FNMA; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

The policies shall also provide for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against unit owners individually; that the insurance is not prejudiced by any act or neglect of individual unit owners which is not in the control of such owners collectively; and that the policy is primary in the event the unit owner has other insurance covering the same loss.

The insurance policy shall afford, as a minimum, protection against the following:

- (a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
- (b) in the event the condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent based on the nature of the property); and
- (c) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement.

2. Liability Insurance

The Association shall maintain comprehensive general liability insurance coverage covering all of the common elements, commercial space owned and leased by the Association, if any, and public ways of the condominium project. The Association does not own or lease any commercial space at the present time. Coverage limits shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common elements, and legal liability arising out of lawsuits related to employment contracts of the Association, if available at a reasonable cost. Such policies shall provide that they may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage on any unit in the condominium which is listed as a scheduled holder of a first mortgage in the insurance policy. The Association shall provide, if required by the holder of first mortgages on individual units, such coverage to include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and use, including but not limited to, host liquor liability, employers liability insurance, contractual and all written contract insurance, and comprehensive automobile liability insurance.

3. Flood Insurance

If the condominium is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association shall obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein insurable property), in an amount deemed appropriate by the Association, as follows:

The lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) one hundred (100%) percent of current "replacement cost" of all buildings and other insurable property within such area.

Such policy shall be in a form which meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator.

Each unit owner shall obtain, maintain and pay their premiums upon a policy of flood insurance coverage covering the Improvements on his/her unit, if applicable.

4. Fidelity Bonds

The Association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the Association, and the president, secretary, and treasurer of the Association. The Association shall bear the cost of any such bonding. If a management agent has the responsibility for handling or administering funds of the Association, the insurance or fidelity bonding of the management agent shall include the management company, its officers, employees and agents, handling or responsible for funds of, or administered on behalf of, the Association. However, the cost of bonding the officers, employees and agents of the management company may be reimbursed to the Association by the management company. Such fidelity bonds shall name the Association as an obligee. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association, insurance trustee and the Federal National Mortgage Association, if applicable. Under no circumstances shall the principal sum of the bonds be less than the amount required by the Florida Condominium Act.

5. Errors and Omissions Insurance

The Association shall obtain and maintain for the benefit of the Officers and Directors of the Association a policy or policies of insurance insuring the Association, its officers and directors against liability resulting from the errors and/or omissions of the officers and/or directors in the amount of no less than \$1,000,000.00. Said policy shall also contain an extended reporting period endorsement (a tail) for a two (2) year period.

6. Insurance Trustees: Power of Attorney

The Association may name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement or any successor to such trustee (each of whom shall be referred to herein as "insurance trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

Each unit owner by acceptance of a deed conveying a unit in the condominium to the unit owner hereby appoints the Association, or any insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

7. Qualifications of Insurance Carriers

The Association shall use generally acceptable insurance carriers. Only those carriers meeting the specific requirements regarding the qualifications of insurance carriers as set forth in the Federal National Mortgage Association Conventional Home Mortgage Selling Contract Supplements and the FHLMC Sellers Guide shall be used.

8. Condemnation and Total or Partial Loss or Destruction

The Association shall represent the unit owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common elements, or part thereof, by the condemning authority. Each unit owner hereby appoints the Association as attorney-in-fact for such purpose.

The Association may appoint a trustee to act on behalf of the unit owners, in carrying out the above functions, in lieu of the Association.

In the event of a taking or acquisition of part or all of the common elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee, to be held in trust for the unit owners.

In the event any loss, damage or destruction to the insured premises is not substantial (as such term "substantial" is hereinafter defined), and such loss, damage or destruction is replaced, repaired or restored with the Association's funds, any repair and restoration on account of physical damage shall restore the improvements to substantially the same condition as existed prior to the casualty.

Substantial loss, damage or destruction as the term is herein used, shall mean any loss, damage or destruction sustained to the insured improvements which would require an expenditure of sums in excess of ten (10%) percent of the amount of coverage under the Association's casualty insurance policy or policies then existing, in order to restore, repair or reconstruct the loss, damage or destruction sustained.

In the event the Association chooses not to appoint an insurance trustee, any casualty insurance proceeds becoming due by reason of substantial loss, damage or destruction sustained to the condominium improvements shall be payable to the Association which proceeds shall be held in a construction fund to provide for the payment for all work, labor and materials to be furnished for the reconstruction, restoration and repair of the condominium improvements. Disbursements from such construction fund shall be by usual and customary construction loan procedures. Any sums remaining in the construction loan fund after the completion of the restoration, reconstruction and repair of the improvements and full payment therefor, shall be paid over to the Association and held for, and/or distributed to the unit owners in proportion to each unit owner's share of common surplus. If the insurance proceeds payable as the result of such casualty are not sufficient to pay the estimated costs of such restoration, repair and reconstruction, which estimate shall be made prior to proceeding with restoration, repair or reconstruction, the Association shall levy a special assessment against the unit owners for the amount of such insufficiency, and shall pay said sum into the aforesaid construction loan fund.

If the damage sustained to the improvements is less than substantial, as heretofore defined, the Board of Administration may determine that it is in the best interests of the Association to pay the insurance proceeds into a construction fund to be administered by an insurance trustee.

Any restoration, repair or reconstruction made necessary through a casualty shall be commenced and completed as expeditiously as reasonably possible, and must substantially be in accordance with the plans and specifications for the construction of the original building. In no event shall any reconstruction or repair change the relative locations and approximate dimensions of the common elements and of any unit, unless an appropriate amendment be made to this Declaration.

The Association may amend the Declaration of Condominium without regard to any requirement for approval by mortgagees of amendment affecting insurance requirements for the purpose of conforming the Declaration of Condominium to the coverage requirements of the Florida Condominium Act.

Any portion of the Condominium property required to be insured by the Association against casualty loss pursuant to this Article VIII which is damaged by casualty shall be reconstructed, repaired, or replaced as necessary by the Association as a common expense. All hazard insurance deductibles, uninsured losses, and other damages in excess of hazard insurance coverage under the hazard insurance policies maintained by the Association are a common expense of the Condominium, except that:

a. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds, if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of any insurer as set forth in this Article VIII.

b. The provisions of the subparagraph immediately above regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure under the

Florida Condominium Act.

c. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and, to the extent the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

d. The Association is not obligated to pay for repair or reconstruction or repairs of casualty losses as a common expense if the casualty losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that casualty was settled or resolved with finality, or denied on the basis that it was untimely filed.

The Association may, upon the approval of a majority of the total voting interests in the Association, opt out of the provisions of subparagraphs a, b, c and d, immediately above, for the allocation of repair or reconstruction expenses and allocate repair or reconstruction expenses in the manner provided in the declaration as originally recorded or as amended. Such vote may be approved by the voting interests of the Association without regard to any mortgagee consent requirements.

The Association, subsequent to voting to opt out of the guidelines for repair or reconstruction expenses as described in subparagraphs a, b, c, and d above must record a notice setting forth the date of the opt-out vote and the page of the Public Records of Brevard County, Florida on which the declaration is recorded. The decision to opt out is effective upon the date of recording of the notice in the public records by the Association. An association that has voted to opt out of subparagraphs a, b, c, and d above may reverse that decision by a majority vote of the total voting interests in the Association and notice thereof shall be recorded in the Public Records of Brevard County, Florida.

The Association is not obligated to pay for any reconstruction or repair expenses due to casualty loss to any improvements installed by a current or former owner of the unit or by the Developer if the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the Developer on all units as part of original construction, whether or not such improvement is located within the unit. This paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for any such improvements.

The Association may amend the Declaration of Condominium without regard to any requirement for approval by mortgagees of amendments affecting insurance requirements for the purpose of conforming the Declaration of Condominium to the coverage requirements of the Florida Condominium Act.

IX.

RESPONSIBILITY FOR MAINTENANCE AND REPAIRS

- A. Each unit owner shall bear the cost and be responsible for the maintenance, repair and replacement, as the case may be, of all personal property within the unit or limited common elements, air conditioning and heating equipment, electrical and plumbing fixtures, kitchen and bathroom fixtures, and all other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his unit and which may now or hereafter be affixed or contained within his unit. Such owner shall further be responsible for maintenance, repair and replacement of any air conditioning equipment servicing his/her unit, although such equipment not be located in the unit, and of any and all wall, ceiling and floor coverings, water heaters, water filters, built-in cabinets and counter tops, window treatments, including curtains, drapes, blinds, hardware and similar window treatment components and replacements thereof, painting, decorating and furnishings and all other accessories which such owner may desire to place or maintain therein. Unit owners are responsible for the maintenance, including cleaning, repair or replacement of windows and screening thereon, screen on doors, fixed and sliding glass doors and hurricane or storm shutters. Air conditioning and heating equipment servicing individual units is a limited common element appurtenant to such units.

- B. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all the common elements, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, sprinkler systems, wiring and other facilities located in the common elements, for the furnishing of utility services to the units, and including artesian wells, pumps, piping, and fixtures serving individual air conditioning units. Painting and cleaning of all exterior portions of the building, including all exterior doors opening into walkways, shall also be the Association's responsibility. Pavers, sidewalks and parking areas are limited common elements as shown in Exhibit "A" attached hereto and made a part hereof but maintenance, repair and replacement thereof shall be the Association's responsibility. Sliding glass doors, screen doors, windows and screens on windows, shall not be the Association's responsibility, but shall be the responsibility of the unit owner. Should any damage be caused to any unit by reason of any work which may be done by the Association in the maintenance, repair or replacement of the common elements, the Association shall bear the expense of repairing such damage. The maintenance, repair and replacement of hurricane shutters is not the responsibility of the Association.
- C. Where loss, damage or destruction is sustained by casualty to any part of the building, whether interior or exterior, whether inside a unit or not, whether a fixture or equipment attached to the common elements or attached to and completely located inside a unit, and such loss, damage or destruction is insured for such casualty under the terms of the Association's casualty insurance policy or policies, but the insurance proceeds payable on account of such loss, damage or destruction are insufficient for restoration, repair or reconstruction, all the unit owners shall be specially assessed to make up the deficiency, irrespective of a determination as to whether the loss, damage or destruction is to a part of the building, or to fixtures or equipment which it is a unit owner's responsibility to maintain.
- No unit owner shall do anything within his/her unit or on the common elements which would adversely affect the safety or soundness or the common elements or any portion of the Association property or Condominium property which is to be maintained by the Association.
- D. In the event owners of a unit make any structural addition or alteration without the required written consent, the Association or an owner with an interest in any unit shall have the right to proceed in a court of equity to seek compliance with the provisions hereof. The Association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or as necessary to prevent damage to the common elements or to a unit or units.
- Maintenance of the common elements is the responsibility of the Association. All limited common elements shall be maintained by the Association including air conditioning and heating equipment servicing individual units.
- E. The Board of Administration of the Association may enter into a contract with any firm, person or corporation for the maintenance and repair of the common elements and may join with other condominium corporations in contracting with the same firm, person or corporation for maintenance and repair.
- F. The Association shall determine the exterior color scheme of all buildings and shall be responsible for the maintenance thereof, and no owner shall paint an exterior wall, door, window, patio or any exterior surface, etc., at any time without the written consent of the Association.

X.

USE RESTRICTIONS

- A. Each unit is hereby restricted to residential use by the owner or owners thereof, their immediate families, lessees, guests and invitees. All units are restricted to no more than six (6) occupants, without the Association's consent. There are no restrictions upon children.
- B. The unit may be leased provided the occupancy is only by one (1) lessee and members of his immediate family and guests, and terms are minimum seven (7) months with prior approval of the homeowners association. No individual rooms in a unit may be rented. No lease of a unit shall release or discharge the owner thereof of compliance with this Section X or any of his other duties as a unit owner. Subleasing of units is prohibited. All

leases shall be in writing and shall be subject to this Declaration, the Articles of Incorporation, By-Laws, and the Rules and Regulations of the Association and shall be approved by the Association.

Paragraph B's short-term rental prohibition shall not apply to any owner who contracted for their unit before June 1, 2023, even if the owner acquires title after the effective date of these documents, unless such owner gives written consent to adhere to the language of Paragraph B. Otherwise, the pre-June 1, 2023 buyer may rent their unit for less than seven months as long as term of the lease is greater than three (3) days, and the language of the lease is approved by the association.

An amendment prohibiting unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

- C. No nuisances shall be allowed to be committed or maintained upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate, nor any fire hazard allowed to exist. No unit owner shall permit any use of his unit or use of the common elements that will increase the cost of insurance upon the condominium property.
- D. No immoral, improper, or offensive use shall be made of the condominium property nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the condominium shall be observed.
- E. Reasonable rules and regulations concerning the use of the condominium property may be made and amended from time to time by the Board of Administration of the Association as provided by its Articles of Incorporation and By-Laws.
- F. The Association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the common elements or to a unit or units.
- G. No sign, advertisement or notice of any type shall be shown on the common elements or any unit. This restrictions on signs, advertising and notices shall not apply to the developer or any institutional lender. No exterior antennas, aerials or satellite dishes shall be erected.
- H. An owner shall not place or cause to be placed in the walkways or in or on any common elements and facilities, stairs, or stairwells, any furniture, packages or objects of any kind. Such areas shall be used for no other reason than for normal transit through them. The Association may permit a unit owner to place small potted plants near the front doors of the unit so long as the potted plants do not protrude into or block access to the common walkways. The Association reserves the right to restrict or prohibit the placement of potted plants on the common elements.
- I. 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, regardless of any declaration rules or requirements dealing with flags.
- J. It is prohibited to hang dust rags, etc., from windows, patios or balconies or to clean rugs, etc., on the exterior of the buildings.
- K. No auto parking space may be used for any purpose other than parking automobiles, sport utility vehicles and non-commercial pick-up trucks which are in operating condition with a current license tag. Other vehicles such as commercial trucks, trucks other than pickup trucks, motorcycles, recreational vehicles, motorhomes, trailers, and boats, shall be parked in parking areas, open or enclosed, designated by the Board of Administration, if any. In the event boats, motorhomes or recreational vehicles are permitted to be parked in designated areas, overnight

camping in these vehicles is prohibited. No parking space shall be used by any other person other than an occupant of the condominium who is an actual resident or by a guest or visitor and by such guest or visitor only when such guest or visitor is, in fact, visiting and upon the premises. **Parking in under-the-building garages is strictly limited to the owners (or their assignees) of the space or spaces, and vehicles parked in such space or spaces must display the homeowner association issued sticker. Vehicles not displaying the sticker and not registered for garage parking with the association office will be towed away at owner's expense without warning.** Open parking spots with designated parking signs are also restricted to the unit owners and their assignees.

- L. Until the Developer has closed all the sales of the units in the condominium, neither the other unit owners nor the Association shall interfere with the sale of such units. The Developer may make such use of the unsold units and common elements as may facilitate its sales, including but not limited to maintenance of a sales office, model units, the showing of the property, and the display of signs. The Developer may not be restricted in the use of the other common elements or areas, including but not limited to, lobbies, exercise rooms, or the sales office in the recreation building by anyone until the sale of all units is completed by the Developer. The Developer's rights under this section shall terminate when the Developer no longer holds a unit for sale in the ordinary course of business.
- M. Two (2) household pets, which shall mean cats or dogs unless otherwise approved by the Board of Administration, shall be allowed to be kept in the owner's unit. All pets must be kept on a leash when outside the owner's unit. Each pet owner shall be responsible for cleaning up after his pets in the common elements. Pets shall not create a nuisance. Notwithstanding any provision to the contrary contained herein, certified guide dogs, service animals and signal dogs (as defined herein below) (hereinafter collectively referred to as "specially trained animals ") shall be permitted at the Condominium subject to the following restrictions:
- i such specially trained animals shall not be kept, bred, or used at the Condominium for any commercial purpose; and
 - ii such specially trained animals shall be on a leash while on the common elements.

Any pet as described above and any specially trained animal causing a nuisance or unreasonable disturbance to any other occupant of the Condominium shall be promptly and permanently removed from the Condominium upon notice given by the Board or Managing Agent; provided, however, that any such notice given with respect to a specially trained animal shall provide that before such animal must be removed, its owner shall have a reasonable time to acquire a replacement specially trained animal unless the Board determines that such animal poses an imminent serious threat of physical harm to other occupants at the Condominium. The Board may from time to time promulgate such rules and regulations regarding the continued keeping of such pets and specially trained animals as the circumstances may then require or the Board may deem advisable.

The term "guide dog" shall mean "any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person".

The term "service animal" shall mean "any animal that is trained to provide those life activities limited by the disability of the person".

The term "signal dog" shall mean "any dog that is trained to alert a deaf person to intruders or sounds".

- N. No unit owner shall allow anything whatsoever to fall from the window, patio, balcony, terrace, porch, or doors of the premises, nor shall unit owners sweep or throw from the premises any dirt or other substance into any of the corridors, halls, patios, balconies, terraces or porches, elevators, ventilators, or elsewhere in the building or upon the grounds. A unit owner shall not place, store or use any item, upon any patio, balcony, terrace or porch without the approval of the Association, other than standard patio chairs, tables and furnishings. Gas or electric grills and potted plants are permitted on balconies but charcoal grills are prohibited.

- O. When a unit is leased, a tenant shall have all use rights in the Association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest. Nothing in this subsection shall interfere with the access rights of the unit owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a unit owner and a tenant of Association property and common elements otherwise readily available for use generally by unit owners.

XI.

LIMITATIONS UPON RIGHT OF OWNER TO ALTER OR MODIFY UNIT

No owner of a unit shall make any structural modifications or alterations of the unit. Further, no owner shall cause any improvements or changes to be made on or to the exterior of the unit buildings, including painting or other decoration, the installation of awnings, shutters, electrical wiring, air conditioning units and other things which might protrude through or be attached to the walls of the Improvements on the unit; further, no owner shall in any manner change the appearance of any portion of the Improvements on the unit. The Association has adopted hurricane shutter specifications and will permit the installation of hurricane shutters for any balcony and storm window panels for the windows provided the color of the shutters and storm window panels is white and the installation of shutters and storm window panels complies with applicable building codes and provided that prior to installation or replacement of the hurricane shutters and storm window panels the Association has approved the installation. If the Board fails to act within the thirty day period, the plans and specifications shall be deemed approved. The installation, replacement, and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed a material alteration to the common elements within the meaning of the Condominium Act. 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 any unit owner may display in a respectful way portable, removable official flags, not larger than 4 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations.

XII.

ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY ASSOCIATION

Whenever in the judgment of the Board of Administration the condominium property shall require additions, alterations or improvements (in the excess of the usual items of maintenance), and the making of such additions, alterations or improvements shall have been approved by a majority of the unit owners, the Board of Administration shall proceed with such additions, alterations or improvements and shall specially assess all unit owners for the cost thereof as a common expense.

The Association may not refuse a request of a unit owner for a reasonable accommodation for the attachment to the mantel or frame of the door of the unit owner a religious object not to exceed three (3) inches wide, six (6) inches high and one point five (1.5) inches deep.

XIII.

AMENDMENT OF DECLARATION

These restrictions, reservations, covenants, conditions and easements may be modified or amended by recording such modifications in the Public Records of Brevard County, Florida, after approval by the owners of a majority of the units whose votes were cast in person or by proxy at the meeting duly held in accordance with the By-Laws and Articles of Incorporation of the Association. No amendment to this Declaration shall be adopted which would operate to materially affect the validity or priority of any mortgage held by an institutional first mortgagee or which would alter, amend or modify, in any manner whatsoever, the rights, powers, interests or privileges granted in favor of any institutional first mortgagee or in favor of the Developer without the consent of all such mortgagees or the Developer, as the case may be, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation which consent may not be

unreasonably withheld. There shall be no amendment adopted altering the share of ownership in the common elements or surplus, or altering the share of common expenses, except by the unanimous vote of all members in the Association and by their respective institutional first mortgagees.

Notwithstanding anything to the contrary contained in this Declaration, the Developer expressly reserves the right to amend the Declaration so as to correct any legal description contained herein, which legal description or descriptions may have been incorrect by reason of a scrivener's or surveyor's error. The Developer may amend this Declaration as aforescribed by filing an amended legal description (or descriptions) as an amendment to the Declaration among the Public Records of Brevard County, Florida, which amendment (or amendments) shall expressly describe that legal description which is being corrected (by reference to the exhibit containing said legal description or otherwise), in addition to the corrected legal description. Such amendments need be executed and acknowledged only by the Developer and need not be approved by the Association, unit owners, lienors or mortgagees of units of the condominium whether or not elsewhere required for amendments. As part and parcel of any such amendment as provided for in this subparagraph, however, there shall be attached thereto an affidavit of the individual or individuals responsible for the original incorrect legal description, whether he be scrivener or surveyor, which affidavit shall set forth (1) that said individual made an error in the legal description, (2) that the error is corrected by the description contained in the amendment, and (3) that it was the intent at the time of the incorrect original legal description to make that description such as is contained in the new amendment. In the event the party responsible for the original incorrect legal description has died, or is not available, then in that event, any other party having personal knowledge of the incorrect legal description by reason of the scrivener's or surveyor's error may execute the required affidavit for the amendment provided herein. Any amendment subject to Section 718.110(4), Florida Statutes, shall be approved by a majority of the voting interests of the condominium.

Pursuant to Section 718.110(2), Florida Statutes, the Developer may make amendments to this Declaration without consent of the unit owners which shall be limited to matters other than those under Sections 718.110(4) and (8), Florida Statutes.

The Association may amend the Declaration of Condominium without regard to any requirement for approval by mortgagees of amendments affecting insurance requirements for the purpose of conforming the Declaration of Condominium to the coverage requirements of the Florida Condominium Act.

In the event it shall appear that there is an error or omission in this Declaration or exhibits thereto, then and in that event the Association may correct such error and/or omission by an amendment to this Declaration in the manner hereinafter described to effectuate an amendment for the purpose of curing defects, errors or omissions. Such an amendment shall not require a vote of approval as provided above but shall require a vote in the following manner:

(a) Notice of the subject matter of a proposed amendment to cure a defect, error or omission shall be included in the notice of any meeting at which such proposed amendment is to be considered.

(b) A resolution for the adoption of such a proposed amendment may be proposed by either the Board of Administration of the Association or by the members of the Association. Unit owners may not vote by general proxy, but may vote limited proxies substantially conforming to a limited proxy form, adopted by the Division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes on the matter listed in Section 718.112(2)(b)2, Florida Statutes. Except as elsewhere provided, such approvals must be either by:

(i) Not less than thirty-three and one-third (33 1/3%) percent of the Board of Directors and by not less than ten (10%) percent of the votes of the entire membership of the condominium; or

(ii) Not less than twenty-five (25%) percent of the votes of the entire membership of the Association; or

(iii) In the alternative, an amendment may be made by an agreement signed and acknowledged by eighty (80%) percent of the unit owners in the manner required for the execution of a deed, and such amendment shall be effective when

recorded in the Public Records of Brevard County, Florida.

(c) The foregoing provisions relative to amendments for defects, errors or omissions are in accordance with and pursuant to Sections 718.110(5) and (10), Florida Statutes.

(d) That the amendment made pursuant to this paragraph need only be executed and acknowledged by the Developer or the Association and by no other parties whatsoever.

Notwithstanding anything to the contrary contained in this Declaration, the Developer reserves the right to change the interior designs and arrangement of all units and to alter the boundaries between units, as long as the Developer owns the units so altered; however, no such change shall increase the number of units nor alter the boundaries of the common elements, except the party wall between any units, without amendment of this Declaration in the manner hereinbefore set forth. If the Developer shall make any changes in units, as provided in this paragraph, such changes shall be reflected by an amendment to this Declaration with a survey attached reflecting such authorized alteration of units, and said amendment need only be executed and acknowledged by the Developer, any holders of institutional mortgages encumbering the altered units and if the amendment is subject to Section 718.110(4), Florida Statutes, it shall be approved by a majority of the voting interests of the condominium. The survey shall be certified in the manner required by the Condominium Act. If more than one (1) unit is concerned, the Developer shall not apportion between the units the shares in the common elements, common expenses and common surplus of the units concerned and such shares of common elements, common expenses and common surplus shall remain unchanged in the amendment of this Declaration unless all unit owners approve the amendment changing the shares.

No provision of the Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the 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." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

Invalidation of any one (1) or more of these restrictions, reservations, covenants, conditions and easements, or any provision contained in this Declaration, or in a conveyance of unit by the Developer, by judgment, court order, or law, shall in no way affect any of the other provisions which shall remain in full force and effect.

In the event that any court should hereafter determine that any provision, as originally drafted herein, violates the rule against perpetuities or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose, the measuring life shall be that of the youngest incorporator of the Association.

These restrictions, reservations, covenants, conditions and easements shall be binding upon and inure to the benefit of all property owners and their grantees, heirs, personal representatives, successors and assigns, and all parties claiming by, through or under any member.

XIV.

TERMINATION OF CONDOMINIUM

(1) **LEGISLATIVE FINDINGS.**—The Legislature finds that:

(a) Condominiums are created as authorized by statute and are subject to covenants that encumber the land and restrict the use of real property.

(b) In some circumstances, the continued enforcement of those covenants may create economic waste and areas of disrepair which threaten the safety and welfare of the public or cause obsolescence

of the property for its intended use and thereby lower property tax values, and it is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination.

(c) It is contrary to the public policy of this state to require the continued operation of a condominium when to do so constitutes economic waste or when the ability to do so is made impossible by law or regulation.

(d) It is in the best interest of the state to provide for termination of the covenants of a declaration of condominium in certain circumstances in order to:

1. Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.
2. Avoid transferring the expense of maintaining infrastructure serving the condominium property, including, but not limited to, stormwater systems and conservation areas, to the general tax bases of the state and local governments.
3. Prevent covenants from impairing the continued productive use of the property.
4. Protect state residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.
5. Provide fair treatment and just compensation for individuals and preserve property values and the local property tax base.
6. Preserve the state's long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium.

(2) TERMINATION BECAUSE OF ECONOMIC WASTE OR IMPOSSIBILITY.—

(a) Notwithstanding any provision in the declaration, the condominium form of ownership of a property may be terminated by a plan of termination approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination if:

1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or
2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.

(b) Notwithstanding paragraph (a), a condominium in which 75 percent or more of the units are timeshare units may be terminated only pursuant to a plan of termination approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.

(c) Notwithstanding paragraph (a), a condominium that includes units and timeshare estates where the improvements have been totally destroyed or demolished may be terminated pursuant to a plan of termination proposed by a unit owner upon the filing of a petition in court seeking equitable relief. Within 10 days after the filing of a petition as provided in this paragraph and in lieu of the requirements of paragraph (15)(a), the petitioner shall record the proposed plan of termination and mail a copy of the proposed plan and a copy of the petition to:

1. If the association has not been dissolved as a matter of law, each member of the board of directors of the association identified in the most recent annual report filed with the Department of State and the registered agent of the association;
2. The managing entity as defined in s. 721.05(22);
3. Each unit owner and each timeshare estate owner at the address reflected in the official records of the association, or, if the association records cannot be obtained by the petitioner, each unit owner and each timeshare estate owner at the address listed in the office of the tax collector for tax notices; and
4. Each holder of a recorded mortgage lien affecting a unit or timeshare estate at the address appearing on the recorded mortgage or any recorded assignment thereof.

The association, if it has not been dissolved as a matter of law, acting as class representative, or the managing entity as defined in s. 721.05(22), any unit owner, any timeshare estate owner, or any holder of a recorded mortgage lien affecting a unit or timeshare estate may intervene in the proceedings to contest the proposed plan of termination brought pursuant to this paragraph. The provisions of subsection (9), to the extent inconsistent with this paragraph, and subsection (16) are not applicable to a party contesting a plan of termination under this paragraph. If no party intervenes to contest the proposed plan within 45 days after the filing of the petition, the petitioner may move the court to enter a final judgment to authorize implementation of the plan of termination. If a party timely intervenes to contest the proposed plan, the plan may not be implemented until a final

judgment has been entered by the court finding that the proposed plan of termination is fair and reasonable and authorizing implementation of the plan.

(3) **OPTIONAL TERMINATION.**—The condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination meeting the requirements of this section and approved by the division. Before a residential association submits a plan to the division, the plan must be approved by at least 80 percent of the total voting interests of the condominium. However, if 5 percent or more of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections, the plan of termination may not proceed.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 5 percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 24 months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 5 years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term “bulk owner” means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner’s former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner’s former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner’s former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the termination trustee. For a person whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association as of the date the plan of termination is recorded, the fair market value shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term “fair market value” means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit’s share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit’s share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have

satisfied the first mortgage in full.

5. Before a plan of termination is presented to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 25 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 10 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

d. The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(e) The division shall examine the plan of termination to determine its procedural sufficiency and, within 45 days after receipt of the initial filing, the division shall notify the association by mail of any procedural deficiencies or that the filing is accepted. If the notice is not given within 45 days after the receipt of the filing, the plan of termination is presumed to be accepted. If the division determines that the conditions required by this section have been met and that the plan complies with the procedural requirements of this section, the division shall authorize the termination, and the termination may proceed pursuant to this section.

(f) Subsection (2) does not apply to optional termination pursuant to this subsection.

(4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination.

(5) MORTGAGE LIENHOLDERS.—Notwithstanding any provision to the contrary in the declaration or this chapter, approval of a plan of termination by the holder of a recorded mortgage lien affecting a condominium parcel in which fewer than 75 percent of the units are timeshare units is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien affecting the condominium parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to the plan of termination may contest the plan as provided in subsection (16). At the time of sale, the lien shall be transferred to the proportionate share of the proceeds assigned to the condominium parcel in the plan of termination or as subsequently modified by the court.

(6) POWERS IN CONNECTION WITH TERMINATION.—The approval of the plan of termination does not terminate the association. It shall continue in existence following approval of the plan of termination with all powers and duties it had before approval of the plan. Notwithstanding any provision to the contrary in the declaration or bylaws, after approval of the plan the board shall:

(a) Employ directors, agents, attorneys, and other professionals to liquidate or conclude its affairs.

(b) Conduct the affairs of the association as necessary for the liquidation or termination.

(c) Carry out contracts and collect, pay, and settle debts and claims for and against the association.

(d) Defend suits brought against the association.

(e) Sue in the name of the association for all sums due or owed to the association or to recover any of its property.

(f) Perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other condominium property in compliance with applicable codes.

(g) Sell at public or private sale or exchange, convey, or otherwise dispose of assets of the association for an amount deemed to be in the best interests of the association, and execute bills of sale and deeds of conveyance in the name of the association.

(h) Collect and receive rents, profits, accounts receivable, income, maintenance fees, special assessments, or insurance proceeds for the association.

(i) Contract and do anything in the name of the association which is proper or convenient to terminate the affairs of the association.

(7) NATURAL DISASTERS.—

(a) If, after a natural disaster, the identity of the directors or their right to hold office is in doubt, if they are deceased or unable to act, if they fail or refuse to act, or if they cannot be located, any interested person may petition the circuit court to determine the identity of the directors or, if found to be in the best interests of the unit owners, to appoint a receiver to conclude the affairs of the

association after a hearing following notice to such persons as the court directs. Lienholders shall be given notice of the petition and have the right to propose persons for the consideration by the court as receiver. If a receiver is appointed, the court shall direct the receiver to provide to all unit owners written notice of his or her appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. 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.

(b) The receiver shall have all powers given to the board pursuant to the declaration, bylaws, and subsection (6), and any other powers that are necessary to conclude the affairs of the association and are set forth in the order of appointment. The appointment of the receiver is subject to the bonding requirements of such order. The order shall also provide for the payment of a reasonable fee to the receiver from the sources identified in the order, which may include rents, profits, incomes, maintenance fees, or special assessments collected from the condominium property.

(8) REPORTS AND REPLACEMENT OF RECEIVER.—

(a) The association, receiver, or termination trustee shall prepare reports each quarter following the approval of the plan of termination setting forth the status and progress of the termination, costs and fees incurred, the date the termination is expected to be completed, and the current financial condition of the association, receivership, or trusteeship and provide copies of the report by regular mail to the unit owners and lienors at the mailing address provided to the association by the unit owners and the lienors.

(b) The unit owners of an association in termination may recall or remove members of the board of administration with or without cause at any time as provided in s. 718.112(2)(j).

(c) The lienors of an association in termination representing at least 50 percent of the outstanding amount of liens may petition the court for the appointment of a termination trustee, which shall be granted upon good cause shown.

(9) PLAN OF TERMINATION.—The plan of termination must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. A copy of the proposed plan of termination shall be given to all unit owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. A unit owner may document assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan. If the plan of termination fails to receive the required approval, the plan shall not be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 18 months after the date that such failed plan of termination was first given to all unit owners in the manner as provided in this subsection.

(a) If the plan of termination is voted on at a meeting of the unit owners called in accordance with this subsection, any unit owner desiring to reject the plan must do so by either voting to reject the plan in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

(b) If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, any unit owner desiring to object to the plan must deliver a written objection to the association within 20 days after the date that the association notifies the nonconsenting owners, in the manner provided in paragraph (15)(a), that the plan of termination has been approved by written action in lieu of a unit owner meeting.

(10) PLAN OF TERMINATION; REQUIRED PROVISIONS.—The plan of termination must specify:

(a) The name, address, and powers of the termination trustee.

(b) A date after which the plan of termination is void if it has not been recorded.

(c) The interests of the respective unit owners in the association property, common surplus, and other assets of the association, which shall be the same as the respective interests of the unit owners in the common elements immediately before the termination, unless otherwise provided in the declaration.

(d) The interests of the respective unit owners in any proceeds from the sale of the condominium property. The plan of termination may apportion those proceeds pursuant to any method prescribed in subsection (12). If, pursuant to the plan of termination, condominium property or real property owned by the association is to be sold following termination, the plan must provide for the sale and may establish any minimum sale terms.

(e) Any interests of the respective unit owners in insurance proceeds or condemnation proceeds that are not used for repair or reconstruction at the time of termination. Unless the declaration expressly addresses the distribution of insurance proceeds or condemnation proceeds, the plan of termination

may apportion those proceeds pursuant to any method prescribed in subsection (12).

(11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL TERMINATION; WITHDRAWAL; ERRORS.—

(a) Unless the plan of termination expressly authorizes a unit owner or other person to retain the exclusive right to possess that portion of the real estate which formerly constituted the unit after termination or to use the common elements of the condominium after termination, all such rights in the unit and common elements automatically terminate on the effective date of termination. Unless the plan expressly provides otherwise, all leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination. If the plan expressly authorizes a unit owner or other person to retain exclusive right of possession for that portion of the real estate that formerly constituted the unit or to use the common elements of the condominium after termination, the plan must specify the terms and conditions of possession. In a partial termination, the plan of termination as specified in subsection (10) must also identify the units that survive the partial termination and provide that such units remain in the condominium form of ownership pursuant to an amendment to the declaration of condominium or an amended and restated declaration. In a partial termination, title to the surviving units and common elements that remain part of the condominium property specified in the plan of termination remain vested in the ownership shown in the public records and do not vest in the termination trustee.

(b) In a conditional termination, the plan must specify the conditions for termination. A conditional plan does not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests, have been recorded. In a partial termination, the plan does not vest title to the surviving units or common elements that remain part of the condominium property in the termination trustee.

(c) Unless otherwise provided in the plan of termination, at any time before the sale of the condominium property, a plan may be withdrawn or modified by the affirmative vote or written agreement of at least the same percentage of voting interests in the condominium as that which was required for the initial approval of the plan.

(d) Upon the discovery of a scrivener's error in the plan of termination, the termination trustee may record an amended plan or an amendment to the plan for the purpose of correcting the error, and the amended plan or amendment to the plan must be executed by the termination trustee in the same manner as required for the execution of a deed.

(12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM PROPERTY.—

(a) Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan of termination may require separate valuations for the common elements. However, in the absence of such provision, it is presumed that the common elements have no independent value but rather that their value is incorporated into the valuation of the units. In a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined, and the plan of termination must specify the allocation of the proceeds of sale for the units and common elements being terminated.

(b) The portion of proceeds allocated to the units shall be apportioned among the individual units. The apportionment is deemed fair and reasonable if it is determined by any of the following methods:

1. The respective values of the units based on the fair market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee;
2. The respective values of the units based on the most recent market value of the units before the termination, as provided in the county property appraiser's records; or
3. The respective interests of the units in the common elements specified in the declaration immediately before the termination.

(c) The methods of apportionment in paragraph (b) do not prohibit any other method of apportioning the proceeds of sale allocated to the units or any other method of valuing the units agreed upon in the plan of termination. Any portion of the proceeds separately allocated to the common elements shall be apportioned among the units based upon their respective interests in the common elements as provided in the declaration.

(d) Liens that encumber a unit shall, unless otherwise provided in the plan of termination, be transferred to the proceeds of sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. In a partial termination, liens that encumber a unit being terminated must be transferred to the proceeds of sale of that portion of the condominium property being terminated which are attributable to such unit. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property. The holder of a lien that encumbers a unit at the time of recording a plan must, within 30 days after the written

request from the termination trustee, deliver a statement to the termination trustee confirming the outstanding amount of any obligations of the unit owner secured by the lien.

(e) The termination trustee may setoff against, and reduce the share of, the termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

1. All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and owing to the association associated with the unit, its owner, or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

2. All costs of clearing title to the owner's unit, including, but not limited to, locating lienors, obtaining statements from such lienors confirming the outstanding amount of any obligations of the unit owner, and paying all mortgages and other liens, judgments, and encumbrances and filing suit to quiet title or remove title defects.

3. All costs of removing the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons from the unit in the event such persons fail to vacate a unit as required by the plan.

4. All costs arising from, or related to, any breach of the plan by the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

5. All costs arising out of, or related to, the removal and storage of all personal property remaining in a unit, other than personal property owned by the association, so that the unit may be delivered vacant and clear of the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons as required by the plan.

6. All costs arising out of, or related to, the appointment and activities of a receiver or attorney ad litem acting for the owner in the event that the owner is unable to be located.

(13) **TERMINATION TRUSTEE.**—The association shall serve as termination trustee unless another person is appointed in the plan of termination. If the association is unable, unwilling, or fails to act as trustee, any unit owner may petition the court to appoint a trustee. Upon the date of the recording or at a later date specified in the plan, title to the condominium property vests in the trustee. Unless prohibited by the plan, the termination trustee shall be vested with the powers given to the board pursuant to the declaration, bylaws, and subsection (6). If the association is not the termination trustee, the trustee's powers shall be coextensive with those of the association to the extent not prohibited in the plan of termination or the order of appointment. If the association is not the termination trustee, the association shall transfer any association property to the trustee. If the association is dissolved, the trustee shall also have such other powers necessary to conclude the affairs of the association.

(14) **TITLE VESTED IN TERMINATION TRUSTEE.**—If termination is pursuant to a plan of termination under subsection (2) or subsection (3), title to the condominium property being terminated vests in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination as set forth in the plan. The termination trustee may deal with the condominium property being terminated or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee, on behalf of the unit owners, may contract for the sale of real property being terminated, but the contract is not binding on the unit owners until the plan is approved pursuant to subsection (2) or subsection (3).

(15) **NOTICE.**—

(a) Within 30 days after a plan of termination has been recorded, the termination trustee shall deliver by certified mail, return receipt requested, notice to all unit owners, lienors of the condominium property, and lienors of all units at their last known addresses that a plan of termination has been recorded. The notice must include the book and page number of the public records in which the plan was recorded, notice that a copy of the plan shall be furnished upon written request, and notice that the unit owner or lienor has the right to contest the fairness of the plan.

(b) The trustee, within 90 days after the effective date of the plan, shall provide to the division a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and page number of the public records in which the plan is recorded.

(16) **RIGHT TO CONTEST.**—A unit owner or lienor may contest a plan of termination by initiating a petition for mandatory nonbinding arbitration pursuant to s. 718.1255 within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the liens of the first mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not

obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). The arbitrator shall determine the rights and interests of the parties in the apportionment of the sale proceeds. If the arbitrator determines that the apportionment of sales proceeds is not fair and reasonable, the arbitrator may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, the arbitrator may void the plan or grant other relief it deems just and proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan. In any such action, the prevailing party shall recover reasonable attorney fees and costs.

(17) DISTRIBUTION.—

(a) Following termination of the condominium, the condominium property, association property, common surplus, and other assets of the association shall be held by the termination trustee pursuant to the plan of termination, as trustee for unit owners and holders of liens on the units, in their order of priority unless otherwise set forth in the plan of termination.

(b) Not less than 30 days before the first distribution, the termination trustee shall deliver by certified mail, return receipt requested, a notice of the estimated distribution to all unit owners, lienors of the condominium property, and lienors of each unit at their last known addresses stating a good faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount. The deadline must be at least 15 days after the date the notice was mailed. The notice may be sent with or after the notice required by subsection (15). If a unit owner or lienor files a timely objection with the termination trustee, the trustee need not distribute the funds and property allocated to the respective unit owner or lienor until the trustee has had a reasonable time to determine the validity of the adverse claim. In the alternative, the trustee may interplead the unit owner, lienor, and any other person claiming an interest in the unit and deposit the funds allocated to the unit in the court registry, at which time the condominium property, association property, common surplus, and other assets of the association are free of all claims and liens of the parties to the suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorney's fees and costs.

(c) The proceeds from any sale of condominium property or association property and any remaining condominium property or association property, common surplus, and other assets shall be distributed in the following priority:

1. To pay the reasonable termination trustee's fees and costs and accounting fees and costs.
2. To lienholders of liens recorded prior to the recording of the declaration.
3. To purchase-money lienholders on units to the extent necessary to satisfy their liens; however, the distribution may not exceed a unit owner's share of the proceeds.
4. To lienholders of liens of the association which have been consented to under s. 718.121(1).
5. To creditors of the association, as their interests appear.
6. To unit owners, the proceeds of any sale of condominium property subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or lienor as provided in paragraph (b).
7. To unit owners, the remaining condominium property, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).
8. To unit owners, the proceeds of any sale of association property, the remaining association property, common surplus, and other assets of the association, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).

(d) After determining that all known debts and liabilities of an association in the process of termination have been paid or adequately provided for, the termination trustee shall distribute the remaining assets pursuant to the plan of termination. If the termination is by court proceeding or subject to court supervision, the distribution may not be made until any period for the presentation of claims ordered by the court has elapsed.

(e) Assets held by an association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, shall be returned, transferred, or conveyed in accordance with the condition. The remaining association assets shall be distributed pursuant to paragraph (c).

(f) Distribution may be made in money, property, or securities and in installments or as a lump sum, if it can be done fairly and ratably and in conformity with the plan of termination. Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of the assets.

(18) ASSOCIATION STATUS.—The termination of a condominium does not change the corporate status of the association that operated the condominium property. The association continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs. In a partial termination, the association may continue as the condominium association for the property that remains subject to the declaration of condominium.

(19) CREATION OF ANOTHER CONDOMINIUM.—The termination or partial termination of a condominium does not bar the filing of a new declaration of condominium by the termination trustee, or the trustee's successor in interest, for the terminated property or any portion thereof. The partial termination of a condominium may provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium by the condominium association for any portion of the property not terminated from the condominium form of ownership.

(20) EXCLUSION.—This section does not apply to the termination of a condominium incident to a merger of that condominium with one or more other condominiums under s. 718.110(7).

(21) APPLICABILITY.—This section applies to all condominiums in this state in existence on or after July 1, 2007.

XV.

ENCROACHMENTS

If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, or if any encroachment shall hereafter occur as the result of settling of the building, or alteration to the common elements made pursuant to the provisions herein, or as the result of repair and restoration, a valid easement shall exist for the continuance of such encroachment for so long as the same shall exist.

XVI.

ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

The Association shall at all times maintain a register setting forth the names of all owners of units in the condominium, and any purchaser or transferee of an unit shall notify the Association of the names of any party holding a mortgage upon any unit and the name of all lessees in order that the Association may keep a record of same.

XVII.

ESCROW FOR INSURANCE PREMIUMS

An institutional first mortgagee holding a mortgage upon a unit in the condominium shall not have the right to cause the Association to create and maintain an escrow account for the purpose of assuring the availability of funds with which to pay premium or premiums due from time to time on a casualty insurance policy or policies which the Association is required to keep in existence.

XVIII.

REAL PROPERTY TAXES DURING INITIAL YEAR OF CONDOMINIUM

In the event that during the year in which this condominium is established, real property taxes are assessed against the condominium property as a whole, such taxes will be a common expense.

XIX.

RESPONSIBILITY OF UNIT OWNERS

The owner of each unit shall be governed by and shall comply with the provisions of this Declaration as well as the By-Laws and Articles of Incorporation of the Association. Any unit owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his act, neglect or carelessness, or by that of any members of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Nothing herein contained, however, shall be construed so as to modify any waiver of rights or subrogation by insurance companies.

In any action brought against a unit owner by the Association for damages, or injunctive relief due to such unit owner's failure to comply with the provisions of this Declaration or By-Laws of the Association, the prevailing party shall be entitled to court costs, reasonable attorney's fees and expenses incurred by it in connection with the prosecution of such action.

XX.

WAIVER

The failure of the Association, a unit owner or institutional first mortgagee to enforce any right, provision, covenant or condition which may be granted herein, or in the By-Laws and Articles of Incorporation of the Association, or the failure to insist upon the compliance with same, shall not constitute a waiver by the Association, such unit owner or institutional first mortgagee to enforce such right, provision, covenant or condition, or insist upon the compliance with same, in the future.

No breach of any of the provisions contained herein shall defeat or adversely affect the lien of any mortgage at any time made in good faith and for a valuable consideration upon said property, or any part thereof, and made by a bank, savings and loan association, or insurance company authorized to transact business in the State of Florida and engage in the business of making loans constituting a first lien upon real property, but the rights and remedies herein granted to the Developer, the Association, and the owner or owners of any part of said condominium, may be enforced against the owner of said property subject to such mortgage, notwithstanding such mortgage.

XXI.

CONSTRUCTION

The provisions of this Declaration shall be liberally construed so as to effectuate its purposes. The invalidity of any provision herein shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration.

XXII.

GENDER

The use of the masculine gender in this Declaration shall be deemed to refer to the feminine or neuter gender, and the use of the singular or plural shall be taken to mean the other whenever the context may require.

XXIII.

CAPTIONS

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.

XXIV.

REMEDIES FOR VIOLATIONS

Each unit owner, each tenant and other invitee, and each association shall be governed by, and

An institutional mortgagee's rights herein are limited and can only be exercised with a regard to units owned by the institutional mortgagee.

XXX.

NOTICE TO INSTITUTIONAL MORTGAGEES

The Association shall provide a holder, insurer or guarantor of a first mortgage, upon written request (such request to state the name and address of such holder, insurer or guarantor and the unit number) timely notice of:

- A. Any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the owners Association appertaining to any unit; or (iv) the purposes to which any unit or the common elements are restricted;
- B. Any proposed termination of the condominium regime;
- C. Any condemnation loss or any casualty loss which affects a material portion of the condominium or which affects any unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- D. Any delinquency in the payment of assessments or charges owed by an owner of a unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;
- E. Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

XXXI.

INTERNET

The cost of a master antenna internet system service obtained pursuant to a bulk contract shall be deemed a common expense, and if not, such cost shall be considered common expense if it is designated as such in a written contract between the board of administration and the company providing the master television internet system.

The costs of communication services as defined in Chapter 202, Florida Statutes, information services or internet services obtained pursuant to a bulk contract is a common expense.

XXXII.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

The rules of the St. Johns River Water Management District require the following provisions to be included in this Declaration of Condominium:

- A. Property Description: Property encompassed by the permit granted by the St. Johns River Water Management District (where the surface water management system will be located) is included in the legal description of the parent tract located on Sheet 2 of Exhibit "A" attached hereto and made a part hereof.
- B. Definitions: "Surface Water or Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.
- C. Duties of Association: The Association shall be responsible for the maintenance,

must comply with the provisions of the Florida Condominium Act, the declaration, the documents creating the Association, and the Association By-Laws which shall be deemed expressly incorporated into any lease of a unit. Actions for damages for injunctive relief, or both, for failure to comply with these provisions may be brought by the Association or by a unit owner against:

- a. The Association.
- b. A unit owner.
- c. Directors designated by the Developer, for actions taken by them before control of the Association is assumed by unit owners other than the Developer.
- d. Any director who willfully and knowingly fails to comply with these provisions.
- e. Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in Section 718.503(1)(a), Florida Statutes, is entitled to recover reasonable attorney's fees. A unit owner prevailing in an action between the association and the unit owner under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the Court to be necessary to reimburse the unit owner for his or her share of assessments levied by the Association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this Section may not be deemed to be actions for specific performance.

A provision of the Condominium Act may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners are members of a board of administration but waive notice of specific meetings and writing if provided by the By-Laws. Any instruction given in writing by unit owner to purchaser to an escrow agent may be relied upon by an escrow agent whether or not such instruction and the payment of funds thereunder might constitute a waiver or any provision of the Condominium Act.

If a unit owner is delinquent for more than ninety (90) days in paying a monetary obligation due to the Association, the Association may suspend the right of a unit owner or unit's occupant, licensee or invitee to use common elements, facilities or any other Association property until the monetary obligation is paid. This Section does not apply to limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces or elevators. The Association may also levy reasonable fines for the failure of the owner of unit or its occupant, licensee or invitee to comply with any provision of the Declaration, the Association By-Laws or reasonable rules of the Association. A fine does not become a lien against a unit. The fine may not 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. However, provided that no such fine may in the aggregate exceed \$1,000.00. No fine may be levied and a suspension may not be imposed unless the Association first provides at least fourteen (14) days written notice and an opportunity for a hearing to the unit owner and if applicable, its occupant, licensee or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board members household. If the committee does not agree with the fine or suspension, the fine or suspension may not be levied or imposed.

The notice and hearing requirements of this Section do not apply to the imposition of suspensions or fines against a unit owner or a unit's occupant, licensee and invitee because of any amounts due the Association. If such a fine or suspension is imposed, the Association must levy the fine or impose a reasonable suspension at a properly noticed board meeting and after the imposition of such fine or suspension, the Association must notify the unit owner and, if applicable, the unit's occupant, licensee or invitee by mail or hand delivery.

An Association may also suspend the voting right of a member due to non-payment of any monetary obligation due the Association which is more than ninety (90) days delinquent. The suspension ends upon full payment of all obligations currently due or over due the Association.

XXV.

TIMESHARE RESERVATION

No reservation is made pursuant to Section 718.1045, Florida Statutes, for the creation of timeshare estates. Timeshare estates are prohibited.

XXVI.

FINES

The Association may levy reasonable fines against a unit for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of the Declaration, the Association By-Laws, or reasonable rules of the Association. No fine will become a lien against a unit. 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 that no fine shall in the aggregate exceed \$1,000.00. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, its licensee or invitee. The hearing must be held before a committee of other unit owners. If the committee does not agree with the fine the fine may not be levied. The provisions of this Article do not apply to unoccupied units.

XXVII.

SIGNAGE

After the Developer has completed its sales program, the Association, through its Board of Administration, shall have the right to determine the type, style and location of all signage associated with the condominium property. Prior to transfer of control of the Association to unit owners other than the Developer, the Developer shall control signage for the condominium.

XXVIII.

INSTITUTIONAL MORTGAGEE

An institutional mortgagee means the owner and holder of a mortgage encumbering a condominium parcel, which owner and holder of said mortgage is either a bank or life insurance company or a federal or state savings and loan association, or a mortgage or real estate investment trust, or a pension and profit sharing fund, or a credit union, or an agency of the United States Government, or the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or any entity controlling, controlled by or under common control with any of the foregoing, or a lender generally recognized in the community as an institutional lender or the Developer, or assignee, nominee, or designee of the Developer.

An institutional mortgage means a mortgage owned or held by an institutional mortgagee.

An insurance trustee means that Florida bank having trust powers, designated by the board to receive proceeds on behalf of the association, which proceeds are paid as a result of casualty or fire loss covered by insurance policies.

XXIX.

RIGHTS RESERVED UNTO INSTITUTIONAL MORTGAGEES

The rights and privileges in this Declaration of Condominium and the exhibits hereto in favor of the Developer are freely assignable, in whole or in part, by the Developer to any party who may be hereafter designated by the Developer to have and exercise such rights including an institutional mortgage in the event of a foreclosure against the Developer or deed in lieu thereof by the Developer. Such rights may be exercised by the nominees, assignees or designees of the Developer.

operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved by the St. Johns River Water Management District.

- D. Covenant for Maintenance assessments for Association: Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems including, but not limited to, work within retention areas, drainage structures and drainage easements.
- E. Easement for Access and Drainage: The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of the common elements which is a part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without prior written approval of the St. Johns River Water Management District.
- F. Amendment: Any amendment to the Declaration of Condominium which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common elements must have the prior approval of the St. Johns River Water Management District.
- G. Enforcement: The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Declaration of Condominium which relate to the maintenance, operation and repair of the surface water or stormwater management system.
- H. Swale Maintenance: The Developer has constructed a Drainage Swale upon the common elements for the purpose of managing and containing the flow of excess surface water, if any, found upon such common elements from time to time. The Association shall be responsible for the maintenance, operation and repair of the swales on the common elements. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the St. Johns River Water Management District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the Drainage Swale shall be authorized and any damage to any Drainage Swale, whether caused by natural or human-induced phenomena, shall be repaired and the Drainage Swale returned to its former condition as soon as possible by the Association.

XXXIII.

ASSOCIATION MAINTENANCE STANDARDS

It is mandatory that the Association, in carrying out its responsibilities under this Article XXXIII, comply with the following minimum standards, requirements and guidelines:

- A. The Board shall cause all Utilities and Utility systems forming a part of the Common Elements to be maintained properly and in good condition, and effect repairs thereto as needed. It is mandatory that the Board cause all water and/or sewer infrastructure to be inspected at least annually by a licensed and qualified contractor, engineer or

architect, with expertise in the construction and maintenance of such water/sewer infrastructure.

- B. It is mandatory that the Board cause all drainage systems, landscape installations, and irrigation systems within the Common Elements to be inspected at least annually. In particular, the Board shall inspect for any misaligned, malfunctioning or non-functional sprinkler or blocked drainage grates, basins, lines and systems, which circumstances could cause damage to the Condominium Property. It is mandatory that at least one such inspection each year shall be performed by a licensed and qualified contractor, engineer or architect with expertise in the construction and maintenance of such drainage and landscape installations. Without limiting the foregoing, all landscaping shall be maintained in accordance with the following minimum maintenance standards:
1. Lawn and ground cover shall be kept mowed and/or trimmed regularly;
 2. Planting shall be kept in a healthy and growing condition;
 3. Fertilization, cultivation, spraying and tree pruning shall be performed as part of the regular landscaping program;
 4. Stakes, guides, and ties on trees shall be checked regularly to insure the correct function of each; ties shall be adjusted to avoid creating abrasions or girdling of the trunk or stem;
 5. Damage to planting shall be repaired and corrected within thirty (30) days of occurrence; and
 6. Irrigation systems shall be kept in sound working condition; adjustments, replacement or malfunctioning parts and cleaning of systems shall be an integral part of the regular landscaping program.
 7. Only slow release or zero phosphorous fertilizers may be used on the Condominium Property. All other types of fertilizers are prohibited.
 8. Implement the use of soil moisture sensors to reduce over-irrigation on the Condominium Property.
 9. Discuss Florida-Friendly landscaping at the annual meeting of the Association each year. For guidance refer to the University of Florida, Florida Yards & Neighborhoods which has helpful information which can be found on line at <http://fyn.ifas.ufl.edu/publications.htm>.
 10. It is recommended but not mandatory that the Association use a landscape contractor maintenance contract of a business who is certified in Florida Green Industries Best Management Practices.
- C. It is mandatory that the Board cause all hardscape, paved areas and internal streets within the Condominium Property to be inspected at least annually by a licensed and qualified contractor, engineer or architect with expertise in the construction and maintenance of such hardscape and paved areas.
- D. It is mandatory that the Board cause all waterscape or water features within the Common Elements (including, but not necessarily limited to, the swimming pool), to be inspected each year by a licensed and qualified contractor, engineer, or architect with expertise in the construction and maintenance of such waterscape and water features.
- E. It is mandatory that the Board cause the structures and roofs of all improvements within the Condominium Property to be inspected each year by a licensed and qualified contractor, engineer, or architect with expertise in the construction and maintenance of such structures and roofs.
- F. It is mandatory that the Board carry out such other periodic inspections, and obtain such other reports, as may be prudent and appropriate. In each instance in which a contractor, engineer, architect or other professional with expertise in a specific area is engaged to conduct an investigation or inspection, such expert shall promptly provide a written report thereof to the Board. The written report shall identify all items of maintenance or repair which either requires current action by the Association, or which will need further review, inspection or analysis. The Board shall, in each case, cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage.

- G. This Section XXXIII is intended only to provide specific minimum maintenance and inspection requirements in particular areas, and shall in no way limit the Association's general responsibility with respect to maintenance in a prudent manner, designed to prevent avoidable deterioration or property damage.

XXXIV.

MOLD AND MILDEW AWARENESS AND PREVENTIONS

The Association acknowledges that there is a provision in each of the Unit Owner's Contract for Sale and Purchase entitled "Mold Information and Limitation of Liability," a copy of which contract is incorporated herein by reference.

As part of the Association's and the Board's responsibility for maintenance and repair of the Condominium property as set forth in Articles IX and XXXIII of this Declaration, there are many ways that the Association and the Board can help to control moisture and mold located on, under, within or adjacent to the Condominium property, including, but not limited to, the common elements and limited common elements. The following is a list of suggestions, which is not meant to be all inclusive:

- Keep indoor humidity levels as low as possible by running the air conditioning unit at a comfortable level. Remember, the cooler the air is, the less humidity it will hold, thereby limiting the growth of mold and mildew.
- Use of a dehumidifier is a great way to keep the humidity levels lower than normal when needed.
- The addition of a humidistat to existing air conditioning control systems is also an excellent way to keep the humidity levels lower when an indoor space is left unoccupied for extended periods of time.
- There are numerous brands of moisture absorbent chemicals available to help keep the humidity inside at a proper level while indoor space is unoccupied for short periods of time.
- Do not run air conditioners with windows open. The air conditioning system is not designed to keep up with the moisture and heat load this condition will generate. When windows are left open, there is a risk of saturating everything inside the indoor space (walls, furniture, carpeting, etc.) with more moisture than the air conditioning system is designed to remove. Remember, mold needs moisture to survive. The drier the indoor space, the better off the indoor space will be.
- Fix leaking plumbing and any other source of unwanted water immediately.
- Maintain proper indoor humidity. Equipment that conditions the air, such as air conditioners, humidifiers and ventilation systems must be operated year round.
- Have major appliances and equipment, such as heating, ventilating and air conditioning systems inspected, cleaned and serviced regularly by a qualified professional.
- Clean and dry refrigerator, air conditioner and dehumidifier drip pans and filters regularly.
- The Association and/or the Board should respond promptly when they see or have called to their attention signs of moisture or mold.
- Do not allow moisture to stand or make contact with carpet, furniture and cellulose-based materials, such as wood, drywall or other non-tile, non-plastic or non-metal materials.
- Dry all water damaged areas and items immediately to prevent mold growth.

- If mold develops, clean up the mold by washing off hard surfaces with a commercial strength cleaner and mold/mildew inhibitor (such as “Tile Air II” or “Miltrol” from the Marinize Product Corporation) or equal, making sure to follow directions as specified.
- Depending upon the nature and extent of the mold infestation, trained professionals may be needed to assist in the remediation effort.
- Mold that is not properly and adequately removed may reappear.

The Association acknowledges and agrees that neither the Developer, nor its general contractor, Tom Price Enterprises (“Contractor”), will be liable to the Association for any special, incidental or consequential damages based on any legal theory whatsoever, including but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of mold, mildew and/or microscopic spores located on, under, within or adjacent to the Condominium property, including, but not limited to, the common elements and limited common elements, unless caused by the sole negligence or willful misconduct of the Seller or the Contractor. The Association, on behalf of itself and its members, tenants, invitees and licensees hereby releases and agrees to indemnify Seller and Contractor and their officers, directors, partners, members, successors and assigns from and against any and all claims, actions, damages, causes of action, liabilities and expenses (including, without limitation, attorneys’ fees and costs of enforcing this release and indemnity) for property damage, injury or death resulting from the exposure to microscopic spores, mold and/or mildew and from any loss of resale value due to the presence and/or existence of mold, mildew and/or microscopic spores; provided, however, that in no event is the Association releasing or indemnifying Seller or Contractor as a result of the presence and/or existence of mold, mildew and/or microscopic spores if caused by the sole negligence or willful misconduct of the Seller or the Contractor.

ARTICLE XXXV

CONSERVATION EASEMENTS

A. Conservation Easement Areas.

Pursuant to the provisions of Section 704.06, Florida Statutes, Association has granted to St. Johns River Water Management District (the “District”) a conservation easement in perpetuity over the property described in the conservation Easement recorded on April 29th, 2009 in Official Records Book 5939, Page 1727, Public Records of Brevard County, Florida. The Conservation Easement is attached hereto as Exhibit _____. Association granted the Conservation Easement as a condition of permit number 40-009-109154-1 issued by the District, solely to offset adverse impacts to natural resources, fish and wildlife, and wetland functions.

1. **Purpose.** The purpose of the conservation Easement is to assure that the Conservation Easement Areas will be retained forever in their existing natural condition and to prevent any use of the conservation Easement Areas that will impair or interfere with the environmental value of these areas.
2. **Prohibited Uses.** Any activity in or use of the Conservation Easement Areas inconsistent with the purpose of the Conservation Easement is prohibited. The Conservation Easement expressly prohibits the following activities and uses:
 - a. Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.
 - b. Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.
 - c. Removing, destroying or trimming trees, shrubs, or other vegetation.
 - d. Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.

- e. Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.
- f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- g. Acts or uses detrimental to such retention of land or water areas.
- h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

3. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Notwithstanding the prohibitions contained in Section 2, Grantor reserves unto itself, and its successors and assigns, the right to:

3.1 Construct and maintain one boardwalk of the property. The boardwalk must be constructed in accordance with the Permit and the following specifications:

- 1. Docking or mooring of watercraft is prohibited at the boardwalk.
- 2. The portion of the boardwalk within the wetland conservation easement area shall be elevated a minimum of 5 feet over the mean high water elevation.
- 3. The portion of the boardwalk extending through the upland conservation area shall be elevated a minimum of 3 feet above land surface.
- 4. The width of the access boardwalk shall not exceed 4 feet through the upland conservation area.
- 5. Hand railing shall be installed and maintained around the entire perimeter of the boardwalk.
- 6. The boardwalk shall meander round all trees greater than 4 inches dbh and all mangroves.
- 7. 30 days prior to the commencement of any boardwalk construction, Grantor or subsequent lot owners shall submit plans and specifications for the boardwalk, including a description of construction methods, to the District for review and written approval.
- 8. Grantor or subsequent lot owners must obtain all necessary local, state, and federal permits prior to the commencement of any construction of the boardwalk.

3.2 Eradicate invasive and exotic species on the Property utilizing heavy equipment. Invasive/Exotic species are to be mulched, the remaining stumps treated with herbicide, and the mulched material will be raked and hauled off-site. The eradication of invasive and exotic species must be completed in accordance with the Permit.

3.3 Perform the planting and restoration activities as authorized in the approved mitigation plan in accordance with the Permit's conditions.

4. Responsibilities. The Association, its successors and assigns, are responsible for the operation and maintenance of the Conservation Easement Areas. In addition, the Association, its successors and assigns, are responsible for the periodic removal of trash and other debris which may accumulate in the Conservation Easement Areas.

5. Rights of District. To accomplish the purposes stated in the Conservation Easement, the Association conveyed the following rights to the District:

- a. To enter upon and inspect the Conservation Easement Areas in a reasonable manner and at reasonable times to determine if Association or its successors and assigns are complying with the covenants and prohibitions contained in the Conservation Easement.
- b. To proceed at law or in equity to enforce the provisions of the Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the conservation Easement Areas that may be damaged by any activity inconsistent with the Conservation Easement.

6. Amendment. The provisions of the Conservation Easement may not be amended without the prior written approval of the District.

IN WITNESS WHEREOF, the above-stated Developer has caused these presents to be signed and sealed on this 29th day of November, 2023.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

DEVELOPER:

RIVER FLY-IN CONDOMINIUM, INC.,
a Florida Corporation

By: Wasim Niazi
Wasim Niazi

ch. Ni
Print Name: Ibrahim Niazi

Kiyon Fooks
Print Name: Kiyon Fooks

STATE OF FLORIDA)
COUNTY OF BREVARD)

BEFORE ME, the undersigned authority, personally appeared Wasim Niazi, President of RIVER FLY-IN CONDOMINIUM, INC., a Florida corporation, on behalf of the corporation, personally known to me, or who produced _____ as identification, who did/did not take an oath, and who executed the foregoing and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned.

WITNESS my signature and official seal in the State and County last aforesaid on 29th day of November, 2023.

Karen S Newcomb
Notary Public
My Commission Expires:



Prepared by:

Return recorded original to:
Office of General Counsel
St. Johns River Water Management District
4049 Reid Street
Palatka, FL 32177-2529

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this 04 day of April, 2009, by River Fly-In, LLC having an address at 1910 Rockledge Boulevard, Suite 101 Rockledge, Florida 32955 ("Grantor"), in favor of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, a public body existing under Chapter 373, Florida Statutes, having a mailing address at 4049 Reid Street, Palatka, Florida 32177-2529 ("Grantee").

WITNESSETH:

WHEREAS, Grantor solely owns in fee simple certain real property in Brevard County, Florida, more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property");

WHEREAS, Grantor grants this conservation easement as a condition of permit #4-009-109154-1 issued by Grantee, solely to off-set adverse impacts to natural resources, fish and wildlife, and wetland functions; and

WHEREAS, Grantor desires to preserve the Property in its natural condition in perpetuity;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of section 704.06, Florida Statutes, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Conservation Easement"). Grantor fully warrants title to said Property, and will warrant and defend the same against the lawful claims of all persons whomsoever.

1. Purpose. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property.

2. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

(b) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials, except for activities specifically authorized by District permit 40-009-109154-1.

(c) Removing, destroying or trimming trees, shrubs, or other vegetation, except for activities specifically authorized by District permit 40-009-109154-1.

(d) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface, except for activities specifically authorized by District permit 40-009-109154-1.

(e) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.

(f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(g) Acts or uses detrimental to such retention of land or water areas.

(h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

3. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Notwithstanding the prohibitions contained in Section 2 Grantor reserves unto itself, and its successors and assigns, the right to:

(a) Construct and maintain one boardwalk on the Property per Construction Engineering Group, Inc.'s plan sheet C-7B submitted to the District on July 11, 2007. The boardwalk must be constructed in accordance with the Permit and the following specifications:

1. The portion of the boardwalk within the wetland conservation easement area shall be elevated a minimum of 5 feet above land surface.

2. The portion of the boardwalk extending through the upland conservation area shall be elevated a minimum of 3 feet above land surface.
3. The width of the access boardwalk shall not exceed 4 feet through the upland conservation area.
4. Hand railing shall be installed and maintained around the entire perimeter of the boardwalk.
5. The boardwalk shall meander around all trees greater than 4 inches dbh and all mangroves.
6. 30 days prior to the commencement of any boardwalk construction, Grantor or subsequent lot owners shall submit plans and specifications for the outlook/observation structures and the gazebo, including a description of construction methods, to the District for review and written approval.
7. Grantor or subsequent lot owners must obtain all necessary local, state, and federal permits prior to the commencement of any construction of the boardwalk.
8. Eradicate invasive and exotic species on the Property utilizing heavy equipment. Invasive/Exotic species are to be mulched, the remaining stumps treated with herbicide, and the mulched material will be raked and hauled off-site. The eradication of invasive and exotic species must be completed in accordance with the Permit.

9. Perform the planting and restoration activities as authorized in the approved mitigation plan in accordance with the permit's conditions.

[12.3, A.H.]

4. Rights of Grantee. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:

(a) To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.

(b) To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement.

5. Grantee's Discretion. Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its rights under this Conservation Easement, Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

6. Grantee's Liability. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantor, nor any person or entity claiming by or through Grantor, shall hold Grantee liable for any damage or injury to person or personal property which may occur on the Property.

7. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to persons resulting from such causes.

8. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of Brevard County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

9. Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement on the day and year first above written.

Signed, sealed and delivered
in our presence as witnesses:

Signature: _____

Printed Name: _____

Signature: _____

Printed Name: _____

GRANTOR:

Signature: _____

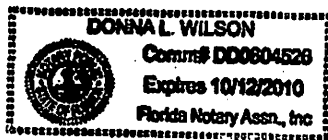
Printed Name: Wasim Niazi

Title: Managing Member, River Fly-In, LLC

STATE OF FLORIDA

COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 28 day of
April, 2009, by Wasim Niazi, who did not take an oath.



Donna L. Wilson
Notary Public, State of Florida
at Large.

My Commission Expires:

10-12-2010

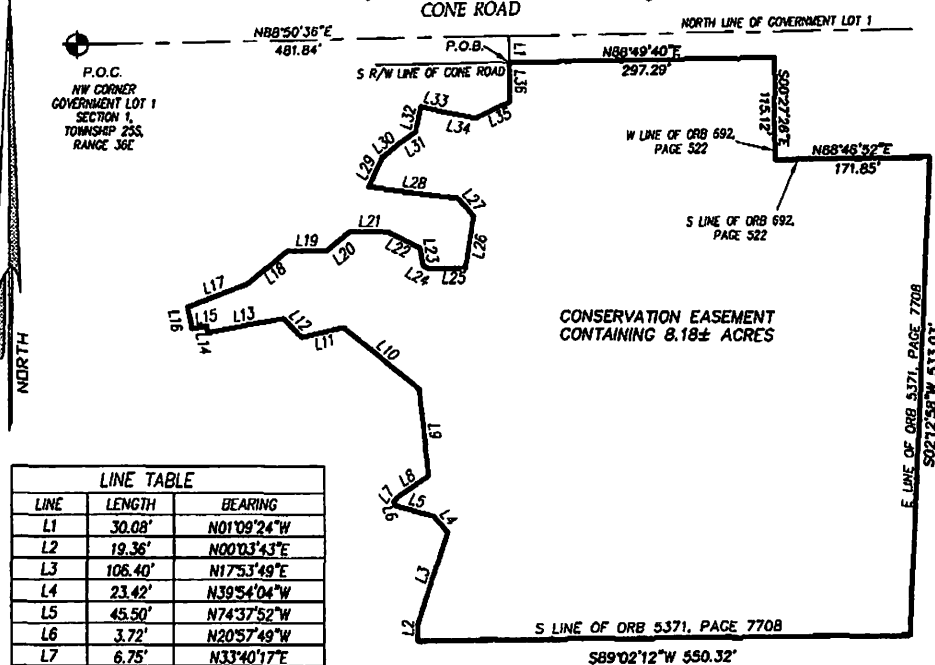
Serial No. DD0604526

Personally known ☒ OR produced Identification _____ Identification
produced _____

EXHIBIT A

legal description

SKETCH TO ACCOMPANY LEGAL DESCRIPTION (NOT A SURVEY)



LEGAL DESCRIPTION:

A parcel of land lying in Government Lot 1, Section 1, Township 25 South, Range 36 East, Brevard County, Florida, being a portion of those lands described in Official Records Book 5371, Page 7708 and being more particularly described as follows: Commence at the Northwest corner of said Government Lot 1 and run N 88°50'36" E along the North line of said Government Lot 1, a distance of 481.84 feet; thence S 01°09'24" E 30.08 feet to the South right-of-way line of Cone Road, as presently occupied and the Point of Beginning of the herein described parcel; thence N 88°49'40" E along the said South right-of-way line of Cone Road 297.29 feet to the West line of lands described in Official Records Book 692, page 522; thence S 00°27'26" E along said West line 115.12 feet to the South line of said lands described in Official Records Book 692, page 522; thence N 88°46'52" E along said South line 171.85 feet to the East line of said lands described in Official Records Book 5371, Page 7708; thence S 02°12'58" W along said East line 533.03 feet to the South line of said lands described in Official Records Book 5371, page 7708; thence S 89°02'12" W along said South line 550.32 feet; thence N 00°03'43" E 19.36 feet; thence N 17°53'49" E 106.40 feet; thence N 39°54'04" W 23.42 feet; thence N 74°37'52" W 45.50 feet; thence N 20°57'49" W 3.72 feet; thence N 33°40'17" E 6.75 feet; thence N 56°01'46" E 42.86 feet; thence N 06°24'42" W 98.25 feet; thence N 51°08'01" W 109.05 feet; thence S 76°55'55" W 48.28 feet; thence N 44°25'58" W 30.00 feet; thence S 78°57'58" W 84.94 feet; thence N 11°34'47" W 8.00 feet; thence S 78°25'13" W 16.99 feet; thence N 10°50'21" W 25.00 feet; thence N 69°02'59" E 72.13 feet; thence N 50°23'09" E 56.40 feet; thence S 89°45'29" E 44.22 feet; thence N 50°30'44" E 33.96 feet; thence S 89°35'45" E 43.63 feet; thence S 63°10'51" E 39.29 feet; thence S 09°38'48" E 19.35 feet; S 63°01'10" E 7.05 feet; thence S 89°50'23" E 41.03 feet; thence N 09°41'53" E 58.86 feet; thence N 42°54'14" W 27.34 feet; thence N 82°46'55" W 100.87 feet; thence N 25°18'41" E 35.83 feet; thence N 48°56'22" E 24.88 feet; thence N 55°22'12" E 22.48 feet; thence N 12°44'21" E 29.92 feet; thence S 76°41'24" E 28.85 feet; thence S 78°57'36" E 34.00 feet; thence N 63°42'13" E 42.28 feet; thence N 01°10'20" W 44.56 feet to the Point of Beginning. Containing 8.18 acres more or less.

LEGEND:

ORB = OFFICIAL RECORDS BOOK
R/W = RIGHT OF WAY
POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT

CERTIFIED TO:

RIVER FLY-IN, LLC

SKETCH

1-25-38/CONSERVATION ESMT JOB No. 21229

DATE: 3/26/09

MICHAEL J. KANE PROFESSIONAL LAND SURVEYOR AND MAPPER
STATE OF FLORIDA NO. LS 40229

C DRAWN BY: JAS

SCALE 1 INCH = 150 FEET

NOTES:

1. BEARINGS BASED ON ORB 5371, PAGE 7708 (SEE SKETCH)
2. BEARINGS, DISTANCES OR ANGLES SHOWN ARE THE SAME AS PLAT, DEED OR RECORD UNLESS SHOWN OTHERWISE.
3. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

KANE SURVEYING

FLORIDA LICENSED BUSINESS No. LB 7179
505 DISTRIBUTION DRIVE
MELBOURNE, FLORIDA 32904
(321) 676-0427
FAX (321) 984-1448
WWW.KANELANDSURVEYING.COM

River Fly-In Conservation Easement:

A parcel of land lying in Government Lot 1, Section 1, Township 25 South, Range 36 East, Brevard County, Florida, being a portion of those lands described in Official Records Book 5371, Page 7708 and being more particularly described as follows: Commence at the Northwest corner of said Government Lot 1 and run N 88°50'36" E along the North line of said Government Lot 1, a distance of 481.84 feet; thence S 01°09'24" E 30.08 feet to the South right-of-way line of Cone Road, as presently occupied and the Point of Beginning of the herein described parcel; thence N 88°49'40" E along the said South right-of-way line of Cone Road 297.29 feet to the West line of lands described in Official Records Book 692, page 522; thence S 00°27'26" E along said West line 115.12 feet to the South line of said lands described in Official Records Book 692, page 522; thence N 88°46'52" E along said South line 171.85 feet to the East line of said lands described in Official Records Book 5371, Page 7708; thence S 02°12'58" W along said East line 533.03 feet to the South line of said lands described in Official Records Book 5371, page 7708; thence S 89°02'12" W along said South line 550.32 feet; thence N 00°03'43" E 19.36 feet; thence N 17°53'49" E 106.40 feet; thence N 39°54'04" W 23.42 feet; thence N 74°37'52" W 45.50 feet; thence N 20°57'49" W 3.72 feet; thence N 33°40'17" E 6.75 feet; thence N 56°01'46" E 42.86 feet; thence N 06°24'42" W 98.25 feet; thence N 51°08'01" W 109.05 feet; thence S 76°55'55" W 48.28 feet; thence N 44°25'58" W 30.00 feet; thence S 78°57'58" W 84.94 feet; thence N 11°34'47" W 8.00 feet; thence S 78°25'13" W 16.99 feet; thence N 10°50'21" W 25.00 feet; thence N 69°02'59" E 72.13 feet; thence N 50°23'09" E 56.40 feet; thence S 89°45'29" E 44.22 feet; thence N 50°30'44" E 33.96 feet; thence S 89°35'45" E 43.63 feet; thence S 63°10'51" E 39.29 feet; thence S 09°38'48" E 19.35 feet; S 63°01'10" E 7.05 feet; thence S 89°50'23" E 41.03 feet; thence N 09°41'53" E 58.86 feet; thence N 42°54'14" W 27.34 feet; thence N 82°46'55" W 100.87 feet; thence N 25°18'41" E 35.83 feet; thence N 48°56'22" E 24.88 feet; thence N 55°22'12" E 22.48 feet; thence N 12°44'21" E 29.92 feet; thence S 76°41'24" E 28.85 feet; thence S 78°57'36" E 34.00 feet; thence N 63°42'13" E 42.28 feet; thence N 01°10'20" W 44.56 feet to the Point of Beginning. Containing 8.18 acres more or less.